

# 立法會

## *Legislative Council*

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### **Panel on Constitutional Affairs**

#### **Background brief prepared by the Legislative Council Secretariat for the special meeting on 24 May 2011**

#### **Arrangements for filling vacancies in the Legislative Council**

#### **Purpose**

This paper gives a brief account of the recent discussions held by the Panel on Constitutional Affairs ("the Panel") on the arrangement for filling the vacancies in the Legislative Council ("LegCo") arising from resignation of five LegCo Members in 2010.

#### **Background**

2. On 25 January 2010, a LegCo Member from each of the five geographical constituencies ("GCs") submitted written notice of resignation to the Clerk to LegCo. Pursuant to section 35 of the Legislative Council Ordinance (Cap. 542) ("LCO"), the Clerk to LegCo must, by notice published in the Gazette, declare the existence of a vacancy in the membership of that Council within 21 days after becoming aware of the vacancy. Section 36(1)(a) of LCO further stipulates that the Electoral Affairs Commission ("EAC") must, in accordance with regulations in force under the EAC Ordinance (Cap 541), arrange for a by-election to be held when the Clerk to LegCo makes a declaration as to the existence of a vacancy in the membership of LegCo.

3. In accordance with section 16 of LCO, a person who ceases to be a Member is, subject to section 39 (When person is disqualified from being nominated as a candidate and from being elected as a Member), eligible for re-election as a Member. The resignation of the five LegCo Members took effect on 29 January 2010. EAC conducted a by-election on 16 May 2010 to fill the five vacancies and the five resigned Members were all re-elected.

#### **Relevant discussions by the Panel**

4. Issues relating to holding the 2010 LegCo by-election were discussed at the meetings of the Panel held on 26 November 2009, 10 February, 19 March,

19 April, 18 October, and 30 October 2010 respectively. The issues raised at these meetings are summarized in the following paragraphs.

#### Conduct of the 2010 LegCo by-election

5. Some members expressed a strong view against the resignation of the five GC Members for the purpose of initiating the so-called "referendum campaign" via the by-election which, they considered, was a waste of public money and time for the community, as well as an abuse of the electoral system. These members pointed out that opinion polls conducted by tertiary institutions had indicated that the community had reservations about the move of these five LegCo Members. They stressed that as a special administrative region of the People's Republic of China, the Hong Kong Special Administrative Region ("HKSAR") had no authority to determine or change its political structure on its own, or to create a referendum mechanism.

6. Some other members, however, took the view that the purpose of the resignation of the five GC Members was to trigger a "de facto referendum" so that every citizen could express view on the theme of "implementation of genuine universal suffrage and abolition of functional constituencies ("FC") as soon as possible" by voting in the by-election, whereby public opinion could be quantified. As Articles 45 and 68 of the Basic Law ("BL") stipulated that the electoral methods for the CE election and LegCo election respectively should develop in the light of the actual situation in Hong Kong, the referendum campaign would provide the most scientific way to find out the actual situation of Hong Kong.

7. The Administration explained to the Panel that BL did not provide for any referendum mechanism. Conducting any form of so-called "referendum" in Hong Kong would have no legal basis or effect under BL and the legislation of Hong Kong, and would not be recognized by the Government. However, the Administration emphasized that the Government was obliged to discharging its statutory duty to arrange the by-election in order to ensure that the views of Hong Kong people were fully represented in LegCo. The Decision made by the Standing Committee of the National People's Congress on 29 December 2007 ("the NPCSC Decision") had already provided a timetable for HKSAR to implement universal suffrage. Conducting the so-called "referendum campaign" on the issue of constitutional development was not consistent with the provisions in BL relating to amendments to the two electoral methods for selecting the Chief Executive and for forming LegCo, the interpretation made by NPCSC on 6 April 2004 and the NPCSC Decision.

