

立法會

Legislative Council

LC Paper No. CB(2)1647/11-12

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Paper for the House Committee meeting on 13 April 2012

Report of the Bills Committee on Legislative Council (Amendment) Bill 2012

Purpose

This paper reports on the deliberations of the Bills Committee on the Legislative Council (Amendment) Bill 2012 ("the Bills Committee").

Background

Situations giving rise to vacancy in the membership of the Legislative Council

Legislative Council Ordinance (Cap. 542)

2. The Legislative Council Ordinance (Cap. 542) ("LCO") provides for the constitution, convening and dissolution of the Legislative Council ("LegCo"), the election of Members, and other related matters. According to section 13 of LCO, a person who is elected as a Member is taken to have resigned from office as a Member if that person gives a notice of non-acceptance of office to the Clerk to LegCo. Under section 14 of LCO, a Member may, at any time, resign from office as a Member by giving a written notice of resignation to the Clerk to LegCo. Section 15 of LCO stipulates that a Member's office becomes vacant if the Member –

- (a) resigns;
- (b) dies;
- (c) alters either the Member's nationality or the fact as to whether the Member has a right of abode in a country other than the People's Republic of China¹;

¹ This does not apply to a Member elected for the legal functional constituency ("FC"), the accountancy FC, the engineering FC, the architectural, surveying and planning FC, the real estate and construction FC, the tourism FC, the commercial (first) FC, the industrial (first) FC, the finance FC, the financial services FC, the import and export FC and the insurance FC unless the Member has declared in the nomination form that he or she has Chinese nationality or has no right of abode in a country other than the People's Republic of China ("PRC") and subsequently he or she: (a) acquires a nationality other than Chinese nationality, or (b) acquires a right of abode in a country other than PRC.

- (d) is the President of LegCo and has been found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs; or
- (e) is declared in accordance with Article 79 of the Basic Law ("BL") ("BL 79") to be no longer qualified to hold that office.

The Basic Law

3. In accordance with BL 79, the President of LegCo of the Hong Kong Special Administrative Region ("HKSAR") shall declare that a Member is no longer qualified for the office under any of the following circumstances –

- (a) when he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (b) when he or she, with no valid reason, is absent from meetings for three consecutive months without the consent of the President of LegCo;
- (c) when he or she loses or renounces his or her status as a permanent resident of HKSAR;
- (d) when he or she accepts a government appointment and becomes a public servant;
- (e) when he or she is bankrupt or fails to comply with a court order to repay debts;
- (f) when he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside HKSAR and is relieved of his or her duties by a motion passed by two-thirds of Members present; and
- (g) when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of Members present.

Vacancies in the membership of LegCo in January 2010

4. On 25 January 2010, five Members returned by each of the five geographical constituencies ("GCs") respectively submitted written notices of resignation to the Clerk to LegCo. Pursuant to section 35 of LCO, the Clerk to LegCo, by notices published in the Gazette on 5 February 2010, declared the existence of five vacancies in the membership of the Council.

5. The resignation of the five Members took effect on 29 January 2010. Section 36(1)(a) of LCO 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. 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. EAC conducted a by-election on 16 May 2010 to fill the five GC vacancies and the five resigned Members were all re-elected.

Legislative Council (Amendment) Bill 2011

6. On 8 June 2011, the Administration introduced the Legislative Council (Amendment) Bill 2011 ("the 2011 Amendment Bill") into LegCo. The object of the 2011 Amendment Bill was to provide for a replacement arrangement for filling a vacancy arising from resignation of Members and other situations.

7. At the House Committee ("HC") meeting on 10 June 2011, members formed a bills committee to study the 2011 Amendment Bill ("the former Bills Committee"). Members expressed diverse views on the proposed replacement mechanism. Some members requested the Administration to consider their views on ways to improve the legislative proposals and to conduct a public consultation exercise to listen further to the views of the public on the arrangements for filling vacancies in LegCo.

