

**立法會**  
**Legislative Council**

Ref : CB2/BC/4/11

LC Paper No. CB(2)2407/11-12  
(These minutes have been seen by  
the Administration)

**Bills Committee on  
Legislative Council (Amendment) Bill 2012**

**Minutes of the second meeting  
held on Friday, 24 February 2012, at 8:30 am  
in Conference Room 1 of the Legislative Council Complex**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
  - Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
  - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
  - Dr Hon Margaret NG
  - Dr Hon Philip WONG Yu-hong, GBS
  - Hon LAU Kong-wah, JP
  - Hon Emily LAU Wai-hing, 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 Ronny TONG Ka-wah, SC
  - Hon CHIM Pui-chung
  - Hon Cyd HO Sau-lan
  - Hon CHAN Kin-por, JP
  - Dr Hon Priscilla LEUNG Mei-fun, JP
  - Hon WONG Kwok-kin, BBS
  - Hon IP Wai-ming, MH
  - Hon IP Kwok-him, GBS, JP
  - Hon Paul TSE Wai-chun, JP
  - Hon Alan LEONG Kah-kit, SC
  - Hon LEUNG Kwok-hung
  - Hon Albert CHAN Wai-yip
- Members absent** :
- Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
  - Hon CHEUNG Man-kwong
  - Hon WONG Yung-kan, SBS, JP
  - Hon LAU Wong-fat, GBM, GBS, JP

Hon Miriam LAU Kin-ye, GBS, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon LI Fung-ying, SBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Dr Hon PAN Pey-chyou

**Public Officers :**     Constitutional and Mainland Affairs Bureau  
**attending**

Mr Raymond TAM Chi-yuen  
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 (Constitutional and Mainland  
Affairs)

Department of Justice

Ms Roxana CHENG  
Deputy Solicitor General (Constitutional)

Mr Gilbert MO  
Deputy Law Draftsman  
(Bilingual Drafting & Administration)

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

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

Mr Raymond LAM  
Senior Council Secretary (2)2

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(3)402/11-12, CB(2)1125/11-12(01) and CB(2)1168/11-12(01)]

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

2. The Bills Committee requested the Administration to provide information on the conditions under which a person would be disqualified from being nominated as a candidate at an election in overseas jurisdictions and whether there were disqualification provisions similar to the proposed amended section 39 of the Legislative Council Ordinance (Cap. 542) in those jurisdictions.

**II. Any other business**

3. Members agreed that the meeting originally scheduled for 1 March 2012 would be cancelled. The Chairman advised that the next meeting would be held on 17 March 2012 to receive views from the public on the Bill.

4. There being no other business, the meeting ended at 10:43 am.

Council Business Division 2  
Legislative Council Secretariat  
20 June 2012

**Proceedings of the second meeting of the  
Bills Committee on Legislative Council (Amendment) Bill 2012  
held on Friday, 24 February 2012, at 8:30 am  
in Conference Room 1 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000533 - 000737	Chairman Mr LAU Kong-wah	Opening remarks	
000738 - 000840	Chairman Administration	Briefing by Administration on its paper regarding the constitutionality of the proposal in the Bill [LC Paper No. CB(2)1168/11-12(01)]	
000841 - 001514	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's request for the Administration to provide information on the conditions under which a person would be disqualified from being nominated as a candidate at an election in overseas jurisdictions and on whether there were disqualification provisions similar to the proposed amended section 39 of the Legislative Council Ordinance (Cap. 542) ("LCO") in those jurisdictions.</p> <p>Dr Margaret NG's question and the Administration's response regarding the meaning of "resigning at will".</p> <p>Dr Margaret NG's view on the need to define "resigning at will".</p>	Admin to follow up (paragraph 2 of the minutes refers)
001515 - 002554	Chairman Mr Albert CHAN Administration	<p>Mr Albert CHAN's suggestion that the Hong Kong Bar Association be invited to the Bills Committee meeting scheduled for 17 March 2012 to receive views from the public.</p> <p>The Chairman's instruction that the Hong Kong Bar Association should be notified of that meeting.</p> <p>Mr Albert CHAN's objection to the Bill.</p> <p>The Administration's explanation that the Bill proposed to disqualify a resigning Member from being nominated as a candidate at a subsequent by-election in the same LegCo term held within six months of his resignation.</p>	
002555 - 003506	Chairman Mr LEUNG Kwok-hung Administration	Mr LEUNG Kwok-hung's views that if the resigning Members sought to seek the public's mandate for his proposed course of action,	

