

**立法會**  
**Legislative Council**

Ref : CB2/BC/6/10

LC Paper No. CB(2)1605/11-12  
(These minutes have been seen  
by the Administration)

**Bills Committee on  
Legislative Council (Amendment) Bill 2011**

**Minutes of the eighth meeting  
held on Friday, 22 July 2011 at 10:00 am in the  
Chamber of the Legislative Council Building**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
  - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
  - Dr Hon Philip WONG Yu-hong, GBS
  - Hon WONG Yung-kan, SBS, JP
  - Hon LAU Kong-wah, JP
  - Hon LI Fung-ying, SBS, JP
  - Hon Vincent FANG Kang, SBS, JP
  - Hon WONG Kwok-hing, MH
  - Hon CHEUNG Hok-ming, GBS, JP
  - Hon WONG Ting-kwong, BBS, JP
  - Hon CHIM Pui-chung
  - Dr Hon LAM Tai-fai, BBS, JP
  - Hon CHAN Kin-por, JP
  - Dr Hon Priscilla LEUNG Mei-fun, JP
  - Hon Paul TSE Wai-chun, JP
- Members attending** :
- Hon Albert HO Chun-yan
  - Dr Hon Margaret NG
  - Hon Emily LAU Wai-hing, JP
  - Hon Audrey EU Yuet-mee, SC, JP
  - Hon Andrew LEUNG Kwan-yuen, GBS, JP
  - Hon Ronny TONG Ka-wah, SC
  - Hon Cyd HO Sau-lan
- Members absent** :
- Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
  - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
  - Hon Miriam LAU Kin-ye, GBS, JP
  - Hon Abraham SHEK Lai-him, SBS, JP

Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Dr Hon PAN Pey-chyou

**Public Officers :** Constitutional and Mainland Affairs Bureau  
**attending**

Mr Stephen LAM Sui-lung  
Secretary for Constitutional and Mainland Affairs

Ms Adeline WONG Ching-man  
Under Secretary for Constitutional and Mainland  
Affairs

Mr Arthur HO Kin-wah  
Deputy Secretary for Constitutional and Mainland  
Affairs

Ms Anne TENG Yu-yan  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Mr Freely CHENG Kei  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Mr Ivanhoe CHANG Chi-ho  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Department of Justice

Ms Roxana CHENG Pui-lan  
Acting Solicitor General

**Clerk in** : Miss Flora TAI  
**attendance** : Chief Council Secretary (2)3

**Staff in** : Mr Arthur CHEUNG  
**attendance** : Senior Assistant Legal Adviser 2

Ms Alice LEUNG  
Senior Council Secretary (2)2

Mrs Fanny TSANG  
Legislative Assistant (2)3

---

Action

**I. Meeting with the Administration**

[LC Paper No. CB(2)2432/10-11(01) and CB(3)840/10-11]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Papers provided by the Administration at the meeting

2. Members noted that the following papers were tabled by the Administration at the meeting -

- (a) the consultation paper on the arrangements for filling vacancies in the Legislative Council ("LegCo"), which was issued by the Administration on the day of the meeting; and
- (b) the Administration's paper on public consultation on arrangements for filling vacancies in LegCo [issued vide LC Paper No. CB(2)2432/10-11(01) on 25 July 2011].

Proposals in the Administration's consultation paper

3. Members were advised that the Administration would conduct a public consultation on the proposals for filling mid-term vacancies in LegCo for about two months and the consultation period would end on 24 September 2011. The Administration would consider carefully views collected during the public consultation and decide whether the relevant proposals should be revised.

4. Members noted that the consultation paper set out the following four options for filling vacancies in the membership of LegCo arising during the term of office of LegCo -

- (a) Option 1 – restricting resigning Members from participating in any by-election in the same term;

Action

- (b) Option 2 - a replacement mechanism using the same candidate list followed by a precedence list system (which was the Administration's revised proposal presented to the Bills Committee at its meeting on 4 July 2011);
- (c) Option 3 - a replacement mechanism which did not cover casual vacancies arising from death, serious illness or other involuntary circumstances; and
- (d) Option 4 - a replacement mechanism using the same candidate list, followed by leaving the seat vacant when the list was exhausted.

Legislative timetable

5. In response to Dr LAM Tai-fai's enquiry, the Administration advised that after the conclusion of the public consultation exercise, it would consolidate views received and publish a report detailing the views received. The Administration's intention was to complete the legislative exercise in the 2011-2012 session.

**II. Any other business**

- 6. Members agreed that further meetings would be arranged if necessary.
- 7. There being no other business, the meeting ended at 11:45 am.

