

CE signs Public Offices (Candidacy and Taking Up Offices)(Miscellaneous Amendments) Ordinance 2021 (with photos)

The Chief Executive, Mrs Carrie Lam, today (May 20) signed in accordance with Article 48(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law) the Public Offices (Candidacy and Taking Up Offices)(Miscellaneous Amendments) Ordinance 2021 (the Ordinance) passed by the Legislative Council (LegCo). The Ordinance will come into effect after it is published in the Gazette tomorrow (May 21).

"Upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) is the legal requirement and the precondition for public officers of the HKSAR. It is also the fundamental obligation and responsibility of persons who stand for election or take up the relevant public office," Mrs Lam said.

"The Ordinance will be gazetted and come into effect tomorrow. It stipulates very clearly for the first time the legal requirements for oath-taking of public officers, marking an important step for safeguarding the 'patriots administering Hong Kong' principle."

The Ordinance clearly explains the meaning of a reference to "upholding Basic Law and bearing allegiance to HKSAR"; introduces the oath-taking requirement for members of the District Councils; specifies oath-taking requirements; standardises arrangement of oath administrators; enhances the mechanism to deal with breach of oaths; and introduces restrictions on participation in public elections for related situations.

Article 104 of the Basic Law states that five categories of public officers, that is the Chief Executive, principal officials, members of the Executive Council and of LegCo, judges of the courts at all levels and other members of the judiciary in HKSAR must, in accordance with law, swear to uphold the Basic Law and swear allegiance to HKSAR of the PRC when assuming office. The Standing Committee of the National People's Congress endorsed the Interpretation of Article 104 of the Basic Law (the Interpretation) on November 7, 2016, which explains that oath-taking is the legal prerequisite and required procedure for public officers specified in Article 104 of the Basic Law to assume office, and must comply with the legal requirements in respect of its form and content. The Interpretation also makes it clear that an oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with the law.

Apart from the five categories of public officers specified in Article

104 of the Basic Law, Article 6 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law) stipulates that a resident of the HKSAR who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law and swear allegiance to the HKSAR in accordance with the law.

The Ordinance seeks to implement the oath-requirements for public officers as stipulated in the Interpretation and the National Security Law accurately. The Bill was introduced into LegCo for First Reading and Second Reading on March 17, 2021, and was passed by LegCo on May 12.

"To implement 'One Country, Two Systems' fully and accurately, we must act in accordance with the Constitution and the Basic Law. The Ordinance improves the oath-taking arrangements as required by the Basic Law and effectively deals with legal responsibility that a public officer has to bear if he/she engages in conduct in breach of the oath after taking the oath and assuming the office. It will be conducive to the full and faithful implementation of 'One Country, Two Systems'," Mrs Lam said.

