

立法會
Legislative Council

Ref : CB2/BC/6/10

LC Paper No. CB(2)1223/11-12
(These minutes have been seen
by the Administration)

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

**Minutes of the first meeting
held on Friday, 17 June 2011 at 5:30 pm (or immediately after the Finance
Committee meeting scheduled for 3:30 pm, whichever is later)
in the Chamber of the Legislative Council Building**

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, SBS, 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
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Miriam LAU Kin-yeet, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP

Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Tanya CHAN
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man

Members absent : Hon Albert HO Chun-yan
Hon Vincent FANG Kang, SBS, JP
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP

Public Officers attending : Constitutional and Mainland Affairs Bureau

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Joshua LAW Chi-kong
Permanent 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 for Constitutional and
Mainland Affairs

Department of Justice

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
(Bilingual Drafting and Administration)

Miss Emma WONG
Senior Government Counsel

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

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

Ms Alice LEUNG
Senior Council Secretary (2)2

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. LS72/10-11, CB(2)1787/10-11(01), CB(2)2106/10-11(01), CB(2)2098/10-11(01), and CB(3)840/10-11]

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

III. Any other business

Meeting schedule

3. Members agreed to the following meeting schedule for June 2011 -
- (a) 20 June 2011 (Monday) from 8:30 am to 10:30 am;
 - (b) 21 June 2011 (Tuesday) from 8:30 am to 10:30 am;
 - (c) 22 June 2011 (Wednesday) from 8:30 am to 10:00 am;
 - (d) 23 June 2011 (Thursday) from 8:30 am to 10:30 am;
 - (e) 23 June 2011 (Thursday) from 2:30 pm to 5:30 pm; and
 - (f) 24 June 2011 (Friday) from 9:00 am to 1:00 pm.

Invitation of public views

4. Members noted that the Panel on Constitutional Affairs ("CA Panel") had scheduled a special meeting on 18 June 2011 to receive views from over one hundred deputations on the Administration's proposed arrangements for filling vacancies in the Legislative Council ("LegCo"), to which members of the Bills Committee and all other Members had also been invited. Members further noted that the LegCo Brief on the Legislative Council (Amendment) Bill 2011 had also been uploaded to LegCo website for the deputations' reference.

5. Members discussed whether the Bills Committee should hold a public hearing in its own name to receive public views on the Bill. Some members held a strong view that as the Administration had not conducted any public consultation on the Bill before its introduction into LegCo, there was a need for the Bills Committee to hold such a public hearing. Some other members, however, considered that the holding of a public hearing was not the only way that the Bills Committee could gauge public views. Having regard to the fact that the CA Panel would hold a public hearing on the same subject matter and the relevant papers (including the Bill) had been made accessible on the LegCo website for the deputations, these members considered it not necessary for the Bills Committee to hold another public hearing to gauge public views.

6. In summing up the discussion, the Chairman concluded that there was no need for the Bills Committee to hold another public hearing to receive public views on the Bill but members of the public were welcomed to make written submissions.

7. There being no other business, the meeting ended at 7:00 pm.

**Proceedings of the first meeting of the
Bills Committee on Legislative Council (Amendment) Bill 2011
on Friday, 17 June 2011, at 5:30 pm (or immediately after the Finance
Committee meeting scheduled for 3:30 pm, whichever is later)
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000247 - 000359	Ir Dr Raymond HO Mr IP Kwok-him Mr TAM Yiu-chung	Election of Chairman	
000360 - 000432	Chairman Mrs Sophie LEUNG Mr Jeffrey LAM	Election of Deputy Chairman	
000433 - 000544	Chairman Clerk	Opening remarks Tentative schedule of meetings	
000545 - 000848	Chairman Mr Albert CHAN Dr Margaret NG Mr IP Kwok-him	<p>While noting that the Panel on Constitutional Affairs ("CA Panel") would hold a special meeting to receive views from deputations on the Administration's proposed arrangements for filling vacancies in the Legislative Council ("LegCo") on 18 June 2011, Mr Albert CHAN held the view that the Bills Committee should hold a public hearing to receive views from the public.</p> <p>Dr Margaret NG's strong dissatisfaction about the Administration's failure to conduct any public consultation on the Bill before its introduction into LegCo.</p> <p>Mr IP Kwok-him's view that considering that the subject of discussion for the public hearing of the CA Panel was the same as that of the Bills Committee, and the relevant papers (including the LegCo Brief on Legislative Council (Amendment) Bill 2011) had been uploaded to LegCo website for reference of the deputations, for the convenience of the public, it was not necessary for the Bills Committee to hold another public hearing to receive public views.</p>	
000849 - 001120	Chairman Mr LEUNG Kwok-hung	Mr LEUNG Kwok-hung's view that the Administration should issue a white bill which would provide the widest possible public consultation on its proposed replacement mechanism before the introduction of a blue bill.	