8. At its meeting held on 10 February 2010, the Panel passed a motion expressing the views that it was a waste of public money to spend \$159 million

to arrange for the LegCo by-election arising from the resignation of the five LegCo Members; that the so-called 'referendum' was inconsistent with the procedures stipulated in BL on amending the methods for selecting CE and for forming LegCo; and that the HKSAR Government should amend LCO to prevent the system regarding the resignation of LegCo Members and by-elections from being abused again in future.

#### Expenditure and resources for holding the by-election

9. Noting that the estimated expenditure for the 2010 LegCo by-election was \$159 million and the provisions would be reflected mainly in the draft estimates for 2010-2011 of the Registration and Electoral Office ("REO"), some members expressed dissatisfaction that the Administration had bundled the expenditure for conducting the by-election with the REO's draft estimates for 2010-2011, instead of submitting a separate financial proposal for the approval of the Finance Committee. They considered it inappropriate and unfair for the Administration to do so as Members would be deprived of the opportunity to indicate their stance and those of their electors by voting for or against the proposal.

10. Some other members took the view that a by-election was required by law to be conducted whenever a vacancy arose in the membership of LegCo. The Administration had the constitutional duty to arrange a by-election whenever a vacancy arose in the membership of LegCo.

11. The Administration explained that section 12 of the EAC Ordinance specified that all expenses incurred by EAC in the performance of its function should be payable out of the general revenue. In line with the established practice, provisions for conducting elections/by-elections would be included in the annual estimates of REO's Head of Expenditure.

12. In his reply to an oral question raised by Dr LAM Tai-fai on LegCo by-elections at the Council Meeting of 2 June 2010, the Secretary for Constitutional and Mainland Affairs informed Members that the scale of the 2010 LegCo by-election, which covered five GCs across the territory, was comparable to that of a general election. An extract from the relevant record of the Council proceedings is in **Appendix I**.

#### Proposed restrictions on LegCo Members who resign from their office to stand again in the by-elections

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13. Some members considered that to prevent abuse of the electoral system, there was a need to amend section 14 of LCO to restrict the condition under which a Member who resigned from one's office could stand for election in the

by-election to fill that vacancy. These members expressed concern that a District Council (second) FC Member who would be returned from the whole HKSAR as a single constituency could also set in motion the need to another by-election by resignation. Noting that there were other suggestions in the community such as the vacancy should be filled automatically by the candidates who obtained the second highest number of votes in the respective list and the direct substitution practice adopted in the National People's Congress election, they called on the Administration to put forward legislative proposals to plug the loophole.

14. Some other members considered that the freedom of expression of LegCo Members and electors would be infringed if a LegCo Member was prohibited by law to resign and stand again in the by-election. They were of the view that it was the fundamental right of a LegCo Member to resign in protest against a policy or practice. The overriding principle was that the Administration must ensure that the right to vote and the right to stand for election as guaranteed under BL would not be compromised.

15. The Administration advised that it observed that members of the public expected the LegCo Members they voted for would complete their four-year term of office to serve the community and did not support the so-called "referendum campaign" brought about by the resignation of the five GC Members in January 2010 which triggered the need to hold a by-election. However, any proposal to amend LCO must comply with BL 26 and the proposed restrictions should be reasonable and practicable. The Administration considered that it would not be effective to simply prevent the Member who had resigned from standing for in the by-election to fill that vacancy if a party colleague of that Member could still stand for that by-election. The Administration stressed that it would uphold the right to vote and the right to stand for election of the public as guaranteed in BL 26. It was the Administration's plan to put forward the legislative proposal for Members' discussion and enactment within the 2010-2011 legislative session.

### **Relevant papers**

16. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

~~SECRETARY FOR HOUSING AND TRANSPORT (in Cantonese): I may repeat what is stated in the main reply. We do not have any plan at the moment to "require the mandatory installation of 'black boxes' on all taxis". I have already explained that there is no such mandatory requirement in the regulatory framework of other places. But we still welcome the sector to enhance its service quality or to promote safe driving behaviour through the installation of "black boxes". We note that many accidents are caused by drivers' driving behaviour, and we will also monitor the development of the situation closely.~~

PRESIDENT (in Cantonese): Sixth question.

