

立法會
Legislative Council

Ref : CB2/BC/4/11

LC Paper No. CB(2)2246/11-12
(These minutes have been seen by
the Administration)

**Bills Committee on
Legislative Council (Amendment) Bill 2012**

**Minutes of the first meeting
held on Tuesday, 21 February 2012, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
 - Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Dr Hon Margaret NG
 - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon LAU Kong-wah, JP
 - Hon Miriam LAU Kin-ye, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon Abraham SHEK Lai-him, SBS, JP
 - Hon LI Fung-ying, SBS, JP
 - Hon WONG Kwok-hing, MH
 - Hon WONG Ting-kwong, BBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Hon CHIM Pui-chung
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Dr Hon Priscilla LEUNG Mei-fun, JP
 - Hon WONG Kwok-kin, BBS
 - Hon IP Wai-ming, MH
 - Hon IP Kwok-him, GBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
 - Hon Albert CHAN Wai-yip
- Members absent** :
- Hon CHEUNG Man-kwong
 - Hon WONG Yung-kan, SBS, JP
 - Hon LAU Wong-fat, GBM, GBS, JP

Hon Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon PAN Pey-chyou

Public Officers : Constitutional and Mainland Affairs Bureau
attending

Mr Raymond TAM Chi-yuen
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 (Constitutional and Mainland
Affairs)

Department of Justice

Ms Roxana CHENG
Deputy Solicitor General (Constitutional)

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting & Administration)

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

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

Mr Raymond LAM
Senior Council Secretary (2)2

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Election of Chairman and Deputy Chairman

Mr TAM Yiu-chung and Mr Jeffrey LAM were elected as the Chairman and Deputy Chairman of the Bills Committee respectively.

II. Meeting with the Administration

[CMAB C1/30/5, LC Paper Nos. LS27/11-12, CB(3)402/11-12 and CB(2)1125/11-12(01) to (03)]

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

3. The Bills Committee requested the Administration to provide its instruction brief and the information given to Lord Pannick when his legal advice was sought on the constitutionality of the proposal in the Bill.

III. Any other business

Meeting schedule

4. Members agreed to the following meeting schedule for February and March 2012 -

- (a) 24 February 2012 (Friday) from 8:30 am to 10:30 am;
- (b) 1 March 2012 (Thursday) from 4:30 pm to 6:30 pm;
- (c) 17 March 2012 (Saturday) from 9:00 am to 1:00 pm;
- (d) 23 March 2012 (Friday) from 10:45 am to 12:45 pm; and
- (e) 30 March 2012 (Friday) from 10:45 am to 12:45 pm.

Invitation for public views

5. Members agreed to receive views from the public on the Bill at the meeting scheduled for Saturday, 17 March 2012.

6. There being no other business, the meeting ended at 6:20 pm.

**Proceedings of the first meeting of the
Bills Committee on Legislative Council (Amendment) Bill 2012
held on Tuesday, 21 February 2012, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000440 - 000549	Ir Dr Raymond HO Mrs Sophie LEUNG Mr TAM Yiu-chung	Election of Chairman	
000550 - 000742	Chairman Mr WONG Kwok-hing Dr Priscilla LEUNG Mr WONG Ting-kwong Ir Dr Raymond HO Mr Jeffrey LAM	Election of Deputy Chairman	
000743 - 000826	Chairman Ms Emily LAU	Opening remarks Tentative schedule of meetings	
000827 - 003119	Dr Margaret NG Chairman Administration	Dr Margaret NG's request for provision of the legal advice of Lord David Pannick, QC in full on the constitutionality of the proposal in the Bill. Briefing by the Administration on the Bill, the legal advice of Lord Pannick and the Administration's paper on the constitutionality of the proposal in the Bill.	
003120 - 003832	Chairman Mr WONG Kwok-hing Administration	Mr WONG Kwok-hing's expression of support for the proposal in the Bill in order to address the mischief arising from Members resigning in order to trigger by-elections. He, however, expressed concern whether the proposal in the Bill could stand up to a legal challenge by way of judicial review. The Administration's response that the legal advice of Lord Pannick and the Department of Justice ("DoJ") confirmed that the proposal was constitutional. Article 26 of the Basic Law ("BL26"), which stipulated that permanent residents of the Hong Kong Special Administrative Region had the right to vote and the right to stand for election in accordance with law, had to be read in conjunction with BL68 and Annex II to BL, which provided the Legislative	

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		<p>Council ("LegCo") with a broad discretion in determining the contents of legislation which governed the specific method for forming LegCo. Restrictions could be imposed on the right so long as they were rational and proportionate to achieve a legitimate aim. The concept of LegCo enjoying considerable margin of appreciation in managing electoral affairs was well established in courts and had been applied by courts.</p>	
003833 - 005045	<p>Chairman Dr Margaret NG Administration</p>	<p>Dr Margaret NG's view that –</p> <ul style="list-style-type: none"> (a) the proposal in the Bill was unnecessary for maintaining the integrity of the democratic process; and (b) as stated in the statement issued by the Hong Kong Bar Association ("Bar Association") on 17 February 2012 – <ul style="list-style-type: none"> (i) the restriction imposed on a resigning Members not only curtailed the resigning Member's right to stand for election, but also the electors' choice of their favourite candidates and consequently restricted their right to elect as well; and (ii) whether a matter constituted a mischief for the purpose of constitutional analysis was ultimately a matter for the courts. <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) the proposal in the Bill did not impose restriction on the right to vote, although it imposed restriction, to some extent, on the right to stand for election; (b) electors had already exercised their voting right in the general election at which the Members had been elected before the Members chose to resign in order to trigger a by-election; and (c) the Bar Association had not set out its argument as to how the proposal in the Bill would restrict the electors' right to elect. 	