Time Marker	Speaker(s)	Subject(s)	Action required
001121 - 001627	Chairman Ms Emily LAU Mrs Sophie LEUNG	<p>Ms Emily LAU's view that the Bills Committee should hold a public hearing and dissatisfaction over the tight schedule of Bills Committee meetings.</p> <p>The Chairman's advice about the arrangement of the special meeting to be held by the CA Panel on 18 June 2011 for receiving public views and members of the public should be welcome to submit written submissions to the Bills Committee if they so wished.</p> <p>Mrs Sophie LEUNG's view that early announcement of the arrangements on the proposed replacement mechanism should be made as persons who wished to consider standing in the District Council ("DC") election to be held in November 2011 would need time to decide if they would take part in the upcoming DC election. The Administration should also inform electors as early as possible about the replacement mechanism.</p>	
001628 - 002150	Dr Margaret NG Chairman Mr Albert CHAN Mr LEUNG Kwok-hung	<p>Dr Margaret NG's, Mr Albert CHAN's and Mr LEUNG Kwok-hung's reiteration of their earlier views that the Bills Committee should hold a public hearing on the Bill.</p> <p>Mr Albert CHAN's view that it was incumbent upon the Bills Committee to hold a public hearing to receive the public views. He protested against the deprivation of the public's right to give views to the Bills Committee.</p> <p><i>(Mr CHAN walked out of the meeting at this juncture.)</i></p> <p>Mr LEUNG Kwok-hung echoed Mr Albert CHAN's view, pointing out that the holding of a public hearing was an established practice for the Bills Committee.</p>	
002151 - 002546	Chairman Mr Paul TSE SALA2 Mr IP Kwok-him	<p>In response to Mr Paul TSE's enquiries, SALA2's advice that the Rules of Procedure and the House Rules had given room for the Bills Committee to determine its practice and procedures in scrutinizing the Bill. It was up to the Bills Committee whether a public hearing should be held.</p>	

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		<p>While agreeing that the Bills Committee should gauge public views on the Bill, Mr IP Kwok-him's view that the holding of a public hearing was not the only way for the Bills Committee to do so. His reiteration of view that for the sake of convenience of the public, he did not consider it appropriate for the Bills Committee to hold another hearing.</p> <p>The Chairman's summing up of members' views that there was no need for the Bills Committee to hold another public hearing to receive public views on the Bill but members of the public were welcome to make written submissions.</p>	
002547 - 003240	Chairman Administration	Briefing by the Administration on its paper [CB(2)1787/10-11(01)]	
003241 - 003748	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO's view that the proposed replacement mechanism would deprive the public's right to vote and that there was a public outcry urging the Administration not to seek enactment of the Bill in July 2011.</p> <p>The Administration's response that -</p> <p>(a) it had listened to the public views and observed that the public did not support the so-called "referendum campaign" brought about by the resignation of the five Geographic Constituency ("GC") Members in January 2010, which triggered the need to hold a by-election. There were also views that there should be a mechanism to facilitate the speedy replacement of any vacant LegCo seat in order to maintain the integrity and operation of LegCo; and</p> <p>(b) the Administration's proposal was consistent with the proportional representation electoral system and could reflect the overall will of the electorate expressed during the general election.</p>	
003749 - 004655	Chairman Dr Priscilla LEUNG Ir Dr Raymond HO Administration	Dr Priscilla LEUNG's view about the abuse of the existing replacement arrangement by some Members and the need to plug the loophole.	

