

**立法會**  
**Legislative Council**

Ref : CB2/BC/4/11

LC Paper No. CB(2)2408/11-12  
(These minutes have been seen by  
the Administration)

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

**Minutes of the fourth meeting  
held on Friday, 23 March 2012, at 10:45 am  
in Conference Room 3 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 CHEUNG Man-kwong  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-yee, 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 CHIM Pui-chung  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Cyd HO Sau-lan  
Hon CHAN Kin-por, JP  
Dr Hon Priscilla LEUNG Mei-fun, JP  
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** : Dr Hon Philip WONG Yu-hong, GBS  
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 Ronny TONG Ka-wah, SC  
Hon WONG Kwok-kin, BBS  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Dr Hon PAN Pey-chyou

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

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

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

Mr Gordon LEUNG  
Deputy Secretary for Constitutional and Mainland Affairs  
(Designate)

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

Ms Catherina YU  
Senior Council Secretary (2)6

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(3)402/11-12, CB(2)1125/11-12(01) and CB(2)1485/11-12(01)]

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

2. The Bills Committee requested the Administration to provide supplementary information on the electoral system for the Diet of Japan, particularly on whether any restriction on a resigning Member to stand in a by-election.

**II. Any other business**

3. There being no other business, the meeting ended at 11:40 am.

Council Business Division 2  
Legislative Council Secretariat  
20 June 2012

**Proceedings of the fourth meeting of the  
Bills Committee on Legislative Council (Amendment) Bill 2012  
held on Friday, 23 March 2012, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000615 - 000649	Chairman	Opening remarks	
000650 - 000854	Chairman Mr Albert CHAN Clerk SALA2	Mr Albert CHAN's enquiry and the Clerk's response on the deadline for members to submit Committee Stage amendments ("CSAs") to the Bills Committee for consideration.	
000855 - 000953	Chairman Administration	The Administration's briefing on the conditions under which a person was disqualified from being nominated as a candidate at an election in some overseas jurisdictions [LC Paper No. CB(2)1485/11-12(01)].	
000954 - 001533	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's enquiries on –</p> <p>(a) the number of electors in and the size of the single-member constituency in Japan; and</p> <p>(b) the reasons for Japan restricting a resigning Member who was elected from a single-member constituency from standing in the ensuing by-election.</p> <p>The Administration's explanation on the electoral system in Japan. The Administration undertook to provide relevant supplementary information.</p> <p>Dr Margaret NG's view that the conditions under which a person was disqualified from being nominated as a candidate and from being elected as a Member provided in section 39 of the Legislative Council ("LegCo") Ordinance ("LCO") (Cap. 542) and the proposed restriction in the Bill were completely different in nature.</p>	Admin (paragraph 2 of the minutes refers)
001534 - 001915	Chairman Ms Emily LAU Administration	Ms Emily LAU's expression of the Democratic Party's objection to the Administration's latest proposal on the ground that the fundamental right to elect and to be elected should not be affected.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Ms LAU's views that –</p> <ul style="list-style-type: none"> <li>(a) the Administration's latest proposal could not address the alleged mischief as by-election would be held in any event following the resignation of Members; and</li> <li>(b) the proposed restriction on a resigning Member was not commonly adopted by other jurisdictions and the situation in Japan was not pertinent to that in Hong Kong. As such, there was no reason for Hong Kong to impose any restriction on a resigning Member to stand in any by-election as proposed in the Bill.</li> </ul> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) as the overseas jurisdictions under study had largely adopted the list proportional representation voting system, vacancies would not be filled by way of by-election. As no by-election would be held, there was no need to impose any restriction on resigning Members with respect to by-election there;</li> <li>(b) by-elections had been held to fill mid-term vacancies in Geographical Constituencies ("GCs") notwithstanding the adoption of the list proportional representation voting system for GCs since 1998;</li> <li>(c) members of the public generally considered that by-elections should be retained and legislative amendments should be introduced to plug the loophole whereby Members could resign at will in order to trigger a by-election in which they intended to stand and sought to be re-elected; and</li> <li>(d) although the Administration's latest proposal would not be able to entirely address the mischief arising from Members resigning at will in order to trigger by-elections, it would convey a very strong message about the community's disapproval of triggering a by-election by way of resignation and deter Members from abusing the system.</li> </ul>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Ms Emily LAU's views that –</p> <ul style="list-style-type: none"> <li>(a) the decision to support or not the resigning Member in a by-election rested with the community and it should be up to the Member to decide whether to resign and stand in the ensuing by-election;</li> <li>(b) the existing arrangement for filling a mid-term vacancy in LegCo should be retained; and</li> <li>(c) if the Bill was to be enacted, the right of the public to vote in a by-election would be compromised.</li> </ul>	
001916 - 002603	<p>Chairman Mr LEUNG Kwok-hung Administration</p>	<p>Mr LEUNG Kwok-hung's views that –</p> <ul style="list-style-type: none"> <li>(a) the policy objective for imposing the proposed restriction on resigning Members was unclear;</li> <li>(b) the Administration's latest proposal was largely the same as the proposed replacement mechanism which had been regarded as unconstitutional;</li> <li>(c) the proposal could not serve the Administration's intended purpose but would deprive the right of the resigning Member to stand for election and the right of members of the public to express support for the resigning Member or otherwise; and</li> <li>(d) the existing arrangement for filling any mid-term vacancies in LegCo through a by-election should be retained.</li> </ul> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) it had examined comprehensively the legality and constitutionality of the replacement mechanism previously proposed to fill any mid-term vacancies and sought independent legal advice on the constitutionality of its latest proposal; and</li> <li>(b) The latest proposal had been drawn up having regard to the view that while legislative amendments should be introduced to address the loophole in the existing electoral system,</li> </ul>	

