

政制及內地事務局
政府總部
香港添馬添美道2號
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT
EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

Our Ref : CMAB C1/30/5
Your Ref : LS/B/8/11-12

Tel. no.: 2810 2603
Fax no.: 2840 1976

23 February 2012

Mr Arthur Cheung
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Fax No. : 2901 1297)

Dear Mr Cheung,

Legislative Council (Amendment) Bill 2012

Thank you for your letter dated 17 February 2012 on the captioned. We have the following response to the questions raised in your letter.

In our view, it is not possible to hold a by-election for a functional constituency ("FC") under section 36(1)(b) of the Legislative Council Ordinance ("LCO") (Cap. 542) on the same date of the general election (whether held as scheduled or deferred) if a candidate of a FC has died or is disqualified from being nominated as a candidate after the close of nomination but before the date of the election under section 42C of the LCO.

According to section 7(2) and section 7(3) of Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), the nomination period for an election must not begin earlier than the date on which the election notice or the by-election

notice, as the case may be, is published in the Gazette. The nomination period must not be less than 14 days or more than 21 days. The nomination period must end not less than 28 days and not more than 42 days before the date on which the relevant election is to be held.

Since the nomination period must end not less than 28 days before the date the election is to be held, and the nomination period must not be less than 14 days, the nomination of the by-election must start at least 42 days before the polling day in accordance with the above regulation. As the by-election in question would only arise if a candidate has died or is disqualified after the close of nominations for a general election (the nomination period of which must and not more than 42 days before the date of the general election), there will not be sufficient time to hold the by-election of a FC under section 36(1)(b) of the LCO on the same date of the general election.

If there is a need to hold such a by-election, therefore, it will be held after the date of the general election. Such a by-election is not covered by the proposed section 39(2A)(b) of the LCO and this is in line with our policy intent that the proposed restriction should not apply to any by-election after a general election has been held.

For the question on whether the use of “亦” instead of “即” in the Chinese text for the proposed section 39(2A) of the LCO has any consistency problem, we consider that the use of “亦” is a better formulation to reflect the meaning and is consistent with the English text.

Yours sincerely,



(C T WONG)

for Secretary for Constitutional and Mainland Affairs

c.c. Clerk to Bills Committee (Fax: 2509 9055)