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		<p>Ir Dr Raymond HO's advice that there were precedent cases where LegCo Members had scrutinized Bills within a tight schedule when there was a genuine need for an early enactment of a bill.</p> <p>The Administration's explanation about the timing of the introduction of the Bill.</p>	
004656 - 005151	Chairman Ms LI Fung-ying Administration	<p>Ms LI FUNG-ying's view that given that LegCo election had adopted the list proportional representation voting system for GCs, it was reasonable that when a Member who represented his list of candidates had to leave the office or chose to resign, the vacant seat should be filled by the next candidate on the same list.</p> <p>The Administration's explanation that the proposed replacement mechanism was put forward to plug a loophole in the existing replacement arrangement under which a Member could resign to force a by-election and stand for that by-election. The proposal for not filling a vacancy with a candidate from the same list of that resigned Member was to avoid a Member handing over his seat to a successor of the same affiliation.</p>	
005152 - 005836	Chairman Ms Emily LAU Administration	<p>Referring to the research paper prepared by the Research Division of LegCo Secretariat, Ms Emily LAU's query that there were no other overseas jurisdictions adopting the proposed replacement mechanism.</p> <p>The Administration's response that the Administration's proposal would be consistent with the proportional representation electoral system and could reflect the overall will of the electorate expressed during the general election. Electors in Hong Kong voted for the political parties or groups which they wished to support. They also cast their votes on the basis of the lists with better known candidates. Therefore, once a candidate had resigned, it was reasonable to assume that in the absence of that candidate, his list might not receive the same level of support. It could not be assumed that the votes used by the resigned Member could again be accorded to the list he belonged to. Furthermore, from the perspective of the electoral system, once an</p>	

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		incumbent LegCo Member resigned, his votes should go with him as he had already used the quota of the votes to take up his seat.	
005837 - 010502	Chairman Mr Alan LEONG Administration	On Mr Alan LEONG's query about how the electors could at the time of voting at a general election know how to vote for the replacement candidates, the Administration responded that the electorate should cast their votes for the list of candidates whom they supported. Candidates of the list who obtained the highest votes would have the greater chance of being elected and being put on the replacement list.	
010503 - 011007	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU's question as to whether the Administration would consider proposing a different replacement mechanism for filling vacant seats in LegCo arising from the situations as set out in section 15 of the Legislative Council Ordinance (Cap. 542) ("LCO") (i.e. if a Member died) and Article 79 of the Basic Law ("BL") (i.e. when a Member lost the ability to discharge his duties as a result of serious illness or other reasons) as they were outside the control of a Member.</p> <p>The Administration's response that the Administration considered it appropriate to apply the replacement mechanism to all situations as set out in section 15 of LCO and Article 79 of BL and such a mechanism would be more able to withstand a legal challenge in the court.</p>	
011008 - 011430	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM asked how the remaining vacant seat would be dealt with if four Members resigned and there were only three names on the precedence list.</p> <p>The Administration responded that the three candidates on the precedence list would fill in the three vacancies and the remaining vacancy would be filled by by-election.</p>	
011431 - 011939	Dr Priscilla LEUNG Chairman Administration	The Administration's advice that it had duly considered Dr Priscilla LEUNG's proposal of restricting a resigned Member to re-elect within a certain period of time after resignation. Having considered that the proposal was in contravention of Article 26 of BL under which permanent	

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		residents had the right to vote and to stand for election, the Administration was of the view that the current proposal which was made on the basis of the electorate's wish was preferable and could respect the rights under BL.	
011940 - 012541	Chairman Ms Emily LAU Administration	The Administration's reiteration of its considerations pertinent to proposing an alternative replacement mechanism under which a vacancy arose 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.	
012542 - 012957	Chairman Dr Priscilla LEUNG Administration	Dr Priscilla LEUNG's reiteration of her request that the Administration should consider narrowing the scope of applicability of the proposed replacement mechanism to the situation where a Member resigned in the mid term.	
012958 - 013110	Chairman	Date of next meeting Tentative schedule of meetings	

Council Business Division 2
Legislative Council Secretariat
28 February 2012