8. Taking into account the views of members and the public in general, the Administration decided not to resume the Second Reading debate on the 2011 Amendment Bill on 13 July 2011. On 22 July 2011, the Administration published the Consultation Paper on Arrangements for Filling Vacancies in the Legislative Council for public consultation. On 20 January 2012, the Administration published the Consultation Report on Arrangements for Filling Vacancies in the Legislative Council and put forward its latest proposal for the arrangements for filling vacancies in LegCo.

9. On 1 February 2012, the Secretary for Constitutional and Mainland Affairs ("SCMA") wrote to the Chairman of the former Bills Committee advising that a new bill would be introduced to address the issue, and that the 2011 Amendment Bill would not be further pursued and would be withdrawn. The reports of the former Bills Committee to HC are in LC Paper Nos. CB(2)2285/10-11 and CB(2)983/11-12 respectively. The Legislative Council (Amendment) Bill 2012 ("the Bill") was introduced into LegCo on 8 February 2012. The 2011 Amendment Bill was withdrawn as announced by SCMA at the Council meeting of 22 February 2012.

Object of the Bill

10. The object of the Bill is to introduce a restriction to prohibit a person who has resigned, or is taken to have resigned, as a Member of LegCo from standing for a by-election to be held in the same LegCo term within six months of his resignation.

The Bills Committee

11. At the HC meeting on 10 February 2012, members formed a bills committee to study the Bill. Mr TAM Yiu-chung and Mr Jeffrey LAM were elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

12. The Bills Committee has held five meetings to study the Bill and received views from organizations and individuals at one of those meetings. The names of organizations and individuals that/who have submitted views to the Bills Committee are in **Appendix II**.

Deliberations of the Bills Committee

The Administration's latest proposal for filling vacancies in LegCo

13. Section 16 of LCO provides that a person who ceases to be a Member is, subject to the disqualification provisions in section 39, eligible for re-election as a Member. The existing section 39 is in **Appendix III**. There is no provision under section 39 of LCO disqualifying a person who resigns from office as a Member from being nominated or elected as a Member in the resulting by-election.

14. The Bill seeks to implement the following arrangement for filling vacancies in LegCo with effect from the Fifth LegCo –

- (a) a vacancy arising mid-term in a GC, the District Council ("DC") (second) functional constituency ("FC") or any other FC under section 15 or section 72 of LCO or BL79 would continue to be filled by a by-election;
- (b) a Member returned by a GC, the DC (second) FC or any other FC who has resigned from office under section 13 or section 14 of LCO would be prohibited from standing in any by-elections in all GCs, the DC (second) FC and other FCs in the same LegCo term within six months of his resignation; and
- (c) the restriction would not apply to general elections. If the six-month prohibition spans over a current term and the following term of LegCo, the prohibition will not be applicable to the by-elections in the following term of LegCo.

Constitutionality of the Bill

15. The issue of whether the Bill is constitutional has been the primary focus of discussion. The Administration has given detailed elaboration on the constitutionality of the Bill to the Bills Committee. According to the Administration, the right to vote and the right to stand for election under BL26 and Article 21 of the Hong Kong Bill of Rights ("HKBOR") are not absolute but may be subject to reasonable restrictions prescribed by law, so long as, applying the "proportionality test", the restrictions are rationally connected to legitimate aim(s), and are no more than is necessary to achieve those aim(s). BL68 and Annex II to BL give the Government and LegCo broad margin of discretion in determining the contents of the legislation which governs the "specific method" for forming LegCo. The concept of margin of appreciation is well-established in courts and has been applied by courts in relation to the views of the Government and LegCo. The Government and LegCo enjoy considerable margin of appreciation in managing electoral affairs.