### Legislative Council By-elections

6. DR LAM TAI-FAI (in Cantonese): *President, the 2010 Legislative Council by-election for the five geographical constituencies was completed on 16 May, and the voter turnout rate was 17.1%, which is a record low in Legislative Council general elections and by-elections since the establishment of the SAR Government. It has been reported that the outcome of a relevant opinion poll published by the Hong Kong Youth Association before the election indicated that 65% of the respondents were against the by-election under the slogan of "five geographical constituencies referendum". The Chief Executive issued a statement in the evening of 14 May, stating that the mainstream community view was that this by-election could have been avoided, was an abuse of system and was even a waste of taxpayers' money. He decided not to vote in the by-election and also indicated that he would consider amending the legislation to prevent Members from resigning and then standing for the by-elections again during the Session. In this connection, will the Government inform this Council:*

- (a) *of the actual expenses and the manpower resources, including police manpower and other supporting staff concerned, deployed by the Government for this by-election, together with a breakdown in table form detailing various types of expenses and manpower resources;*
- (b) *whether it has commenced the law drafting procedure to amend the relevant legislation, so as to eliminate the recurrence of some*

*Members resigning and then standing for the by-elections again during the session; if it has, when it will submit the bill to this Council for scrutiny; if not, the reasons for that; and*

- (c) *whether it has, before the relevant legislation is amended, formulated any contingency mechanism to handle cases of some Members resigning and then standing for the by-elections again during the session; if it has, of the details; if not, the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, my reply to part (a) of the question is as follows:

- (a) The 2010 Legislative Council By-election was held on 16 May 2010. The scale of the By-election, which covered five geographical constituencies across the territory, is comparable to that of a general election. The estimated expenditure for the 2010 Legislative Council By-election amounts to about HK\$159 million with the relevant breakdown set out at Annex I. The departments and suppliers which provided support to the By-election are still calculating the actual expenses involved. Moreover, as the candidates and their agents in the By-election may, according to the law, apply for financial assistance within 60 days after the gazettal of the result of the election, the Registration and Electoral Office (REO) is not able to compute the relevant expenses for the time being. Due to the above reasons, the REO currently does not have the figure on the actual expenses of the By-election.

The manpower resources arrangement for the By-election is set out at Annex II.

- (b) According to section 36(1)(a) of the Legislative Council Ordinance, the Electoral Affairs Commission (EAC) must arrange for a by-election to be held when the Clerk to the Legislative Council makes a declaration as to the existence of a vacancy in the membership of the Legislative Council. The EAC is obliged to discharge this statutory responsibility.

We note that there are views in the community which consider that restrictions should be imposed on Legislative Council Members who resign from their office and then stand for the by-elections. We would analyse these proposals carefully when considering amendments to the relevant local legislation. The SAR Government considers that it is indeed necessary for us to consider plugging the loophole, so that Members in office would not be able to resign at will and trigger a by-election. However, consideration would have to be given as to whether these proposals comply with the Basic Law; whether the proposed restrictions are reasonable restrictions from the legal point of view; and whether those restrictions are practicable. After we have completed the relevant research and analysis, on the basis of the conclusions drawn, we would decide how the relevant legislation could be amended.

- (c) Our plan is to deal with the amendment motions to Annexes I and II to the Basic Law in relation to the methods for selecting the Chief Executive and for forming the Legislative Council in 2012 before the Legislative Council summer recess in mid-July 2010. Matters relating to the relevant local legislation can be dealt with thereafter.