Council Business Division 2  
Legislative Council Secretariat  
3 April 2012

**Proceedings of the eighth meeting of the  
Bills Committee on Legislative Council (Amendment) Bill 2011  
on Friday, 22 July 2011 at 10:00 am  
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000314 - 000427	Chairman	Opening remarks	
000428 - 001601	Chairman Administration	<p>The Administration presented the following papers tabled at the meeting -</p> <p>(a) the consultation paper on arrangements for filling vacancies in the Legislative Council ("LegCo") issued on the day of the meeting; and</p> <p>(b) the Administration's paper on public consultation on arrangements for filling vacancies in LegCo [LC Paper No. CB(2)2432/10-11(01)].</p>	
001602 - 002412	Chairman Mr Albert HO Administration	<p>Mr Albert HO considered that the timing for public consultation exercise was inappropriate as it should be conducted before the introduction of the Bill into LegCo. As regards the consultation paper, he opined that the contents were biased and many leading questions were included. The views expressed by the Hong Kong Bar Association ("the Bar Association") about the non-conformity of the Bill with the Basic Law ("BL") should have been included. He pointed out that according to a recent opinion survey conducted by the Democratic Party, more than 50% of the respondents considered that the Government should withdraw the Bill and the consultation paper.</p> <p>The Administration advised that the views of the Bar Association and the Law Society of Hong Kong ("the Law Society") had been included in the consultation paper and links from their websites regarding their views on the proposed replacement mechanism were available in the paper. The Administration's views on the legal aspects of the revised proposal presented to the Bills Committee at its meeting on 4 July 2011 had also been annexed to the paper.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
002413 - 003224	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG remarked that according to the results of the opinion polls conducted by many political parties and groups, most of the respondents objected to the Bill. He was disappointed at the absence of an option for maintaining a status quo (i.e. the existing arrangement for filling a vacancy arising mid term through a by-election) in the consultation paper.</p> <p>Mr TONG also opined that the cons of option 1 (i.e. restricting resigning Members from participating in any by-election in the same term) as set out in paragraph 4.08 of the consultation paper were also applicable to options 2, 3 and 4.</p> <p>The Administration responded that options 2, 3 and 4 were related to the arrangements for filling a mid-term vacancy which had made reference to the results of the previous general election and that could give effect to the will of electors at the general election as a whole. These options did not restrict a Member who resigned from office from being nominated as a candidate in a by-election.</p>	
003225 - 004022	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG criticized that there was no precedent case where the Administration chose to conduct a public consultation exercise on the Bill when the Bills Committee had already completed its scrutiny work and submitted a report to the House Committee. As stated in the consultation paper, Article 26 of BL ("BL 26") stipulated that permanent residents of the Hong Kong Special Administrative Region ("HKSAR") should have the right to stand for election in accordance with law, she queried whether there was any constitutional basis for depriving a Member who resigned from office from participating in any by-election in the same term.</p> <p>The Administration advised that in Japan, if a member returned under the proportional representation system resigned or vacated his seat, no by-election would be held to fill the vacancy.</p>	
004023 - 004814	Chairman Mr LAU Kong-wah Administration	<p>Mr LAU Kong-wah pointed out that there were strong views in the community that the loophole in the existing replacement arrangement had to be plugged. As regards paragraph 4.08(c)(iii) in the consultation paper about the cons for restricting</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>resigning Members from participating in any by-election in the same term, he enquired about the exceptions that should be allowed. He also sought information about the legal implications of leaving a LegCo seat vacant as referred to paragraph 4.20(d) about option 4 (i.e. a replacement mechanism using the same candidate list, followed by leaving the seat vacant when the list is exhausted).</p> <p>The Administration responded that there had been views that the filling of a vacancy arising from a Member's illness or other involuntary circumstances should be differentiated from that of a vacancy arising from a Member resigning from office on his own initiative, and exceptions should be allowed under such circumstances should be considered. In respect of option 4, the Administration advised that there were similar arrangements in Germany and Poland and it would need to explore further whether this proposal complied with BL.</p>	
004815 - 005545	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO was concerned that the Administration did not provide an option of maintaining a status quo in the consultation paper. She was also worried that a by-election would not be held after the dissolution of LegCo by the Chief Executive ("CE") in accordance with BL 49 and 50.</p> <p>The Administration stressed that as set out in paragraph 5.06 of the consultation paper, respondents were welcomed to give views on whether the status quo should be maintained. It also assured that a general election would be conducted after the dissolution of LegCo by CE in accordance with BL 49 and 50.</p>	
005546 - 010544	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU shared the views expressed earlier by Mr Albert HO about the contents of the consultation paper. She also raised concern about the absence of an option for maintaining a status quo in the consultation paper.</p> <p>The Administration reiterated that the public was welcomed to give views on whether the status quo should be maintained. After the conclusion of the consultation exercise, the Administration</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		would consider carefully and thoroughly all the responses received.	
010545 - 011401	Chairman Dr LAM Tai-fai Administration	<p>Dr LAM Tai-fai expressed his hope that the public consultation exercise would be conducted in a truly open and fair manner. He considered that the Administration should also give due regard to the views raised by Members who were not affiliated to any political party. He asked whether the two-month consultation period would be further extended and about the timetable for the legislative work of the Bill after the consultation period ended.</p> <p>The Administration reiterated that it would consider all the views received and work out a proposal that would be acceptable to most of the people. Though the Administration had not decided on the timing for resumption of the Second Reading debate on the Bill, it hoped that the scrutiny work of the Bill would be completed in the 2011-2012 session.</p>	
011402 - 012239	Chairman Ir Dr Raymond HO Administration	<p>On the consultation paper, Ir Dr Raymond HO shared the view that some of the wordings in the consultation paper were biased. He urged the Administration to give due regard to various views raised by different sectors of the community. Referring to paragraph 4.08(c)(iii) of the consultation paper, he enquired how to decide on the exceptions to option 1 under which resigning Members were restricted from participating in any by-election in the same term that should be allowed.</p> <p>The Administration responded that if option 1 was considered an acceptable and feasible option after consultation exercise, it was imperative to have explicit statutory provisions specifying the exceptions and the exceptional circumstances under which resigning Members were allowed to participate in any by-election in the same term.</p>	
012240 - 013110	Chairman Mr WONG Kwok-hing Administration	<p>In response to Mr WONG Kwok-hing's question as to whether option 4 conformed with BL, the Administration explained that -</p> <p>(a) recently, there were views from some academics and commentators that it was also</p>	



