

**Law Society's Submissions
Legislative Council (Amendment) Bill 2012**

1. The Law Society has reviewed the Legislative Council (Amendment) Bill 2012 (Bill), and the Information Note "*Constitutionality of the Proposal*" (Information Note) prepared by the Department of Justice which sets out the legal views on the constitutionality of the legislative proposal and contains a large number of extracts from the Legal Advice obtained from Lord David Pannick QC.

2. The Law Society has the following observations on the Information Note:

Lord Pannick QC is of the opinion that the proposed amendment in the Bill is a rational and proportionate means to cure the mischief of Legco Members resigning to trigger a by-election because:
 - (a) The prohibition is only for a short time, namely six months.

 - (b) The Bill applies to all Geographical Constituency seats and Functional Constituency seats, so there is no discrimination against any party, unlike the 2011 Bill which only targeted Geographical Constituency seats.

3. The Information Note quoted Lord Pannick's Advice that the Administration is entitled to regard the resignation of a Legco Member in order to trigger a by-election as an abuse for the following reasons:
 - Constituents are deprived of a representative during the period between resignation and the by-election

 - Legco is deprived of a Member during that period

 - By-elections will involve costs to public funds

- If such resignations to trigger by-elections become a common occurrence, respect for the electoral process will be undermined, particularly when such action results in a low turnout rate in the by-election.¹
4. We note the justifications cited above also apply to Legco Members vacating their seats for other reasons which can include the following: a Member who is sick, or a Member who has been convicted but then has his conviction overturned; these members would be prevented from standing again for re-election in a by-election under the proposed amendment.
 5. The Law Society notes that there is a “value judgment” on whether the prohibition period of six months is rational and proportionate based on the views of Lord Pannick QC. The Law Society notes that if there is a challenge on whether the proposed amendment is rational and proportionate will be a matter for a legal challenge and for the Court to decide whether the proposed amendment is constitutional.

The Law Society of Hong Kong
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¹ Information Note paragraph 22(1)