

Legislative Council Panel on Constitutional Affairs

Consultation Report on Arrangements for Filling Vacancies in the Legislative Council

Purpose

This paper briefs Member on the Consultation Report on Arrangements for Filling Vacancies in the Legislative Council. The Consultation Report summarises the views received during the public consultation on arrangements for filling vacancies in the Legislative Council (“LegCo”) and puts forth the latest proposal.

Background

2. The Government introduced the Legislative Council (Amendment) Bill 2011 (“the Bill”) into the LegCo on 8 June 2011. It proposed a replacement arrangement for filling a vacancy arising from resignation of LegCo Members and other situations. In the context of the discussion of the Bill, the Bills Committee was of the view that the Government should provide more time to consider suggestions of the Members and listen further to public views on the arrangements for filling vacancies in the LegCo. The Government subsequently announced on 13 July 2011 that it would not resume second reading debate and the voting of the Bill and would conduct a public consultation on the proposals for filling mid-term vacancies in the LegCo for about two months.

3. The Government published a Consultation Paper on Arrangements for Filling Vacancies in the Legislative Council on 22 July 2011 which gave an account of the mischief arising from the resignations of five LegCo Members in 2010. In the Consultation Paper, the Government expressed the view that it is an abuse of the electoral process for a Member to resign in order to trigger a by-election in which the Member intends to stand and seek re-election. It reviewed the arrangements for filling vacancies in the LegCo and set out four options to fill mid-term vacancies in the LegCo. The four options were:

- (a) Option 1: restricting resigning Members from participating in any by-election in the same term;
- (b) Option 2: a replacement mechanism using the same candidate list followed by a precedence list system (the Government's revised proposal in late June 2011);
- (c) Option 3: a replacement mechanism which does not cover causal vacancies arising from death, serious illness or other involuntary circumstances; and
- (d) Option 4: a replacement mechanism using the same candidate list, followed by leaving the seat vacant when the list is exhausted.

4. Among other things, the Consultation Paper invited the public to express views on:

- (a) whether Members resigning at will is a loophole that needs to be plugged;
- (b) if it is considered that the loophole should be plugged, which of the four options set out above would be preferred;
- (c) if it is considered that the loophole need not be plugged, whether the status quo should be maintained; and
- (d) any other feasible options or suggestions.

5. During the public consultation period which ended on 24 September 2011, two public forums were organised by the Government to engage the public and to gauge their views. The Chief Secretary for Administration, the Secretary for Constitutional and Mainland Affairs and other relevant policy secretaries also attended 11 forums or discussion sessions organised by different organisations to collect their views. Groups, organisations and individual members of the community were invited to submit their views on the key issues set out in the Consultation Paper as well as other related topics. During the period, some academic and non-governmental organisations as well as the media also conducted polls to gauge the views of the public.

Summary of Views

6. By the end of the consultation period, 31 120 written submissions were received and the results of a number of polls were announced. Chapters 3 and 4 of the Consultation Report summarise the views received during the public consultation period. In brief:

- (a) the results of the various polls indicate that over 50% or close to 50% of the respondents consider that the Government needs to plug the loophole in the existing legislation by way of legislative amendments. The loophole is that Members may resign at will to trigger by-elections in which they seek to stand and be re-elected. Option 1 (restricting resigning Members from participating in any by-election within the same LegCo term) commands more support than the other three options;
- (b) around 70% of the 31 120 written submissions received support plugging the loophole by way of legislative amendments and Option 1 commands more support than the other three options;
- (c) for those political parties which do not consider that there is a loophole to be plugged, they do not support any of the Options and consider that the right to vote should not be deprived. For those political parties which consider that there is a loophole to be plugged, they have various views on the Options set out in the Consultation Paper;
- (d) the community generally considers that by-elections should continue to be held as a means for the electorate to make a choice when a mid-term vacancy arises. The holding of a by-election to fill a mid-term vacancy could address the concern about the replacement mechanism proposed in the Bill, under which electors no longer have a chance to make a choice afresh when a causal vacancy arises mid-term. As far as the legal sector is concerned, the Hong Kong Bar Association, the Law Society of Hong Kong and 15 Members of the Election Committee Legal Subsector do not see any need to change the existing by-election arrangement; and

- (e) some political parties and groups advocate that mid-term vacancies arising from voluntary resignations should be treated differently from those arising from scenarios like death or inability to discharge duties as a result of serious illness. These political parties and groups consider that a mid-term vacancy arising from circumstances other than the voluntary resignation of a Member is not abusive in nature and does not involve the resignation of a Member at will to trigger a by-election.
7. From the views received, there are clear indications that:
- (a) there is strong public support for the Government to address the mischief;
 - (b) Option 1 provides a targeted and a more proportionate response to address the mischief; and
 - (c) Option 1 receives more support than the other three Options.

Latest Proposal

8. Having carefully considered the views received, we propose to prohibit a LegCo Member who has resigned from office from standing in any by-elections in the same LegCo term within six months of his resignation. The details are as follows:

- (a) a vacancy arising mid-term in a geographical constituency (“GC”), the District Council (second) functional constituency (“DC (second) FC”) or any other functional constituency (“FC”) under section 15 or section 72 of the Legislative Council Ordinance (“LCO”) or Article 79 of the Basic Law would continue to be filled by a by-election;
- (b) a Member returned by a GC, the DC (second) FC or other FCs who has voluntarily resigned from office under section 13 or section 14 of the 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 LegCo term and the following LegCo term, the prohibition will not be applicable to the by-elections in the following LegCo term.

Justifications

9. It is an abuse of process for a Member to resign in order to trigger a by-election in which the Member intends to stand and seek re-election. This will have adverse impact on the credibility of the electoral system.

10. Apart from the manpower and financial resources involved, between a Member's resignation and the by-election, the LegCo will be deprived of the service of a Member, and the constituents will be deprived of the service of the Member as their representative.

11. The views received during the public consultation period indicate that more people consider that the Government should introduce legislative amendment to plug the loophole that LegCo Members resign at will to trigger by-election in which they seek to stand.

12. Under the latest proposal, individual Members may still resign to trigger by-elections. The Electoral Affairs Commission will arrange for a by-election to fill the vacancy arising from the resignation of a Member. Electors can continue to cast votes in by-elections. However, the proposal would transmit a strong signal indicating the community's disapproval of such kind of resignation and this would have a considerable effect in preventing Members from abusing the system.

13. This is a more focused and moderate approach to address the mischief arising from Members resigning at will in order to trigger by-elections, as the only persons affected are the resigning Members.

14. We have sought legal advice on the proposal and the legal advice confirms that the proposal is constitutional. Details of the legal advice are in Chapter Six of the Consultation Report.

Way Forward

15. The Government plans to introduce legislative amendment to the LCO in due course to effect the latest proposal. Our intention is to complete the legislative process within the 2011/12 legislative year.

Advice Sought

16. Members' views are invited on the latest proposal set out in paragraph 8 above.

Constitutional and Mainland Affairs Bureau
January 2012