Annex I

Estimated Expenditure for the 2010 Legislative Council By-election

	<i>Expense Items</i>	<i>\$ Million</i>
(1)	Staff Cost (including time-limited civil service posts and non-civil service contract staff)	31
(2)	Publicity	3
(3)	Election Expenses (including the costs for electoral arrangements such as hire of venue, honorarium for polling and counting staff, Financial Assistance Scheme, transportation, postage, free mailing for candidates, printing, operating cost for temporary office, and so on)	125
	Total	159

## Annex II

Manpower Resources Arrangement  
for the 2010 Legislative Council By-election

<i>Item</i>	<i>Major Duties</i>
(1) Increased around 20 time-limited civil service posts <sup>(1)</sup>	To identify suitable venues as polling-cum-counting stations; recruit and train electoral staff; formulate and implement electoral arrangements; handle election-related enquiries, complaints, election expenses returns, claims for financial assistance; and compile the election report.
(2) Recruited over 260 non-civil service contract staff	To carry out polling and counting duties on the polling day.
(3) Recruited over 14 600 civil servants as electoral staff	To be stationed at the polling stations to maintain order of the by-election on the polling day and discharge other duties such as handling complaints and escorting the transportation of ballot papers, and so on.
(4) Arranged 4 200 duty attendances by police officers	

Note:

(1) The posts include Executive Officer grade and Information Officer grade staff.

**DR LAM TAI-FAI** (in Cantonese): *President, the Secretary's main reply has obviously not answered parts (b) and (c) of my main question. I know that Secretary Stephen LAM can be considered as a diligent official who frequently visits the districts and comes into contact with many community bodies. Of course, he reads newspapers, watches television and listens to the radio; in theory, he should be very clear about the voices of the community and public opinion. However, the reply given by the Secretary this time is the same as the replies given by government officials insofar as amending Article 39(E) of the Inland Revenue Ordinance is concerned. He does not understand public opinion and has no intention do the job well; and he has not proactively plugged the loophole.*



*I asked the Secretary to explicitly give me the relevant dates and timetable. When will the Government finish considering amending the legislation? When will the legislation be amended? How will the Secretary deal with the situation should history repeat itself? At present, the Government is only focused on the publicity work on the "Act Now" campaign for constitutional reform. But if the legislation is not amended, how can we prevent some people from organizing resignations or anchor dropping en masse? What will happen if there is an insufficient number of Members to cast votes on 23 June? May I ask the Secretary to tell me the relevant timetable explicitly? When will the Government consider amending the legislation? When will it put forward a proposal for discussion?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, just like principal government officials, Dr LAM Tai-fai actually attaches great importance to the views of the community. Coming back to the issue of resigning and then standing for the by-elections, the community's views are very specific: people think that the elected Legislative Council Members should serve on the Council for four years. They should not resign halfway on their own, wasting taxpayers' money. To tackle the constitutional reform issue, they should vote in the Legislative Council according to the Basic Law.

As regards Dr LAM Tai-fai's worries about an insufficient number of Members to vote on the amendment to Annexes I and II to the Basic Law, I believe his are groundless fears. So long as we have dozens of Members here, there is a quorum for a meeting. The SAR Government already indicated that even after the resignation of a few Members, at least 40 votes, that is, two thirds of the 60 Members of the Legislative Council, are required to pass the amendment to Annexes I and II to the Basic Law.

Nevertheless, back to the issue of resigning and then standing for the by-elections, we definitely need to plug this loophole. The problem is not about whether we can — but how we can — plug this loophole. Article 26 of the Basic Law ensures that permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election. Now that all of us have the right to vote and the right to stand for election, if it is proposed that Members should be restricted from resigning and

then standing for the by-elections, we must ensure that such a proposal is constitutionally and legally justified. Mr WONG Yuk-man commends the relevant provisions of the Basic Law but he should not feel happy too soon because the SAR Government is really examining the matter. We need to comply with the Basic Law and impose reasonable restrictions, with a view to practicably plugging this loophole. President, I think that the community's views .....