16. The Administration has advised that applying the above principles to the Bill, it is the view of the Department of Justice ("DoJ") that the Bill is constitutional as the restriction on the right to stand for election is a reasonable, necessary and proportionate measure in serving a legitimate purpose, namely, to deter the practice of a Member resigning in order to trigger a by-election in which he intends to stand and seek to be re-elected. The DoJ's view is based on the following considerations –

- (a) the Administration considers such conduct to be an abuse of the Member's power to resign and an abuse of the electoral process resulting in significant but unnecessary drain on public resources, LegCo being deprived of the service of a Member and the constituents being deprived of the service of the Member as their representative. Hence, this is a mischief which needs to be addressed;
- (b) the public's right to vote under BL26 and Article 21(b) of HKBOR is not affected as by-elections will continue to be held to fill mid-term vacancies in LegCo;
- (c) the Bill is a more targeted response to the mischief as the restriction on the right to stand for election in a by-election only applies to a Member who has resigned or is taken to have resigned from office under sections 13 and 14 of LCO and the restriction only applies to by-elections held in the same LegCo term within six months of the effective date of the resignation;
- (d) insofar as the Bill may result in some "hard cases" where a Member chooses to resign for health or other personal reasons or concerns, it is well-established that the legislature may adopt a general rule which is justifiable, even though it may result in a detrimental effect on individuals in hard cases. Moreover,
 - (i) the restriction does not apply to a Member who vacates the office in other circumstances, including the circumstance under BL79(1);
 - (ii) a Member with a valid reason may apply to the President of LegCo for consent to be absent from meetings for the purpose of BL79(2). As representatives of the constituents in a democratic society, Members have important public functions to discharge. The assumption of the office of a Member is a solemn public commitment, and it is expected that a Member would give serious consideration before deciding to resign from office; and
- (e) the Bill does not restrict the resigning Member's right to stand in any subsequent general election, even if it is held within six months of his resignation. Nor would the resigning Member be prevented from standing in any subsequent by-election held in the next LegCo term.

17. The Administration has further advised that independent legal advice has been sought from Lord David Pannick QC on the constitutionality of the Bill. Lord Pannick QC has advised that the proposal underlying the Bill is legally defensible as compatible with the provisions of BL and HKBOR. At the Bills Committee's request, the Administration has provided a paper setting out its legal analysis (LC Paper No. CB(2)1168/11-12(01)) and extracts of Lord Pannick's legal advice to members for reference.

18. The Bills Committee notes the position of the Hong Kong Bar Association ("the Bar Association") that the proposed restriction which would have the effect of curtailing the electors' choice of candidates in a by-election is neither necessary nor justified. The Bar Association considers that the Administration has given no reasonable explanation, or any sufficient and rational justification why Members who resign for medical, personal or other reasons should be denied the right to stand for re-election; nor why electors should be deprived of the choice and the right to vote for them. Allowing electors to exercise their existing right to vote and the right to stand for election is already capable of addressing the alleged mischief. Some members have expressed concern whether the Bill can withstand a legal challenge by way of judicial review and how the proceedings of a by-election would be affected if a resigning Member has successfully challenged the legality of the restriction on his right to stand in the by-election after the enactment of the Bill.

19. The Administration has assured members that in light of the legal assessment of DoJ and having regard to independent legal advice from external Counsel, the Bill is compatible with the provisions of BL and HKBOR, and is constitutional. However, if the restriction on a resigning Member has been ruled by the court as unconstitutional upon any election petition or judicial review, the relevant provision will be struck down and the by-election will be regarded as having a material irregularity since an eligible person has been prevented from standing in the election. The by-election will be determined as invalid and another by-election will need to be held to fill the vacancy.

20. Some members including members belonging to the Civic Party, members belonging to the Democratic Party, Ms Cyd HO, Mr LEUNG Kwok-hung and Mr Albert CHAN have expressed objection to the Bill. They are of the view that the proposed measure is not proportionate and will restrict the right to stand for election as well as the right to vote. These members consider that a person's right to vote will be compromised if the resigning Member cannot stand again in the by-election but that Member is that person's choice. If the resigning Member intends to seek the public's mandate for his proposed course of action, the Administration should not deprive electors of the right to express their support or otherwise for the resigning Member in their vote in the by-election. No loophole needs to be plugged as holding by-elections is part of the democratic electoral

system. Furthermore, the Bill cannot address the alleged mischief because persons belonging to the same political party of the resigning Member or persons who share his political views can still stand in a by-election. In any event, public expenditure will need to be incurred for the holding of the by-election. These members stress that there is no convincing reason for not maintaining the existing arrangement for filling a vacancy in LegCo through a by-election.

