

**Submission by The Professional Commons for the
Special Meeting of the Panel on Constitutional Affairs of the Legislative Council
on 18 June 2011 Regarding the
“Arrangements for Filling Vacancies in the Legislative Council”**

1. The Professional Commons strongly opposes the government proposal on the arrangements for filling vacancies in the Legislative Council (“replacement arrangements” hereinafter), in which severe contradictions with the democratic course leading to dual elections by universal suffrage will be embedded. Details are listed as follows:

Dislocation of Key Principles

2. Among the criteria that the Government used to scrutinize various replacement arrangements, it is totally unreasonable to attach a lower priority to “whether it can reflect the views of the electorate over the candidates” than “whether it is consistent with the election system in Hong Kong”. It is obvious that the key design of any electoral system lies on its capability in reflecting the views of the electorate rather than the internal consistency within the system. However, the Administration put one-sided emphasis on consistency between the replacement arrangement and the existing electoral system at the expense of an effective reflection of the latest preference of the electorate. Such a proposition is indeed putting the cart before the horse. Furthermore, the “views” cited by the respective Administration’s papers not only lacked support from quantitative evidences but are also not in the criterion of respective comparison. Their justifications for the deprivation of citizens’ electoral rights are surprisingly weak and unconvincing.

Choices by History deviating Public Opinion of the day

3. There has been a general understanding in the study of Politics that “public views are as ever-flowing as running water”. Election result will be no longer be valid after a particular period of time. Electors’ choices are subject to change after the lapse of time, or even overthrown with a mere caprice. Hence, election results in the past should only be perceived as an outcome of “historical choice”. In view of this, automatic replacement of seats according to past election results is incapable of reflecting the latest preference of the electorate. Given that the

existing by-election mechanism is well established and is definitely a window of opportunity that reflects public views at the moment, why should we give up on this more effective and direct means of filling vacancies by a secondary option?

Inconsistencies Concerning the Attitudes of the Proportional Representation System

4. It should be highlighted that the Government is trying to despise the political wisdom of the general public, suggesting they "cast their votes on the basis of the lists which have candidates who are more well-known" rather than based on their rational decision. The Government also ignores the appealing effect of political ideas and platforms that the candidates upheld by an understanding that "in the absence of that (well-known) candidate, his(/her) list may not receive the same level of support". Such an analogy suggests that the elected members are by no means representative of genuine will of the public. If it is really the fact that the second candidate on the same list who gets elected would suffer from a low degree of credibility, the "list representation system" under the proportional representation system should not be implemented in the first place. On the contrary, the Government has planned to expand the proportional representation system by scrapping the by-election mechanism. Such an attitude is indeed self-contradictory, therefore utterly unconvincing to the public.

Dual "Step-back" on Democratic System and Democratic Education

5. Hong Kong is gradually moving towards universal suffrage, suggesting that the political system should be more democratic. It is suggested that the replacement arrangement is inferior to the formal by-election in the reflection of public opinion. In terms of process of the political development, it represents nothing but regression. To usher in the upcoming dual elections by universal suffrage, it is indispensable of the Government to nurture democratic values amongst Hong Kong people. Unfortunately, its perverse act when dealing with filling of vacant LegCo seats suggests that it has been biased to listen to voices that oppose the existing by-election mechanism, therefore demeaning it as wasting public money in a high-profile manner and dwarfing the by-election and its arrangement as a vehicle of education of democratic values by the smear campaign of the Government. Democratic election is by all means the most direct means that realizes democratic practice as well as democratic education. Any act leading to

the withdrawal of the existing by-election mechanism would result in enticing the public to ignore their democratic rights as well as their opportunities to speak out.

Conclusion: Unconvincing to the Public Due to Unfairness

6. Teaming up with lawmakers in pro-establishment camp, the Government has been unscrupulous to put forward an unfair replacement arrangement that suggests an unfair filling of vacant LegCo seats. Such a move will definitely undermine people's confidence in the course of democratization. Even worse, members of the public will no longer respect the Administration, not to mention the legislature. Once the proposed replacement arrangement is in practice, it would be of utmost absurdity that the newly elected LegCo members could be someone who hold opposition views against their predecessor.
7. In recent years, the Government has experienced tremendous setbacks in its daily administration, particularly mounted criticisms on its alleged favoritism towards the business sectors. In fact, democracy as a political system provides institutional arrangement that facilitates free expression of opinions. By doing so, public views are more likely to be aired in a rational and peaceful manner. In the light of this, it is expected to see a higher degree of fairness in daily administration which will help boost the creditability of the Administration. However, the proposed replacement arrangement is beyond any doubt a major step-back in democratization of our election system, which will seriously dampen its fairness and legitimacy. Through solid evidence, it further consolidates the entrenched public perception that the Government is by no means fair and just.
8. If the proposal was eventually enacted by this Council, it would certainly undermine the credibility of legislators who takes up the vacant seats. Casting supporting votes to the proposed replacement arrangements is like castrating the dignity of the Council. As a consequence, LegCo in a decline will eventually be nothing but a mere accessory to the unparalleled power of the Administration and subsequently the separation of powers will be in jeopardy for sure. Those sitting in this Council who support the reform proposal would not be allowed to shift their historical responsibilities.