(Mr LEUNG Kwok-hung stood up)

**PRESIDENT** (in Cantonese): What is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): *The Secretary has talked about a loophole again and again, can he clarify what the loophole is? What is the legal loophole he just mentioned?*

**PRESIDENT** (in Cantonese): Mr LEUNG, please sit down. It is up to the Secretary to determine whether he will clarify that point upon your request; please sit down. Please continue, Secretary.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): The loophole is distinct in the eyes of the public, and there are now laws .....

**MR WONG YUK-MAN** (in Cantonese): *We are now talking about the laws, not about what is in the eyes of the public or the values, therefore, he must clarify that.*

**PRESIDENT** (in Cantonese): Mr WONG, please sit down.

**MR WONG YUK-MAN** (in Cantonese): *He just needs to say that there is a loophole; he just needs to tell us so. He just needs to tell us that the Government regards that as a loophole, right?*

**PRESIDENT** (in Cantonese): Mr WONG, please stop speaking and sit down. I have said many times that this is not a debate session; even if it is a debate, the speakers should speak in a certain order. Thus, I ask Mr WONG to let the Secretary finish giving his reply first.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, in the eyes of the public, this loophole is distinct because the current Legislative Council Ordinance permits resignations by Members, and arrangements should be made for by-elections to be held under the Ordinance after Members have resigned. But this falls short of people's expectation. On the one hand, people hope that the elected Legislative Council Members would serve on the Council for four years, and on the other, they think that taxpayers' money should not be wasted this way. For this reason, the Government must practicably consider how the loophole can be plugged.

**DR LAM TAI-FAI** (in Cantonese): *President, the Secretary has spoken a lot but he has not talked about a timetable. In that case, he might as well ask "Long Hair" direct whether he will resign again. He has just written me a note: "Tai-fai — Long Hair has always been a street-fighter without any fears". Why does the Secretary not ask him if he will resign again?*

**PRESIDENT** (in Cantonese): Dr LAM, you have repeated your question ..... Mr LEUNG Kwok-hung.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, I now publicly declare that I will resign again if the Government enacts legislation on Article 23 of the Basic Law again.*

**PRESIDENT** (in Cantonese): Mr LEUNG, you need not make this declaration here. Secretary, do you have anything to add about the timetable?

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, we will handle the matter as quickly as possible.

**MR WONG YUK-MAN** (in Cantonese): *I think this oral question raised by Dr LAM Tai-fai today serves a very positive purpose indeed. Although the Secretary has just derided me, I actually want to commend him for giving his reply to Dr LAM Tai-fai's question from the constitutional and legal perspectives. I commend the Secretary, but he told me not to feel happy too soon because the Government will certainly consider the matter. It does not matter, and the Government can feel free to do so. So long as the laws are observed, it is all right if the Court ruled that the Government was right; the loophole would be plugged. Nevertheless, in raising this oral question, Dr LAM Tai-fai has given us, the so-called representatives of public opinion, or Legislative Council Members who have a popular mandate, an opportunity to think seriously about resigning and standing for by-elections, as well as "de facto referendum". We have never said that this is a lawful referendum because it is not provided for in the laws, right? Yet, as regards resigning and standing for by-elections — a single subject .....*

**PRESIDENT** (in Cantonese): Mr WONG, please put your supplementary question.

**MR WONG YUK-MAN** (in Cantonese): *My supplementary question is: I would like Tai-fai and the Secretary to read this article of over 8 000 words written by Dr WONG Yin about resigning and standing for by-elections. That is consistent with the conventions of a democratic constitutional system and the core values of democratic politics. The book is published on the Mainland. The Japanese political scene has seen dynastic changes lately. The Democratic Party put an end to the one-party dictatorship of the Liberal Democratic Party for several decades. For decades in the past, party politics in Japan .....*

**PRESIDENT** (in Cantonese): Mr WONG, please stop expressing your views.

**MR WONG YUK-MAN** (in Cantonese): ..... *very often operate through resigning and standing for by-elections* .....

**PRESIDENT** (in Cantonese): Mr WONG, please put your supplementary question.

**MR WONG YUK-MAN** (in Cantonese): ..... *the government constantly dissolves the parliament and holds elections again; buddy, this is common sense* .....