21. Some other members including members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong, Ms Miriam LAU, Mr WONG Kwok-hing, Mr CHIM Pui-chung, Dr Priscilla LEUNG and Mr Paul TSE, however, have expressed support for the Bill. They are of the view that the Bill has answered the strong call from the community to plug the loophole whereby Members can resign at will in order to trigger a by-election in which they intend to stand and seek to be re-elected. The Bill has struck a right balance between the need to prevent possible abuse of the existing by-election system and the need to protect the right of the Hong Kong people to vote in a by-election. These members have pointed out that a person's right to stand for election is already subject to restrictions as prescribed by law. For example, a person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person is an undischarged bankrupt. A person is only eligible to be nominated as a candidate at an election if he has reached the minimum age requirement. Those members have stressed the importance to maintain the integrity of and respect for the electoral system. They consider that there are many other means for electors to express their support or otherwise for a resigning Member and it is the responsibility of an elected Member to serve a complete four-year LegCo term.

22. It is the Administration's position that the Bill does not impose restriction on the right to vote, although it imposes restriction, to some extent, on the right to stand for election. The Administration considers that electors have already exercised their voting right in the relevant election at which the Members had been elected before the Members chose to resign in order to trigger a by-election. While the Bill cannot prevent incurring expenditure of public funds for the holding of a by-election, it will convey a strong message about the community's disapproval of triggering a by-election by way of resignation and deter Members from abusing the system. The Administration has further explained that the public concerns to be addressed by the Bill includes –

- (a) constituents being deprived of a representative during the period between resignation and by-election;

- (b) LegCo being deprived of a Member during that period;
- (c) the by-election incurring expenditure of public funds; and
- (d) if such resignation to trigger by-elections becomes a common occurrence, respect for the electoral process being undermined, particularly if it leads to a low turnout rate in the by-election.

23. Mr Ronny TONG has taken the view that the effect of the Bill is too general as it will apply even to cases where a Member has chosen to resign not at will but for health or other personal reasons. He is concerned that the Bill as drafted will not meet the proportionality test.

24. It is the Administration's position that the Bill has already been very narrowly focused and cases of involuntary vacation of office can be dealt with under BL79. The Administration has reiterated that the Bill represents a targeted and proportionate response in addressing the public concerns, whether in terms of the persons affected by the Bill (resigning Members), the circumstances in which the vacancy arises (voluntary resignation), the scope of the restriction (right to stand for election in by-elections in the same LegCo term within six months of his resignation).

25. Some members including Mr LAU Kong-wah, Dr Priscilla LEUNG and Mr Paul TSE have expressed agreement with the Administration's position. They stress that a Member should give serious consideration before deciding to resign from office. Moreover, as a vacancy arising mid-term under BL79 will continue to be filled by a by-election, a Member can preserve his right to stand in a by-election by way of vacating his office under BL79.

26. Dr Margaret NG stresses that while the right to stand for an election can be subject to reasonable restrictions as prescribed by law, the legislature is not entitled to apply a blanket restriction at will. If the Bill seeks 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. Dr Margaret NG has pointed out that under section 39 of LCO, a person is disqualified from being nominated as a candidate and from being elected as a Member if he (i) has a conflict of roles; (ii) has been convicted of a serious crime; (iii) is serving a sentence; or (iv) is mentally disabled. The restriction proposed in the Bill is of a completely different nature. She has queried whether there are similar disqualification provisions as proposed in the Bill in overseas jurisdictions.