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		<p>a by-election should continue to be held so that electors could exercise their right to vote when a mid-term vacancy arose.</p> <p>Mr LEUNG Kwok-hung's enquiry on whether similar restriction had been imposed on resigning Members on overseas jurisdictions and whether the Administration had sought legal advice other than Lord David Pannick's.</p> <p>The Administration's responded that –</p> <p>(a) the Department of Justice had carefully considered the latest proposal and concluded that it was constitutional. Lord David Pannick had also confirmed its constitutionality. The Administration was confident that the latest proposal was legal and constitutional; and</p> <p>(b) as a by-election would not be held in the overseas jurisdictions which adopted the list proportional representation voting system, a resigning Member would not have the opportunity to seek re-election to fill the arising vacancy.</p> <p>Mr LEUNG Kwok-hung's remark that resigning Members of the United Kingdom ("UK") Parliament could stand in a by-election.</p>	
002604 - 003020	Chairman Mr IP Kwok-him Administration	<p>Mr IP Kwok-him's view that the Administration's latest proposal would be suitable for the situation in Hong Kong and reflect the view of the majority of the public and Members.</p> <p>The Administration's response to Mr IP's enquiry that in Japan, a Member elected from a single-member constituency would be restricted from standing in the ensuing by-election if he resigned.</p> <p>The Administration's undertaking to provide further information on the restrictions imposed on a resigning Member to standing in by-elections in Japan, if any.</p> <p>Following up on Mr LEUNG Kwok-hung's earlier remark on resigning Members of the UK Parliament standing in by-elections, the</p>	Admin (paragraph 2 of the minutes refers)

Time Marker	Speaker(s)	Subject(s)	Action required
		Administration's explanation that UK Parliament did not adopt the list proportional representation voting system.	
003021 - 003629	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG's view that disqualification of a Member and voluntary resignation of a Member had different implications. Her request for the Administration to provide more information on disqualification and resignation of Members in overseas jurisdictions.</p> <p>The Administration's response that the procedures adopted in overseas jurisdictions for disqualifying a Member varied. In the case of UK, a Member of the House of Commons would be disqualified from holding office if he had accepted a public office.</p> <p>Dr LEUNG's comments that while Article 79 of the Basic Law stipulated the conditions under which a Member would be disqualified from the office, no reference was made to the procedures for a Member to resign which were governed by section 14 of LCO.</p> <p>The Administration's response that under section 14 of LCO, a Member could resign by giving a written notice to the Clerk of LegCo. Arising from the by-election triggered by the resignation of five Members in January 2010, the community generally considered that legislative amendments should be made to plug the loophole of the electoral system.</p>	
003630 - 004424	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's comments that the constitutional convention in the UK Parliament differed from LegCo in that should a Member of the House of Commons wish to resign, he might request appointment to public offices. These offices existed in name only solely to permit the resignation of Members of the House of Commons. The UK Parliament would not prohibit a Member from standing in a by-election or resigning.</p> <p>Dr NG's view that –</p> <p>(a) under section 39 of LCO, a person was disqualified from being nominated as a</p>	



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		<p>candidate and from being elected as a Member if he (i) had a conflict of roles; (ii) had committed a serious crime; (iii) was serving a sentence; or (iv) was mentally disabled. The proposed restriction was completely different in nature from those in section 39 of LCO;</p> <p>(b) the Administration's latest proposal sought to penalize a Member holding different political views who chose to resign in order to enable electors to exercise their right to vote and deter a Member from doing so; and</p> <p>(c) the legislative amendments proposed by the Administration were disproportionate and unconstitutional.</p> <p>The Administration's response that –</p> <p>(a) many countries would impose restrictions on the right to stand for election so long as the restrictions were proportionate and had a legitimate aim;</p> <p>(b) the Administration had made legal assessment of its latest proposal and concluded that the proposed restriction was proportionate; and</p> <p>(c) the legitimate aim of the latest proposal was to address the mischief arising from Members resigning at will in order to trigger by-elections in which they sought to stand and the proposed restriction was necessary.</p> <p>Dr Margaret NG's expression of her opposition to the Administration's latest proposal.</p>	
004425- 004906	Chairman Dr Priscilla LEUNG	<p>Dr Priscilla LEUNG's view that a six-month restriction period was too short. It would be more proportionate to restrict a resigning Member from participating in any by-election in the entire remainder of the term.</p> <p>Dr LEUNG's expression of support for the Administration's latest proposal.</p>	

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
004907 - 005329	Chairman Administration SALA2	<u>Clause-by-clause examination of the Bill</u> [LC Paper Nos. CB(3)402/11-12 and CB(2)1125/11-12(01)]  Briefing by the Administration on the Bill.	
005330 - 005436	Chairman Clerk	Completion of the clause-by-clause examination of the Bill  Date of next meeting to consider CSAs to be proposed by individual members	

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Legislative Council Secretariat  
20 June 2012