



Public Consultation on Arrangements for Filling Vacancies in the Legislative Council

Highlights

July 2011

Mischief arising from Resignations of Five Legislative Council Members

- In January 2010, five Legislative Council (“LegCo”) Members (“Members”) from each of the five geographical constituencies (“GCs”) resigned to trigger territory-wide by-elections for the purpose of instigating a so-called “referendum”. They stood in the by-elections and were all re-elected. The by-elections cost around \$126 million and had a record low voter turnout rate of 17%.
- Many members of the public and different political parties considered the by-elections to be an unnecessary and significant drain on public resources. There is a large body of public opinion that the loophole should be plugged to prevent recurrence of similar incidents. Furthermore, between a Member’s resignation and the by-election, the LegCo will be deprived of the service of a Member and the constituents the service of the Member as their representative.
- With the introduction in 2012 of the new District Council (second) Functional Constituency (“DC (second) FC”) which will return five seats from the entire territory as a single constituency by about 3.2 million registered voters, the resignation of just one Member from this FC will trigger a territory-wide by-election, involving more than 520 polling stations with cost expected to exceed \$100 million.
- On the other hand, some consider that there is nothing inappropriate for a Member to resign and stand in the resulting by-election to convey a political message.

Arrangements for Filling Vacancies in the Legislative Council

- The list proportional representation system is adopted for GCs and the future DC (second) FC in general elections. Under this system, seats are allocated to different candidate lists according to the proportion of votes they obtain. Political parties and groups winning a smaller percentage of votes may still be able to secure seats.
- However, for by-elections to fill one single vacancy, the first-past-the-post system is adopted. This may result in an unfair change in the proportion of seats allocated among political parties and groups in the previous general election.

- Quite a number of other jurisdictions which adopt the list proportional representation system in general elections fill mid-term vacancies by a candidate list replacement mechanism, instead of holding by-elections.

Options to Fill Mid-term Vacancies

- The Basic Law does not require that any casual vacancy in the Legislature must be filled by means of a by-election. By-election is not the only lawful means to fill a casual vacancy, and using a replacement mechanism would not amount to an unconstitutional deprivation of the right to vote or the right to stand for election merely because no by-election would be held. The Hong Kong Bill of Rights does not contain a requirement relating to by-election either. Since by-election is not mandatory, other options may be adopted provided that they are fair and reasonable, and pursue legitimate aims.
- Having regard to the mischief arising from the resignations of the five Members, the Administration considers it necessary to plug the loophole and the Legislative Council (Amendment) Bill 2011 was gazetted on 3 June 2011. The Administration has subsequently announced some revisions to the proposal in the Bill.
- The proposed replacement mechanism will apply to vacancies in GCs and the DC (second) FC, but not other FCs, as the latter do not adopt the list proportional representation system.
- In response to the view of the LegCo Bills Committee that the Administration should provide more time to consider Members’ suggestions and listen further to public views, the Administration has published a consultation paper for a two-month public consultation. Four main options are set out in the consultation paper:

Option 1: restricting resigning Members from participating in any by-election in the same term

- This will restrict a Member who resigns from being nominated as a candidate in any by-election for the remainder of the term.

Option 2: a replacement mechanism using the same candidate list followed by a precedence list system (the Administration’s revised proposal)

- The vacancy will first be filled by the first candidate who has not been elected on the same list as that of the vacating Member.
- If that candidate is ineligible or unwilling to fill the seat, the vacancy will be filled by the next candidate on the same list, and so on.
- When there is no more candidate on the same list who is eligible and willing to fill the vacancy, the vacancy will be filled by reference to the precedence list i.e. the list of the first candidates who have not been elected on each of the lists with remaining votes at the previous general election, ranked in descending order according to the number of remaining votes of their respective lists.
- If the vacancy cannot be filled by the above methods, a by-election will be held.
- This mechanism will apply to vacancies arising from resignation and all other situations, including death, serious illness, bankruptcy, imprisonment for a criminal offence of a Member, etc.

Option 3: a replacement mechanism which does not cover causal vacancies arising from death, serious illness or other involuntary circumstances

- The replacement mechanism under this Option will be the same as that under Option 2, only that it would not cover vacancies arising from a Member’s death, serious illness or other involuntary circumstances. For these vacancies, by-elections will be held.

Option 4: a replacement mechanism using the same candidate list, followed by leaving the seat vacant when the list is exhausted

- The vacancy will first be filled by the first candidate who has not been elected on the same list as that of the vacating Member. If that candidate is ineligible or unwilling to fill the seat, the vacancy will be filled by the next candidate on the same list, and so on.
- If there is no more candidate on the same list who is eligible and willing to fill the vacancy, the seat can be left vacant for the rest of the term.

Views Sought

- The consultation paper sets out the possible pros and cons of the four options above. The Administration welcomes views on the following questions:
 - whether the phenomenon of Members resigning at will, triggering by-elections in which they seek to stand and involving a considerable amount of public funds, is a loophole that needs to be plugged;
 - if it is considered that the loophole should be plugged, of the above options, which one(s) would be preferred;
 - if it is considered that the loophole need not be plugged, whether the status quo should be maintained i.e. no legislative amendment will be made, a by-election will be held if a Member resigns and a considerable amount of public funds will be spent;
 - whether it is necessary to address the issue that holding a by-election (which adopts the first-past-the-post system) to fill a mid-term vacancy in GCs and the future DC (second) FC (which adopt the list proportional representation system in general elections) may result in an unfair change in the proportion of seats allocated among political parties and groups in the previous general election); and if so, whether a replacement mechanism that is a fair and reasonable alternative to by-election can be considered; and
 - whether there are other feasible options to plug the loophole or other relevant suggestions.

Your Views

- The consultation paper is available at the Public Enquiry Service Centres of District Offices or the website of the Constitutional and Mainland Affairs Bureau (www.cmab.gov.hk). Please send us your views by mail, facsimile or email on or before **24 September 2011**:
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