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		electors should be allowed to express their support or otherwise by exercising the right to vote in the by-election.	
003507 - 004551	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG's view that the effect of the Bill was too general as it would even apply to cases where a Member chose to resign for health or other personal reason, but not at will. His concern that the Bill as drafted would not meet the proportionality test.</p> <p>The Administration's response that the Bill was already very narrowly focused and cases of involuntary vacation of office could be dealt with under Article 79 of the Basic Law ("BL79").</p> <p>Mr Ronny TONG's request for the Administration to consider setting out explicitly the mischief to be addressed and narrowing the restriction.</p> <p>The Administration's explanation that the restriction could not apply to cases under BL 79.</p>	
004552 - 004844	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG's views that –</p> <p>(a) there was a need to address the mischief arising from the resignation of Members to trigger a by-election in which they sought to stand for re-election; and</p> <p>(b) the effect of the proposal in the Bill was very narrow and cases of involuntary vacation of office would be dealt with under BL79.</p>	
004845 - 005802	Chairman Mr LAU Kwok-wah Administration	<p>Mr LAU Kong-wah's views that the effect of the Bill was already very narrow as a resigning Member would only be disqualified from being nominated as a candidate at subsequent by-elections held within six months of his resignation and a Member should give serious consideration before deciding to resign from office.</p> <p>The Administration's explanation that a vacancy arising mid-term under BL79 would continue to be filled by a by-election and cases of involuntary vacation of office mentioned by Mr Ronny TONG could be dealt with under BL79.</p>	

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005803 - 010637	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's views that –</p> <ul style="list-style-type: none"> <li>(a) while the Bill sought to address the mischief arising from Members resigning at will in order to trigger by-elections, the restriction would affect a person's right to elect if the resigning Member who was his choice could not stand again in the by-election;</li> <li>(b) the effect of the Bill was broader than what was necessary to address the alleged mischief; and</li> <li>(c) the Administration had failed to provide justification for applying the restriction to traditional functional constituencies.</li> </ul> <p>The Administration's response that a Member could choose means other than resignation to express his views on an issue and the public concerns to be addressed by the Bill included –</p> <ul style="list-style-type: none"> <li>(a) constituents being deprived of a representative during the period between resignation and by-election;</li> <li>(b) LegCo being deprived of a Member during that period;</li> <li>(c) the by-election incurring public expenditure; and</li> <li>(d) if resignation to trigger by-elections becoming a common occurrence, respect for the electoral process would be undermined, particularly if it led to a low turnout rate in the by-election.</li> </ul> <p>The Bill would also prevent a functional constituency LegCo Member from resigning at will to trigger a by-election.</p>	
010638 - 011713	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE's views that –</p> <ul style="list-style-type: none"> <li>(a) the right to vote and the right to stand for election as guaranteed under BL had all along been subject to the restrictions imposed by law such as the age requirement;</li> </ul>	

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		<p>(b) it would be difficult to define "resignation at will" in law; and</p> <p>(c) a Member could preserve his right to stand in a by-election by means of the disqualification provisions under BL79.</p> <p>Mr Paul TSE's question on whether the rights under BL26 included the right of a Member to resign at will.</p> <p>The Administration's responses that –</p> <p>(a) while the court had confirmed that the right to stand for election was an important political right, members of the public expected the elected Members to serve a full four-year term; and</p> <p>(b) neutral and specific phrases which did not carry any value judgement should be used in drawing up statutory provisions.</p>	
011714 - 012001	Chairman Ms Cyd HO	<p>Ms Cyd HO's views that –</p> <p>(a) the Bill would undermine the integrity of the right to vote for LegCo Members; and</p> <p>(b) electors should not be deprived of the right to express their support or otherwise for the resigning Member by exercising the right to vote in the by-election.</p>	
012002 - 012623	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's view that the Administration should withdraw the Bill because –</p> <p>(a) it failed to address the alleged mischief by avoiding the need to hold an by-election; and</p> <p>(b) it would compromise the fundamental right to stand for election.</p> <p>The Administration's response that the rights under BL26 were not absolute but could be subject to reasonable restrictions prescribed by law, so long as they were rationally connected to legitimate aims, and no more than necessary to achieve those aims.</p>	