27. The Administration has provided the Bills Committee with information on the conditions under which a person is disqualified from being nominated as a candidate at an election of the legislature in some overseas jurisdictions including Australia, Canada, France, Finland, New Zealand, United Kingdom and Japan. These conditions are largely related to conviction of certain crimes (corruption and election-related offences), imprisonment, declared bankruptcy and employment in public service. The Bills Committee has noted however that if there is a vacancy in one of the 300 single-member constituencies (where the first-past-the-post method is adopted) of the House of the Representatives in Japan, a by-election will be held. If a by-election is held as a result of the resignation of a member elected from one of the single-member constituencies, the resigning member will be restricted from standing in that by-election. He may, however, stand in any other by-elections, such as a by-election after the ensuing by-election of the constituency, or by-elections of other constituencies.

28. Some members including Dr Margaret NG and Ms Emily LAU have queried the justification for introducing the proposed restriction which is not commonly adopted by other jurisdictions. The Administration has explained that as the overseas jurisdictions under study have largely adopted the list proportional representation voting system, vacancies will not be filled by way of by-election but by the operation of replacement mechanism. Hence, no restriction needs to be imposed on resigning Members there. However, by-elections have been held to fill mid-term vacancies in GCs notwithstanding the adoption of the list system of proportional representation voting system for GCs since 1998.

The restriction period and scope of application

29. According to the Administration, a six-month period of restriction is proposed in the Bill to prevent a resigning Member from standing in a by-election because past experience has shown that a by-election in a GC is normally held within four months of the vacancy arising. Furthermore, in accordance with section 36(2)(a) of LCO, a by-election to fill a vacancy occurring in the membership of LegCo is not to be held within the four months preceding the end of the current term of LegCo. Dr Priscilla LEUNG and Mr CHIM Pui-chung are of the view that the proposed six-month period may not be adequate. Dr LEUNG has suggested that the resigning Member should be prohibited from standing in any by-election to be held in the entire remainder of the term. Mr LAU Kong-wah has asked whether it will be contrary to the policy intent if a resigning Member is able to stand in the resulting by-election which is held due to exceptional circumstances after the six-month period of restriction.

30. The Administration considers a six-month period of restriction appropriate as it is long enough to deter abuses and not so long as to render the restriction more than is necessary to address the mischief the Bill has set to remedy. The Administration has advised that while it is possible that the conduct of a by-election has to be deferred due to exceptional circumstances and may be held more than six months after the resignation of a Member, it is the policy intent to impose a six-month period of restriction and not longer on a resigning Member to stand in any by-election to be held in any GC or FC.

31. Dr Margaret NG has queried the rationale for applying the restriction to traditional FCs if the objective is to prevent a Member from resigning in order to trigger a by-election for the purpose of instigating a de facto referendum. The Administration has explained that the intention is to prevent a FC Member too from resigning at will to trigger a by-election. Dr Priscilla LEUNG considers the proposed application of the restriction to traditional FCs reasonable.

Committee Stage amendments

32. At the suggestion of the Bills Committee, the Administration has agreed to introduce a Committee Stage amendment ("CSA") to enhance the clarity of the Chinese version of the proposed new section 39(2A)(a). The CSA to be proposed by the Administration is in **Appendix IV**.

33. Mr Albert CHAN has informed the Bills Committee that he will consider moving CSAs to the Bill along the following lines –

- (a) to specify in the proposed new section 39(2A) that the proposed restriction in the Bill will apply only when a specified number of GC Members have resigned;
- (b) to amend the proposed new section 39(2A)(a)(i) and (ii) to shorten the six-month period of restriction to five, four or three months;
- (c) to amend the proposed new section 39(2A)(b) to specify that the proposed restriction in the Bill will apply only if no general election will be held within one, two or three years of the Member's resignation;
- (d) to add a new provision to the section 39 to allow a resigning Member to stand in a by-election within six months of his resignation if (i) he has been forced to resign after being wrongfully imprisoned for a long time without trial in other jurisdictions; (ii) he has resigned

after being diagnosed wrongly as having a serious or mental illness;
or (iii) he is willing to pay a specified percentage of the expenditure
incurred for holding the resulting by-election; and

- (e) to add a sunset provision to the Bill, for example, by specifying that the proposed new section 39(2A) will cease to have effect on 2 October 2013.