**PRESIDENT** (in Cantonese): Mr WONG, please put your supplementary question.

**MR WONG YUK-MAN** (in Cantonese): *When the Government does not have such common sense, it is really a serious matter, right? I think this question raised by LAM Tai-fai allows us to think about these issues. I would like to ask the Secretary if he has thought about what I just mentioned. Or, is he simply considering the matter from the legal and political angles and saying that the loophole should be plugged and the so-called referendum should be thrashed? Frankly, the proposal about a referendum has been vetoed in the Legislative Council on each and every occasion, right? It has never been passed* .....

**PRESIDENT** (in Cantonese): Mr WONG, please sit down.

**MR WONG YUK-MAN** (in Cantonese): ..... *that is why we adopt the de facto referendum method by resigning and standing for by-elections.*

**PRESIDENT** (in Cantonese): Mr WONG, please stop speaking and sit down. Please reply, Secretary.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, my answer to Mr WONG Yuk-man is very simple. Actually, I have just commended the Basic Law which is respected by all. Mr WONG Yuk-man has just said that some Members who have resigned can stand for by-elections, and this is certainly a crucial issue for our consideration. Article 26 of the Basic Law specifies that permanent residents shall have the right to stand for election. Concerning the so-called referendum as Mr WONG Yuk-man has mentioned once again, this issue of constitutional reform has to be put to the vote in the Legislative Council according to the prescribed procedures under the Basic Law. The Government needs the support of a two-thirds majority of all Members. There is no provision for referendum in the Basic Law, which is a constitutional, legal fact.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, it is not true that Legislative Council Members never resigned in the past. Gary CHENG from your party resigned because of a corruption charge and a by-election was held at that time, right? TUNG Chee-hwa also resigned because of his leg pain. All of us in Hong Kong understood that he resigned because JIANG Zemin had stepped down. About public opinion, we all know that TUNG Chee-hwa did not have a leg pain. Dr YEOH Eng-kiong, Mr Antony LEUNG and Mrs Regina IP also resigned, right? Corrupt small-circle elections .....*

**PRESIDENT** (in Cantonese): Please put your supplementary question.

**MR LEUNG KWOK-HUNG** (in Cantonese): *I would like to ask the Secretary and Dr LAM Tai-fai for advice about one thing: the Chief Executive elected by a 400-member committee made an international laughing stock and he resigned in March 2005, pretending that he had a leg pain. Similarly, Mrs Regina IP resigned .....*

**PRESIDENT** (in Cantonese): Please put your supplementary question.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... *did people think that they had wasted taxpayers' money? Did they feel that those people elected through small-circle elections seemed like riding a merry-go-round? Did the resignation of Gary CHENG because of a corruption charge waste taxpayers' money? There is one good point: Gary CHENG resigned because of a corruption charge; it was a very good thing for your party: another Member was elected after he had resigned ..... I would like to say that, when a Member thinks that nobody may support what he proposes, he can ask people to vote again .....*

**PRESIDENT** (in Cantonese): What is your supplementary question?

**MR LEUNG KWOK-HUNG** (in Cantonese): *I would like to ask which of these two incidents wasted taxpayers' money.*

**PRESIDENT** (in Cantonese): Please sit down and let me see how the Secretary responds.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Which of these two things do people consider as a waste of taxpayers' money?*

**PRESIDENT** (in Cantonese): Mr LEUNG, please sit down. Please reply, Secretary.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, we certainly understand the ideas behind this question asked by Mr LEUNG Kwok-hung. What he said is: some political figures in the Legislative Council did resign, and the Chief Executive can also resign. In the

light of such resignations, what are Members' views about these resignation arrangements and do they think that taxpayers' money was appropriately spent?

