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Chapter:	542	Title:	Legislative Council Ordinance	Gazette Number:	E.R. 2 of 2012
Section:	36	Heading:	By-election to be held to fill vacancy in membership of Legislative Council	Version Date:	02/08/2012

(1) The Electoral Affairs Commission must, in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap 541), arrange for a by-election to be held in the following circumstances and not otherwise—

- (a) on the making of a declaration as to the existence of a vacancy in the membership of the Legislative Council under section 35;
- (b) on the making of a declaration under section 42C that the proceedings for the election for a functional constituency have been terminated;
- (c) on the making of a declaration under section 46(2) that an election for a constituency has failed because no candidates were validly nominated for election or because the number validly nominated for election was less than the number of Members to be returned for the constituency; (Amended 25 of 2003 s. 19)
- (ca) on the making of a declaration under section 46A(1) that the proceedings for the election for a constituency have been terminated; (Added 48 of 1999 s. 21. Amended 25 of 2003 s. 19)
- (cb) on the making of a declaration under section 46A(3) that an election for a constituency has failed— (Amended 25 of 2003 s. 19)
 - (i) because of the death or disqualification of the successful candidate at the election; or
 - (ii) because the number of candidates returned at the election was less than the number of Members to be returned for the constituency due to the death or disqualification of a successful candidate; (Added 48 of 1999 s. 21. Amended 25 of 2003 s. 19)
- (d) subject to sections 70A and 72(1A), on the Court's making a determination under section 67 that a person whose election is questioned was not duly elected and that no other person was duly elected instead; (Amended 48 of 1999 s. 21; 18 of 2011 s. 3)
- (e) if an appeal against a determination referred to in paragraph (d) is lodged to the Court of Final Appeal—
 - (i) on the Court of Final Appeal's making a determination under section 70B that a person whose election is questioned was not duly elected and that no other person was duly elected instead; or
 - (ii) on the termination of the appeal proceedings in other circumstances. (Added 18 of 2011 s. 3)

(2) However, a by-election to fill a vacancy occurring in the membership of the Legislative Council is not to be held—

- (a) within the 4 months preceding the end of that Council's current term of office; or
- (b) if the Chief Executive has published in the Gazette an order dissolving that Council in accordance with the Basic Law.

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