Resumption of Second Reading debate on the Bill

34. The Bills Committee supports the resumption of the Second Reading debate on the Bill. The Administration has advised the Bills Committee that it intends to resume the Second Reading debate at the Council meeting of 2 May 2012.

Advice sought

35. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
12 April 2012

Bills Committee on Legislative Council (Amendment) Bill 2012

Membership list

Chairman	Hon TAM Yiu-chung, GBS, JP
Deputy Chairman	Hon Jeffrey LAM Kin-fung, GBS, JP
Members	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP Dr Hon Margaret NG Hon CHEUNG Man-kwong Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, SBS, JP Hon LAU Kong-wah, JP Hon LAU Wong-fat, GBM, GBS, JP Hon Miriam LAU Kin-yea, GBS, JP Hon Emily LAU Wai-hing, JP Hon Timothy FOK Tsun-ting, GBS, JP Hon Abraham SHEK Lai-him, SBS, JP Hon LI Fung-ying, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon Vincent FANG Kang, SBS, 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 Prof Hon Patrick LAU Sau-shing, SBS, JP 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 Mrs Regina IP LAU Suk-yea, GBS, JP Dr Hon PAN Pey-chyou Hon Paul TSE Wai-chun, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Hon Albert CHAN Wai-yip

Total : 35 Members

Clerk	Miss Flora TAI
Legal Adviser	Mr Arthur CHEUNG
Date	21 February 2012

《2012年立法會(修訂)條例草案》委員會
Bills Committee on Legislative Council (Amendment) Bill 2012

曾向法案委員會表達意見的團體/個別人士名單
List of organizations/individuals which/who have
submitted views to the Bills Committee

<u>名稱</u>	<u>Name</u>
* 1. 中國香港柔道總會	The Judo Association of Hong Kong, China
2. 元朗區議會議員陸頌雄先生	Mr LUK Chung-hung, member of Yuen Long District Council
3. 元朗區議會議員麥業成先生	Mr MAK Ip-sing, member of Yuen Long District Council
4. 公民黨	Civic Party
5. 公共專業聯盟	The Professional Commons
6. 屯動力	Tuen Mun Stay Goal
7. 民間人權陣線	Civil Human Rights Front
8. 朱偉基先生，執業大律師	Mr CHU Wai-kei, Barrister-at-Law
9. 何玉慧小姐	Miss HOO Yuk-wai
10. 坊眾社會服務中心	Fong Chung Social Service Centre
11. 李達怡先生	Mr LEE Tat-yi
* 12. 李騰駿先生	Mr Timmy LEE
* 13. 沙田區議會議員鄭則文先生	Mr CHENG Tsuk-man, member of Shatin District Council
14. 東區區議會議員郭偉強先生	Mr KWOK Wai-keung, member of Eastern District Council
15. 林匡正先生	Mr LAM Hong-ching
* 16. 林庭宇先生	Mr LAM Ting-yu
17. 林博先生	Mr LAM Pok
18. 青年民建聯	Young Democratic Alliance for Betterment of Hong Kong
* 19. 香港一市民	A member of the public
20. 香港人權監察	Hong Kong Human Rights Monitor
21. 香港工業總會	Federation of Hong Kong Industries
22. 香港中華文化總會	The Association of Chinese Culture of Hong Kong
* 23. 香港出版印刷唱片界國情班同學會	China Studies Alumni Association of HKPPRI