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012624 - 013116	Chairman Mr Alan LEONG	<p>Mr Alan LEONG's views that –</p> <ul style="list-style-type: none"> <li>(a) the Bill deprived electors of the right to express their support or otherwise for a resigning Member by exercising the right to vote in the by-election;</li> <li>(b) whether a matter constituted a mischief for the purpose of constitutional analysis was a matter for the courts; and</li> <li>(c) the Administration should withdraw the Bill.</li> </ul>	
013117 - 013619	Chairman Dr Priscilla LEUNG	<p>Dr Priscilla LEUNG's views that –</p> <ul style="list-style-type: none"> <li>(a) besides exercising the right to vote in a by-election, electors could express their support or otherwise for a resigning Member by other means, such as staging a demonstration;</li> <li>(b) the resigning Member should be prohibited from standing in any by-election to be held in the same LegCo term; and</li> <li>(c) it was reasonable for the Bill to apply to the traditional functional constituencies.</li> </ul>	
013620 - 014131	Chairman Mr LAU Kong-wah Administration	<p>Mr LAU Kong-wah's views that –</p> <ul style="list-style-type: none"> <li>(a) the Bill did not restrict a person's right to vote;</li> <li>(b) it was important to maintain the integrity of and respect for the electoral system;</li> <li>(c) there were many other means for electors to express their support or otherwise for a resigning Member;</li> <li>(d) it was the responsibility of an elected Member to serve a complete four-year term; and</li> <li>(e) any cases other than voluntary resignation could be dealt with under BL79.</li> </ul> <p>The Administration's confirmation that the Bill would not be applicable to cases under BL79.</p>	



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014132 - 014855	Chairman Mr Albert CHAN Administration	<p>Mr Albert CHAN's view that the Bill would restrict a person's right to stand for election and an elector's choice in a by-election.</p> <p>The Administration's response that although the Bill would impose restriction on a person's right to stand for election, it would not restrict a person's right to vote.</p>	
014856 - 020316	Chairman Ms Cyd HO Mr Paul TSE Administration	<p>Ms Cyd HO's views that the Executive Authorities and the legislature should not restrict the fundamental rights of the general public but the Bill would restrict a person's right to stand for election and an elector's choice in a by-election.</p> <p>Mr Paul TSE's view that LegCo was obliged to plug any loophole identified in the existing legislation by legislation to address the mischief.</p> <p>The Administration's response that restriction could be imposed on a person's right to stand for election, as long as the restriction was reasonable and proportionate. Electors had already exercised their voting right in the general election at which the Members had been elected before the Members chose to resign in order to trigger a by-election.</p>	
020317 - 020919	Chairman Mr CHIM Pui-chung Administration	<p>Mr CHIM Pui-chung's views that –</p> <ul style="list-style-type: none"> <li>(a) the public at large disapproved the resignation of a Member to trigger a by-election and there were strong calls from the community for the Administration to address the mischief;</li> <li>(b) if there was any inadequacy in the legislation, the Executive Authorities had the duty to put forward legislative proposal for LegCo to scrutinize in order to address the problem and the matter should not be left to the courts; and</li> <li>(c) the six-month period of prohibition might not be adequate to prevent a resigning Member from standing in a by-election.</li> </ul> <p>The Administration's legal assessment that the Government and LegCo could seek changes to the electoral process to deal with perceived problems</p>	

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		that were specific to Hong Kong and would enjoy a considerable margin of appreciation in managing electoral affairs.	
020920 - 021402	Chairman Dr Margaret NG	Dr Margaret NG's views that –  (a) while the right to stand for an election could be subject to reasonable restrictions as prescribed by law, the legislature would not be entitled to apply a blanket restriction at will;  (b) if the Bill sought to prevent any abuse of the existing electoral system, the mischief should be clearly defined in the Bill and the restriction should be reasonable and proportionate;  (c) the right of a Member to resign co-existed with his right to stand for election; and  (d) apart from serving a four-year term in full, the public would expect a LegCo Member to protect their interests and monitor the Government.	
021403 - 021454	Chairman	Cancellation of meeting originally scheduled for 1 March 2012 and date of next meeting.	