In 2005, the Chief Executive, TUNG Chee-hwa, tendered a resignation and it was for the Central Government to decide whether his resignation would be accepted. Of course, the resignation of the Chief Executive was not a rash decision. Nonetheless, we are now saying that the five geographical constituencies resignations this time were not quite the same as the resignations of Legislative Council Members in the past. The five resignations on this occasion were a political move, and the two political parties decided to use this arrangement of resigning and standing for by-elections to mobilize public opinion desired by them. However, a most explicit fact was that public opinion generally did not support their resignations or spending \$150 million on the by-election. They also indicated that they originally expected the five Legislative Council Members to serve out the four-year term of office, to act for the public and serve the community. Now that a new issue has been brought up, we should fulfil our due responsibilities to handle this issue and plug this loophole.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, he has really not answered my supplementary question. He has not answered the part of my question about how a comparison can be drawn between the two things. I am saying this once again, and the Secretary should listen carefully, that public opinion holds that .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Does the Secretary think that TUNG Chee-hwa really resigned because of his leg pain?*

**PRESIDENT** (in Cantonese): Mr LEUNG, please sit down.



**MR LEUNG KWOK-HUNG** (in Cantonese): *Was that the case? Donald TSANG elected this time has an even lower level of popular support.*

**PRESIDENT** (in Cantonese): Please sit down. Mr LEUNG, please stop speaking at once.

**MR LEUNG KWOK-HUNG** (in Cantonese): *I know that you do not like me to talk about TUNG Chee-hwa.*

**PRESIDENT** (in Cantonese): Please stop speaking at once. I remind Members and officials again not to turn the question session into a debate session.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Let us not have a debate, so .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, please sit down, you have already put your supplementary question, and I think the Secretary has already answered it. Five Members are still waiting for their turns to ask questions.

**MR ALBERT CHAN** (in Cantonese): *President, if it is said that TUNG Chee-hwa had not resigned for political reasons, this is calling a stag a horse, and the distinctive character of "Eunuch LAM". If it is said that the resignations wasted taxpayers' money, a Political Assistant who was a Southern District Council Member was appointed by Donald TSANG to perform general duties for the Government ....., which made it necessary for a Southern District Council by-election to be held .....*

**PRESIDENT** (in Cantonese): Please stop expressing your views.

**MR ALBERT CHAN** (in Cantonese): *My supplementary question is ..... my supplementary question is: the Government has said that the resignations wasted taxpayers' money, so, can "Eunuch LAM" tell us if the appointment of a Southern District Council Member by Donald TSANG to perform general duties for the Government, which made it necessary for a Southern District Council by-election to be held, was a waste of taxpayers' money?*

**PRESIDENT** (in Cantonese): Mr CHAN, it is specified in the Rules of Procedure that it shall be out of order to use offensive language about Members of the Council or officials attending meetings. Please be careful when you speak.

**MR ALBERT CHAN** (in Cantonese): *President, he accepted that he is an "eunuch".*

**PRESIDENT** (in Cantonese): Please reply, Secretary.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, thank you for the fair deal. The public's eyes are discerning. In the Southern District Council case cited by Mr Albert CHAN, a District Council Member accepted the Government's appointment and became part of the administrative structure. He left the District Council, which made it necessary for a District Council by-election to be held. Those are fundamental constitutional arrangements and principles. It is specified in the Basic Law and our laws that Members shall not accept full-time public offices on full pay. That is entirely different from the five geographical constituencies resignations.

