

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

**Referendum &
Scope of Application of Replacement Mechanism**

During recent meetings of the Bills Committee, various Members have raised two areas for discussion :

- (a) whether there is a system of referendum within the HKSAR;
and
- (b) the scope of application of the replacement mechanism.

Referendum

2. On the first point, the Administration has made it clear on many occasions, even before the by-elections to the five Geographical Constituencies held in 2010, that under the Basic Law that there is no system of referendum in the Hong Kong Special Administrative Region (HKSAR). Such a possibility was considered during the drafting of the Basic Law in the 1980's. However, this provision was eventually not incorporated into the Basic Law enacted in April 1990. Accordingly, any changes to the provisions concerning the selection of the Chief Executive and the formation of the Legislative Council can only be undertaken in accordance with relevant provisions of the Basic Law and the procedures stipulated in Annexes I and II.

Replacement Mechanism : Scope of Application

3. As for the scope of application of the proposed replacement mechanism, the Administration has considered this issue very comprehensively. We have proposed that the mechanism should cover situations encompassed by section 15 of the Legislative Council Ordinance and Article 79 of the Basic Law (BL) for the reasons set out in paragraphs 4 to 9 below.

4. Firstly, we need to plug the loophole whereby Members of the Legislative Council can resign at will, give rise to unnecessary by-elections, and which, in turn, will lead to unnecessary public expenditure.

5. Secondly, we need to forestall situations whereby a certain Member of the Legislative Council can make use of the provisions of BL 79 to instigate a situation whereby the President of the Legislative Council declares that the Member concerned is no longer qualified for the office. There are certain circumstances in which the Member can take such an initiative. For example, under BL 79(2), the Member can choose to be absent from meetings of the Council with no valid reason and without the consent of the President. Under BL 79(3), the Member can renounce his or her status as a permanent resident of the HKSAR. Under BL 79(7), the Member can choose to misbehave, so that two-thirds of the Members of the Council present pass a motion of censure.

6. Thirdly, the Member may become bankrupt or fails to comply with a court order to repay debts, or is convicted and sentenced to

imprisonment for one month or more for a criminal offence and relieved of his/her duties by a motion passed by two-thirds of the Members of the Council present. Under BL 79(5) and BL 79(6) respectively, the President shall declare that the Member is no longer qualified for the office. In these circumstances, the Member has a degree of personal responsibility.

7. Under BL 79(4), the Member can accept a Government appointment as public servant. In accepting such an appointment, the Member concerned is able to exercise a degree of discretion.

8. We consider that, since in the above situations the Member has control or carries a degree of personal responsibility, it is appropriate to apply the replacement mechanism to any vacancies arising in these situations.

9. As for a vacancy arising following the death of a Member, or where under BL 79(1), the Member loses the ability to discharge his or her duties as a Member due to serious illness or other reasons, the Member concerned may not have personal control of the situation. However, we still consider that it is appropriate to apply the replacement mechanism to this situation, in the same manner as it is applied to the other situations outlined above. The same replacement mechanism which determines the replacement candidates based on the list proportional representation voting system should fill vacancies arising in different situations.

BL 26

10. As to the suggestion that we should restrict Members who have resigned from standing in any by-elections during the term of the Legislative Council for a certain period, we have considered this option, but decided not to pursue this. This is because such an option may affect the right of the persons concerned to stand for election under BL 26.

Constitutional & Mainland Affairs Bureau

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