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		<p>Dr Margaret NG's query regarding whether the Administration had communicated with the Bar Association to understand its argument.</p> <p>Administration's response that it had been communicating with the Bar Association and the Law Society of Hong Kong on the proposal in the Bill and provided the paper on the constitutionality of the proposal in the Bill to the two legal professional bodies. It would further approach the two legal professional bodies for their views.</p>	
005046 - 010259	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG's view that the proposal in the Bill had failed to strike a fair balance and was unconstitutional on the grounds that –</p> <ul style="list-style-type: none"> (a) the proposal in the Bill could not address the alleged mischief as a by-election would still need to be held; (b) there was in fact no loophole which needed to be plugged as by-election was part of the democratic electoral system under which the electors could express their support or otherwise for the resigning Members; and (c) the proposal in the Bill would impose unnecessary restriction on the fundamental right of millions of electors to choose their favourite candidates. <p>Mr TONG requested the Administration to provide the Bills Committee with its instruction brief and the information given to Lord Pannick when his legal advice was sought on the constitutionality of the proposal in the Bill.</p> <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) the mischief to be addressed by the Bill included : <ul style="list-style-type: none"> (i) constituents were deprived of a representative during the period between resignation and by-election; (ii) LegCo would be deprived of a Member during that period; 	Admin to follow up (paragraph 3 of the minutes refers)

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		<p>(iii) the by-election would incur expenditure of public funds; and</p> <p>(iv) if such resignation to trigger by-elections became a common occurrence, respect for the electoral process would be undermined, particularly if it led to a low turnout rate in the by-election;</p> <p>(b) electors had already exercised their right to vote in the general election at which the Member was elected before the voluntary resignation took place; and</p> <p>(c) while the proposal in the Bill could not prevent the expenditure of public funds incurred in a by-election, it would deter a Member from resigning to trigger by-election.</p>	
010300 - 010904	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG's view that –</p> <p>(a) the public at large disapproved the resignation of a Member to trigger by-election and there were strong calls from the community for the Administration to address the mischief; and</p> <p>(b) a person's right to stand for election was already subject to restriction. For example, a person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person is an undischarged bankrupt.</p>	
010905 - 012043	Chairman Mr LEUNG Kwok-hung Administration	<p>Mr LEUNG Kwok-hung's views that the proposal in the Bill was not proportionate and would restrict the right to stand for election as well as the right to vote and that the proposal deprived electors of the right to express their support or otherwise for the resigning Member by exercising the right to vote in the by-election.</p> <p>The Administration's response that the proposal in the Bill would not restrict the right to vote. Electors had already exercised their voting right in the general election at which the Member was elected before the Member chose to resign in order to trigger a by-election. There were</p>	

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		<p>generally more restrictions in many countries on the right to stand for election than the right to vote. This was necessary for public interests, as the acts of the elected Members would affect the community at large.</p>	
012044 - 013130	<p>Chairman Mr Alan LEONG Administration</p>	<p>Mr Alan LEONG's view that the right to vote was one of the fundamental rights under the rule of law. The proposal in the Bill deprived electors of the right to express their support or otherwise for the resigning Member by exercising the right to vote in the by-election, and that there was no convincing reason for not maintaining the status quo.</p> <p>The Administration's response that it was committed to the protection of the rights and freedoms under BL but there were strong calls from the community for addressing the mischief arising from the resignation of Members to trigger a by-election in which they sought to stand.</p>	
013131 - 013953	<p>Chairman Ms Miriam LAU Administration Dr Margaret NG</p>	<p>Ms Miriam LAU's views that the proposal in the Bill had (a) struck an appropriate balance between the need to prevent possible abuse of the existing by-election system and the need to protect the right to vote of the Hong Kong people; and (b) answered the strong call from the community to address the mischief by adopting a targeted solution. She said that those who considered that the proposal in the Bill had restricted the right to vote of electors should appreciate the fact that Members should discharge their duties by serving the full term and should not have resigned in the first place.</p> <p>The Administration concurred with the views of Ms LAU saying that the decision as to whether to resign or not rested with Members.</p> <p>Dr Margaret NG's view that even if electors had exercised their right to vote in a general election, they would still be deprived of the right to vote, if they could not express their support or otherwise for the resigning Member by exercising the right to vote in the by-election. She shared the Bar Association's view that the curtailment of electors' choice of candidates was neither necessary nor justified.</p>	

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013954- 014848	Chairman Mr LEUNG Kwok-hung Administration	Mr LEUNG Kwok-hung's view that the Administration should study overseas experience in protecting the right to vote. The Administration's response that its legal views on the constitutionality of the proposal in the Bill, which had taken into account the views of the United Nations Human Rights Committee, and other relevant precedents or authorities of overseas jurisdictions, had been set out in the Administration's paper on the constitutionality of the proposal in the Bill.	
014849 - 015111	Chairman Mr IP Kwok-him	Mr IP Kwok-him's expression of support for the Bill saying that the public at large disapproved the resignation of a Member to trigger by-election and there were strong calls from the community for the Administration to address the mischief. He also expressed disagreement with the views of the Bar Association on the Bill.	
015112 - 015238	Chairman	Date of next meeting Schedule of future meetings and date of meeting to receive the public views on the Bill.	