**MR ALBERT CHAN** (in Cantonese): *President, he has not answered my supplementary question at all. I am talking about a waste of taxpayers' money ..... can all the 7 million people in Hong Kong be appointed? No, President;*

*he has not answered the part about a waste of taxpayers' money. That appointment is a 100% waste of taxpayers' money.*

**PRESIDENT** (in Cantonese): Please sit down, for the Secretary has already given an answer.

**DR PRISCILLA LEUNG** (in Cantonese): *President, I believe the Secretary has just heard Mr LEUNG Kwok-hung say that he will resign again if he considers certain subjects not agreeable. Therefore, I think the question asked by Dr LAM Tai-fai may not be associated with groundless fears.*

*I trust the Secretary also knows that I have introduced a private Member's bill on amendment to the Legislative Council and the Department of Justice has explicitly stated that a certificate would be issued within this week. My proposal seeks to specify that Legislative Council Members can only resign once during their term of office. In his reply a while ago, the Secretary referred to Article 26 of the Basic Law. I would like to say that we also need to take Article 79 of the Basic Law into consideration. If a Member has taken the initiative to resign not because of illness or having committed a criminal offence, it should be specified that he can only take the initiative to resign once without giving reasons. Such a proposal should not relate to the political structure and public expenditure. May I ask the Secretary, if the Legislative Council asks the Government to express its views on my bill, whether he will agree to conducting a relevant debate in the Legislative Council?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, my reply to this question of Dr Priscilla LEUNG includes three points. First, Article 79 of the Basic Law sets out the circumstances under which a member of the Legislative Council is no longer qualified for the office. Certainly, this should be carried through according to our constitution. However, apart from what is specified under Article 79 of the Basic Law, does a Member has the right to resign? For many years, we have all along had relevant provisions and arrangements in the Legislative Council Ordinance and the

relevant laws. If, as Dr LEUNG is now saying, this right to resign should be obstructed, the actions to be taken must be practicable.

Thus, the second point is: I note that Article 26 of the Basic Law specifies that permanent residents shall have the right to stand for election. I am not saying that no restriction should be imposed, but the restriction to be specified must comply with the Basic Law. It must be consistent with principles of law, and they must be reasonable and practicable.

Talking about practicable restriction, I would like to make the third point in passing. If, as Dr Priscilla LEUNG has suggested, when a Member resigns, for example, Member A from a certain party or grouping resigns, even if legislation has been enacted as suggested by her, Member A cannot stand for election again. Yet, we cannot prevent member B from the same party or grouping from standing for election. Actually, the gravest concern of the public is whether these non-essential resignations and by-elections can be prevented.

Dr Priscilla LEUNG is really very concerned about this issue; however, I am afraid her proposal may not be able to address this issue thoroughly. Hence, we really need to consider the matter; we will do so proactively and we will put forward proposals as soon as possible.

**DR PRISCILLA LEUNG** (in Cantonese): *President, I have actually not asked if the proposal is feasible .....*

**PRESIDENT** (in Cantonese): Dr LEUNG, which part of your supplementary question has not been answered by the Secretary?

**DR PRISCILLA LEUNG** (in Cantonese): *..... the third part of my supplementary question is: the private bill on amendment as mine does not relate to the political structure or public expenditure, so, will the Secretary agree that my private bill on amendment can at least be debated in the Legislative Council?*

**PRESIDENT** (in Cantonese): I would like to remind Members that whether a bill introduced by a Member is consistent with the Rules of Procedure, including the provision just mentioned by Dr LEUNG, subject to ruling by the Legislative Council President.

We have spent more than 24 minutes on this question. Oral questions end here.

## Appendix II

### Relevant documents on Arrangements for filling vacancies in the Legislative Council

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs ("CA Panel")	26.11.2009 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	16.12.2009	<a href="#">Official Record of Proceedings</a> <a href="#">Pages 25 - 35 (Oral question)</a>
CA Panel	10.2.2010 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	24.2.2010	<a href="#">Official Record of Proceedings</a> <a href="#">Pages 46 - 49 (Written question)</a>
CA Panel	19.3.2010 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	19.4.2010 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	2.6.2010	<a href="#">Official Record of Proceedings</a> <a href="#">Pages 64 - 80 (Oral question)</a>
CA Panel	18.10.2010 (Item II)	<a href="#">Agenda</a>
	30.10.2010 (Item I)	<a href="#">Agenda</a>

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