

立法會

Legislative Council

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Background brief for the Bills Committee on Legislative Council (Amendment) Bill 2011

Purpose

This paper sets out the background of the Legislative Council (Amendment) Bill 2011 ("the Bill") and gives a brief account of the recent discussions on the Administration's proposed replacement mechanism for filling vacancies in the Legislative Council ("LegCo").

Background

Vacancy in the membership of LegCo

2. On 25 January 2010, a LegCo Member from each of the five geographical constituencies ("GCs") submitted written notice of resignation to the Clerk to LegCo. Pursuant to section 35 of the Legislative Council Ordinance (Cap. 542) ("LCO"), the Clerk to LegCo must, by notice published in the Gazette, declare the existence of a vacancy in the membership of that Council within 21 days after becoming aware of the vacancy. Section 36(1)(a) of LCO further stipulates that the Electoral Affairs Commission ("EAC") must, in accordance with regulations in force under the EAC Ordinance (Cap. 541), arrange for a by-election to be held when the Clerk to LegCo makes a declaration as to the existence of a vacancy in the membership of LegCo.

3. In accordance with section 16 of LCO, a person who ceases to be a Member is, subject to section 39 (When person is disqualified from being nominated as a candidate and from being elected as a Member), eligible for re-election as a Member. The resignation of the five LegCo Members took effect on 29 January 2010. EAC conducted a by-election on 16 May 2010 to fill the five vacancies and the five resigned Members were all re-elected.

Proposed restrictions on LegCo Members who resign from their office to stand again in the by-elections

4. During the deliberations relating to holding the 2010 LegCo by-election at the meetings of the Panel on Constitutional Affairs ("the Panel") held on

10 February, 19 March, 14 April, 18 and 30 October 2010, some members considered that to prevent abuse of the electoral system, there was a need to amend section 14 of LCO to restrict the condition under which a Member who resigned from one's office could stand for election in the by-election to fill that vacancy. These members expressed concern that a District Council ("DC") (second) Functional Constituency ("FC") Member who would be returned from the whole Hong Kong Special Administrative Region ("HKSAR") as a single constituency could also set in motion the need to another by-election by resignation. They called on the Administration to put forward legislative proposals to address the issue.

5. Some other members considered that the freedom of expression of LegCo Members and electors would be infringed if a resigned LegCo Member was prohibited by law to stand again in the by-election. These members were of the view that it was the fundamental right of a LegCo Member to resign in protest against a policy or practice. The overriding principle was that the Administration must ensure that the right to vote and the right to stand for election as guaranteed under the Basic Law ("BL") would not be compromised.

6. The Administration advised that it observed that members of the public expected the LegCo Members they voted for would complete their four-year term of office to serve the community and did not support the so-called "referendum campaign" brought about by the resignation of the five GC Members in January 2010 which triggered the need to hold a by-election. However, any proposal to amend LCO must comply with BL 26 and the proposed restrictions should be reasonable and practicable. The Administration considered that it would not be effective to simply prevent the Member who had resigned from standing for in the by-election to fill that vacancy if a party colleague of that Member could still stand for that by-election. The Administration stressed that it would uphold the right of the public to vote and to stand for election as guaranteed in BL 26.

7. At its meeting held on 10 February 2010, the Panel passed a motion expressing the views, among others, that the HKSAR Government should amend LCO to prevent the system regarding the resignation of LegCo Members and by-elections from being abused again in future.

Issues raised by Members

8. At the special meeting of the Panel held on 24 May 2011, the Administration put forward its proposed replacement mechanism for filling a vacancy in LegCo for members' discussion. Under the Administration's proposed replacement mechanism which would be applicable to GC and the

five new DC (second) FC seats, a vacancy arising mid-term in LegCo should be filled by the first candidate who had not yet been elected in the list with the largest number of remainder votes in the preceding general election.

9. Some members welcomed the Administration's move to put forward the proposed replacement mechanism which, they considered, could prevent the existing replacement arrangement from being abused in the future. They reiterated their concern that a DC (second) FC Member who would be returned from the whole HKSAR as a single constituency could set in motion the need to a by-election by resignation. These members were supportive of the Administration's proposal for not filling a vacant seat with a candidate from the same list of candidate in order to prevent the resigned Member from being able to hand over the vacant seat to a chosen successor.

10. Some other members, however, expressed strong objection to the proposed replacement mechanism which, they considered, would distort the views of the electorate and deprive electors of their voting right in by-elections. They pointed out that as the list voting system was adopted for the GC general and the DC (second) FC elections, it was illogical that the vacancy was not to be filled by the first candidate who had not been elected in the same list of candidate as the resigned Member. These members also stressed that the Administration should have conducted comprehensive public consultation on the proposal as the basic rights of the public would be affected.

11. Members may wish to note that at members' request at the Panel meeting, the Research Division of the LegCo Secretariat has prepared an information note on "Replacement arrangement for filling vacancies in overseas legislature" (LC Paper No. IN15/10-11) and a factsheet on "Results of Legislative Council elections" (LC Paper No. FS22/10-11), which were issued to members vide LC Paper No. CB(2)2099/10-11 on 16 June 2011.

12. During the deliberations of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011, some members reiterated their support for the Administration's proposed replacement mechanism for filling vacancies in LegCo. They suggested that the Administration should introduce amendments to the Bill if appropriate with a view to implementing the proposed replacement mechanism as soon as possible. Some other members, however, queried whether the relevant amendments fell within the scope of the Bill. They stressed that the proposal which affected the basic rights of the general public must go through due legislative process of consideration by LegCo.

Relevant papers

13. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant documents on Bills Committee on Legislative Council (Amendment) Bill 2011

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	10.2.2010 (Item III)	Agenda Minutes
Legislative Council	24.2.2010	Official Record of Proceedings Pages 46 - 49 (Written question)
CA Panel	19.3.2010 (Item III)	Agenda Minutes
	19.4.2010 (Item III)	Agenda Minutes
Legislative Council	2.6.2010	Official Record of Proceedings Pages 64 - 80 (Oral question)
CA Panel	18.10.2010 (Item II)	Agenda
	30.10.2010 (Item I)	Agenda
	24.5.2011 (Item I)	Agenda
Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011	25.5.2011 (Item I)	Agenda