



HONG KONG BAR ASSOCIATION

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The Hong Kong Bar Association notes that considerable public and media attention has been generated by its submissions to Legco in response to the Government's proposals regarding replacement arrangements in the event of a vacancy.

We have carefully considered certain responses given on behalf of the Government to the Bar's submissions. We are of the view that the Bar's concerns as expressed in our submissions have not been properly or adequately addressed for the following key reasons:

- (1) The Government has not provided a rational or logical explanation as to
 - (a) how, given that under the current system an elector only has one vote and he casts this vote for a list and not an individual candidate, it can be asserted that an elector who has voted for a particular list in an election can be said to have also elected a candidate from another list in the event a vacancy arises in the future;
 - (b) how a "back-up candidate" determined by the proposed mechanism can be said to be the result of a "free expression of the will of the electors" when the electors have had no opportunity of deciding whether to vote for that candidate according to the circumstances prevailing at the time when the vacancy arises sometime in the future;
 - (c) how the will of the electors is being guaranteed and given effect to, when a "back-up candidate" whose list has failed to secure sufficient votes for him to be returned as a Legco member in the original election could well become a Legco member under the Government's proposals. This is particularly so when the electors are not able to express their preference as to any "back-up candidate(s)" under the existing electoral system.
- (2) In any event, no proper or reasonable justification has been provided by the Government as to why potential candidates who may wish to stand for election in the event of a vacancy arising should be denied the right, which is presently available to them.

The Bar remains of the view that that the Government's proposals in their present form are contrary to the Basic Law, the Hong Kong Bill of Rights and the International Covenant on Civil and Political Rights. Further, the proposals represent an unwarranted and unjustified attempt to deprive Hong Kong citizens of their right to vote and their right to stand for election in the event a vacancy arises in Legco in the future. The Bar notes that the proposals in their present form would appear to be inconsistent with the Government's standing policy of encouraging members of the public to register in the electoral rolls and exhorting them to exercise their vote.

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21ST June 2011