24. 香港作曲家及作詞家協會	The Composers and Authors Society of Hong Kong
25. 香港青年發展網絡	Hong Kong Youth Development Network
26. 香港南區聯盟	Hong Kong Southern District Alliance
27. 香港政治經濟文化學會	Hong Kong Political, Economic and Cultural Society
28. 香港星火網絡協進會	Hong Kong Starfire Network Association
29. 香港基督徒學會	Hong Kong Christian Institute
30. 香港菁英會	The Y Elites Association
31. 香港影業協會	Hong Kong Motion Picture Industry Association
32. 徐君紹先生	Mr CHUI Kwan-siu
33. 捍衛黃毓民辭職補選大聯盟	捍衛黃毓民辭職補選大聯盟
34. 張姚彬先生	Mr CHEUNG Yiu-pan
35. 梁銳先生	Mr LEUNG Yui
36. 梅懌熙先生	Mr MUI Yik-hei
37. 郭俊先生	Mr KWOK Chun
* 38. 陳明基先生	Mr M K CHAN
39. 陳嘉麟先生	Mr CHAN Ka-lun
40. 陳廣錫先生	Mr CHAN Kwok-shik
41. 傅慶昌先生	Mr FU Hing-cheong
42. 彭穎生先生	Mr PANG Wing-seng, Victor
43. 曾興隆先生	Mr TSANG Hing-lung
44. 覃天柱先生	Mr CHAN Tin-chu, Francis
45. 逸東社區網絡協會	Yat Tung Community Network Association
46. 黃大仙區議會議員莫健榮先生	Mr MOK Kin-wing, member of Wong Tai Sin District Council
47. 新界青年聯會	Federation of New Territories Youth
48. 新界青聯智庫	Think Tank of New Territories Youth
49. 劉建誠先生	Mr LAU Kin-shing
* 50. 鄧長政先生	Mr Gene TANG
51. 鄭重科先生	Mr Tony CHENG
52. 蘇浩先生	Mr SO Ho

* 只提交書面意見的團體/個別人士
Organizations/individuals which/who have submitted written views only

Appendix III

Chapter 542	LEGISLATIVE COUNCIL ORDINANCE	Gazette Number	Version Date
Section 39	When person is disqualified from being nominated as a candidate and from being elected as a Member	2 of 2011	11/03/2011

Remarks:

The amendments made to this section by the Legislative Council (Amendment) Ordinance 2011 (2 of 2011) shall come into operation on 11 March 2011 for the purpose only of enabling arrangements to be made for-

- (a) the holding of the elections of members of the Election Committee under the Chief Executive Election Ordinance (Cap 569) in 2011; and
 - (b) the holding of the Legislative Council general election in 2012.
- (1) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person-
- (a) is-
 - (i) a judicial officer; or
 - (ii) a prescribed public officer; or
 - (iii) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; or (Amended 48 of 1999 s. 24)
 - (b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have been substituted for the sentence; or
 - (ii) received a free pardon; or
 - (c) has been convicted of treason; or
 - (d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or
 - (e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)
 - (f) is-
 - (i) ineligible to be a candidate, or to be elected as a Member, at the election; or
 - (ii) disqualified from being a candidate, or from being elected as a Member, at the election, because of the operation of this or any other law; or
 - (g) is a representative or salaried functionary of a government of a place outside Hong Kong; or
 - (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national or local level; or
 - (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 25 of 2003 s. 22)
- (2) A person is also disqualified from being nominated as a candidate at an election if the person has been found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person

disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Replaced 25 of 2003 s. 22)

- (3) A person is also disqualified from being elected as a Member if the person has been found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Replaced 25 of 2003 s. 22)
- (4) A person is also disqualified from being elected as a Member for a functional constituency (other than the District Council (first) functional constituency and the District Council (second) functional constituency) if, since the close of nominations, the person has ceased to have a substantial connection with the constituency. (Amended 2 of 2011 s. 17)
- (5) In this section-

"judicial officer" (司法人員) means the holder of a judicial office, as defined in section 2 of the Public Service Commission Ordinance (Cap 93);

"prescribed public officer" (訂明的公職人員) means any of the following-

- (a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204);
- (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap 397);
- (d) a member of the Electoral Affairs Commission;
- (e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (ea) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap 486); (Added 48 of 1999 s. 24)
- (eb) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480); (Added 48 of 1999 s. 24)
- (f) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

Legislative Council (Amendment) Bill 2012

Committee Stage

Amendment to be moved by the Secretary for Constitutional and Mainland Affairs

Clause

Amendment Proposed

- 3 In the proposed section 39(2A)(a)(i) and (ii), in the Chinese text, by deleting “於在該補選當日結束” and substituting “在截至該補選當日為止”.