

LEGISLATIVE COUNCIL BRIEF

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2011

INTRODUCTION

 A At the meeting of the Executive Council on 31 May 2011, the Council ADVISED and the Chief Executive ORDERED that the Legislative Council (Amendment) Bill 2011, at Annex A, should be introduced into the Legislative Council (“LegCo”).

BACKGROUND AND JUSTIFICATIONS

2. On 17 May 2011, the Government announced the proposal for introducing a replacement arrangement for filling a vacancy arising from resignation of LegCo Members and other situations. On 24 May 2011, the Government consulted LegCo Members at the special meeting of the Constitutional Affairs Panel on the proposed replacement arrangement. The proposal is as follows –

- (a) a vacancy arising mid-term in the geographical constituencies (“GCs”) and the newly established District Council (second) functional constituency (“DC (second) FC”) seats will be filled by reference to the election result of the preceding general election. The first candidate who has not yet been elected in the list with the largest number of remainder votes in the preceding general election will be returned;
- (b) the replacement arrangement will apply to all situations specified under section 15 of the Legislative Council Ordinance (Cap. 542) (“LCO”) and Article 79 of the Basic Law under which a vacancy of the LegCo arises;

- (c) the replacement arrangement does not apply to traditional functional constituencies (FCs). A vacancy arising mid-term in the FCs (other than the DC (second) FC) will be filled by a by-election; and
- (d) the replacement arrangement specified in (a) and (b) above will be implemented from the fifth term of office.

3. The Bill at Annex A sets out the Government's proposal which is –

- (a) that after a general election, the Returning Officer will publish in the Gazette a notice setting out a list of candidates of the LegCo GCs and the DC (second) FC who are eligible to fill the vacancy in a descending order determined by the number of remaining votes secured by the list of candidates in the general election. The first candidate who has not yet been elected in the list with the largest number of remainder votes will fill a vacancy of the LegCo arising mid-term. If the candidate concerned has died, or is now disqualified or does not wish to serve, the first unelected candidate on the list with the second largest number of remainder votes will fill the vacancy. Where necessary, other candidates on the gazetted list can be approached in sequence to fill the vacancy;
- (b) that if two or more lists in a constituency get the same vote in the general election, the drawing of lots shall be done right after counting so that the order of precedence can be determined;
- (c) that election petitions would be extended to cover the gazetted list of candidates as if they have been returned; and
- (d) that the Electoral Affairs Commission ("EAC") is obliged to hold by-elections to fill the vacancy if the gazetted list of candidates has been exhausted.

THE BILL

4. The main provisions of the Bill are explained below:
- (a) Clause 1 sets out the short title and provides for the commencement. The proposed mechanism is to be put in place at the commencement of the term of office of the fifth term of the LegCo in 2012;
 - (b) Clause 3 amends section 12 of the LCO to provide for the term of office of a Member of the LegCo who fills a vacancy under the proposed mechanism (i.e. he serves for the remainder of the LegCo term);
 - (c) Clause 4 introduces an amendment to provide that a Member who fills a vacancy under the proposed mechanism accepts office as a Member by a written confirmation sent to the Returning Officer;
 - (d) Clause 5 adds a new section to provide for the operation of the proposed mechanism. If a vacancy arises, the Returning Officer must notify the person who ranks highest in the precedence list prepared for the constituency concerned at the last general election. The persons on the precedence list are candidates in the last general election who were not elected but ranked highest in the lists of candidates they were respectively on at that election. The order of priority of the persons is determined by the number of votes their lists obtained in that election. If the person who ranks highest in the precedence list accepts office and is eligible to become a Member, the person fills the vacancy and becomes a Member. If the person does not accept office or is not eligible to become a Member, the Returning officer must notify the person who ranks next highest on the list. If necessary, the Returning Officer must repeat the process until the vacancy is filled. If the persons on the precedence list are exhausted and the vacancy cannot be filled, a by-election will be held as set out in Clause 6;

- (e) Clause 7 adds a new section to provide for the compilation and publication of a precedence list;
- (f) Clauses 8 to 11 provide that election petitions would be extended to cover the precedence list. A decision made by a Returning Officer as regards the compilation of a precedence list or the eligibility of a person on a precedence list to become a Member may be questioned by an election petition; and
- (g) Clauses 14 to 15 propose amendments to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B). The effect is that some documents used in relation to the proposed mechanism have to be in paper form.

LEGISLATIVE TIMETABLE

5. The legislative timetable is as follows -

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| Publication in the Gazette | 3 June 2011 |
| First reading and commencement of Second Reading debate | 8 June 2011 |
| Resumption of Second Reading debate, Committee Stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSALS

6. The Government considers that the legislative proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendments proposed in the Bill will not affect the current binding effect of the Ordinance. The Bill has no economic, sustainability, environmental or productivity implications.

7. The proposal to fill any vacant GC or DC(second) FC seats by reference to the election result of the preceding general election will obviate the need for arranging by-elections for the vacancies. Implementation of the proposal does not require additional financial and civil service resources.

PUBLIC CONSULTATION

8. We announced our proposal for introducing a replacement arrangement for filling a vacancy arising from resignation of LegCo Members and other situations on 17 May 2011. We consulted the LegCo Members at the special meeting of the Constitutional Affairs Panel held on 24 May 2011.

PUBLICITY

9. A press release will be issued and a spokesman will be made available to address media enquiries.

ENQUIRY

10. Any enquiry on this brief can be addressed to Mrs. Anne Teng, Principal Assistant Secretary for Constitutional And Mainland Affairs at 2810 2908.

Constitutional and Mainland Affairs Bureau
31 May 2011

Details of the Proposed Replacement Arrangement

- (a) After a general election, the Returning Officer will publish in the Gazette a notice setting out a precedence list of candidates for each GC and the DC (second) FC respectively. The precedence list will show the candidates who are eligible to fill a vacancy in the constituency concerned in a descending order. The precedence list will be compiled on the following basis –
- (i) the first candidate who was not returned at the preceding general election in each list of candidates which has remainder votes (i.e. votes that were not enough to enable the candidate to be returned at the preceding general election) will be included in the precedence list;
 - (ii) amongst the candidates mentioned in sub-paragraph (i) above, the candidate in the list of candidates which has the largest number of remainder votes will be the first candidate in the precedence list;
 - (iii) the candidate in the list of candidates which has the second largest number of remainder votes will be the second candidate in the precedence list. The order of any other candidates in the precedence list will be determined on the same basis.
- (b) If two or more lists of candidates in a constituency get the same number of remainder votes in the general election, the drawing of lots will be done right after counting so that the order of precedence can be determined.
- (c) The existing election petition mechanism will be extended to cover the precedence list as if the candidates in the list have been returned if there are any disputes about the precedence list.
- (d) If a vacancy arises mid-term, the first candidate in the precedence list will fill the vacancy. If the candidate concerned has died, or becomes disqualified or does not wish to take up the seat, the second candidate in the precedence list will fill the vacancy. Where necessary, the other candidates in the precedence list will be approached by the Returning Officer in sequence to fill the vacancy.

- (e) The EAC will hold a by-election to fill the vacancy if the precedence list has been exhausted and there is no candidate on the list to fill the vacancy.