

Responses from The Professional Commons on the Legislative Council (Amendment) Bill 2012

The Professional Commons is responding to the Government's proposal on the "Consultation Report on Arrangements for Filling Up Vacancies in the Legislative Council" (hereafter the "Consultation Report"), followed by the draft amendment bill of Legislative Council (Amendment) Bill 2012.

Here are the views of The Professional Commons.

1. The consultation process was problematic, leading to a faulty conclusion

- It was based on a wrong assumption of existence of a "loophole". The Consultation Report gave no proof that the general public view the by-elections triggered by resignation is an abuse of process, as the Government perceived.
- The "Consultation Paper on Arrangements for Filling Up Vacancies in the Legislative Council" gave biased and incomplete information to the general public. After the release of the consultation document, surveys from many other parties had concluded that the general public prefers the maintaining the status quo instead of a change of electoral arrangements when a seat in the Legislative Council (hereafter LegCo) has become vacant. Even in the Government's own Consultation Report, it was revealed that roughly 40% to 50% of the respondents in the surveys claimed that the status quo of the electoral arrangements when a seat in the LegCo becomes vacant should be maintained.¹
- The Consultation Paper did not provide open choices of options to the public. There were four options in the proposal², but the option to maintain the status quo was ruled out.
- The provided options are unconstitutional and the Government even admitted some of them are not in line with the current legislation regarding voting rights.
- The consultation process was tailored to fabricate a predetermined outcome. "Loophole" and "mischief" were made up as an excuse for a change to stop reoccurrence of by-election being utilized as a means to express political views by a virtual referendum.
- There is a view that the voluntary resignation of the legislators as a political decision. There is no proof that many or majority viewed it as a "mischief". The objective of the once resigned legislators was to respond to a political problem -- the lack of channel to express the public view on the democratic reform of Hong Kong.
- It should be left to the decisions of the citizens/voters on whether such a political decision could be considered as a "mischief". Legislators who choose to resign to initiate a by-election will have to bear their own political risks. They eventually have to face the judgment of the voters who could voted them down, not letting them regaining their seat for the remaining period of their term of service.

¹ See paras. 3.11, 3.13, 3.14, 3.15 and 3.16 of the Consultation Report.

² The four options are: namely "restricting resigning LegCo Members from participating in any by-election in the same term" (Option 1), and the three options of "replacement mechanism", that is, "using the same candidate list followed by a precedence list system as proposed by the Administration" (Option 2), "not covering causal vacancies arising from death, serious illness or other involuntary circumstances" (Option 3), "using the same candidate list, followed by leaving the seat vacant when the list is exhausted" (Option 4).

2. The proposal of the consultation report is wrong and unsound solution to a non-existent problem

- The consultation report proposed that an amendment to the current practice should be made. The amendment is that any Members of the LegCo resigned at will would be disqualified from running in a by-election resulting from such resignation for six months.
- The Professional Commons is of the view that by-elections, as a means to fill vacancies in the LegCo has been an effective practice since the introduction of the proportional representation electoral system.³ The current by-election mechanism, that is, any eligible individuals can run in the by-election, provides good and fair means to address the issue of by-election initiated by voluntary resignation of any legislators. The Government should simply leave the choice to the eligible voters in Hong Kong in determining whether it is indeed a “mischief” of the legislators.

3. The proposed amendment violates the fundamental rights of the citizens and is totally unacceptable

The rights to vote and stand in any election, including by-election, is a fundamental and basic human rights of the citizens of the Hong Kong as guaranteed under Article 26 of the Basic Law. The current proposal by the Government, though limited to prohibiting resigned legislators to run in the by-election for six months, is still depriving the right to be elected. We are in the view that the Government has failed to guarantee the free expression of the will of the voters under the latest proposal from the Government, as voters are denied the right to make a choice on who should fill the vacancies, as the person which originally resigned from the LegCo seats would not be allowed to run again.

4. The Government should withdraw any proposals on changing the current arrangements on filling vacancies in the LegCo and restraining the rights of being elected, as well as to vote

The Professional Commons call for simply maintaining the current arrangements for filling up vacancies in the LegCo as status quo, that is, having by-elections when a seat in the LegCo becomes vacant under any circumstances, and without any form of restriction on who would be able to stand and vote in the by-elections.

5. The citizens should note that the Government, after releasing the consultation report, would soon table an amendment bill to LegCo and the Government would be aiming at collecting enough support to push it through expeditiously. Hence, **the citizens in Hong Kong should strive to protect the constitutional rights of his, as well as the rights to vote and the right to be elected as provided by the law.**

The Professional Commons
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³ The by-elections of the LegCo in 2000 and 2007 respectively had received significant public responses. The turnout rate of 2007 by-election was 52.06%, higher than that of 2008 LegCo election (50.17%).

Reference

The Professional Commons had submitted a response to the “Consultation Paper on Arrangements for Filling Vacancies in the Legislative Council” on 23 September 2011. The paper provides analysis of the consultation paper and our comment. It is available at the following URL:

http://www.procommons.org.hk/wp-content/uploads/2011/09/ProCommons_Responses_LegCo_FillingUp_Vacancies_23092011.pdf