Time Marker	Speaker(s)	Subject(s)	Action required
		<p>a feasible option under which a vacancy would be first filled by a candidate from the same candidate list as that of the vacating Member and if there was no more candidate on the same list who was eligible and willing to fill the vacancy, then the seat could be left vacant for the rest of the term;</p> <p>(b) to facilitate discussion during the public consultation period, the Administration had to point out in the consultation paper that it had to explore further the legal implications of leaving a LegCo seat vacant; and</p> <p>(c) the Administration would continue to study its legal implications including, among others, whether this proposal complied with BL.</p>	
013111 - 013804	Chairman Dr Priscilla LEUNG Administration	<p><i>To allow sufficient time for discussion, the Chairman extended the meeting by 15 minutes.</i></p> <p>Dr Priscilla LEUNG considered that option 1 would be far more preferable as a by-election would be held if a Member resigned in the mid-term and it would limit the restriction to a Member who resigned in his own initiative.</p> <p>The Administration advised that the following issues should be taken into account when considering option 1 -</p> <p>(a) whether variations in the duration of remainder of the term might lead to legal challenges;</p> <p>(b) whether this proposal would contravene BL 26 that permanent residents of the HKSAR should have the right to stand for election in accordance with law; and</p> <p>(c) whether this proposal could plug the loophole, having regard to the fact that even if the resigning Members could not stand in the by-election themselves, other members of their political parties, or people who shared their political views, could still stand in the by-election.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
013805 - 014438	Chairman Ms Audrey EU Administration	<p>Ms Audrey EU also raised concern that the Administration did not provide an option for maintaining a status quo in the consultation paper. Given that many overseas jurisdictions would not restrict a Member who resigned from office to stand for a by-election, she considered that the electorate should be left to decide whether or not to continue to support that Member in the by-election. In her view, the Administration should provide the legal basis for the four options as set out in the consultation paper.</p> <p>The Administration responded that there was legal basis for option 2 and the legal principles and considerations of the Department of Justice on this option had been set out in a paper tabled at the Bills Committee meeting on 4 July 2011. In the meantime, the Administration would continue to study the legal aspects of the other three options.</p>	
014439- 014945	Chairman Mr Paul TSE	<p>Taking into account that the Bar Association and the Law Society had expressed views and concerns about the Administration's proposals for filling casual vacancies in LegCo arising mid-term, Mr Paul TSE considered that it was incumbent upon the Government to provide its legal opinions relating to the four options. As there were serious disputes over the Administration's proposal to put in place a replacement mechanism which covered all situations where a vacancy arose mid-term and which was not confined to situations of voluntary resignation, he suggested the Administration to consider whether the legislative work could be done in phases.</p>	
014946 - 015015	Chairman	Further meetings would be arranged if necessary.	