

# CE stresses that NPCSC's decision is constitutional, lawful, reasonable and conducive to resolute, full and faithful implementation of "One Country, Two Systems"

The Chief Executive, Mrs Carrie Lam, today (November 11) together with the Secretary for Justice, Ms Teresa Cheng, SC, and the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, explained the [decision](#) made after deliberation by the Standing Committee of the 13th National People's Congress on the qualification of members of the Legislative Council (LegCo) of the Hong Kong Special Administrative Region (HKSAR) at its 23rd session which was closed today. She also gave an account of the HKSAR Government's follow-up actions.

"The National People's Congress (NPC) is the highest organ of state power, whereas the Standing Committee of the NPC (NPCSC) is the NPC's permanent body. It has the authority to interpret the Basic Law (BL), to monitor the implementation of the BL, and to handle any constitutional problems arising from the implementation of the BL in accordance with the law. The decision made by the NPCSC in accordance with the law is legally binding on the HKSAR," Mrs Lam said.

"Article 104 of the BL clearly stipulates that LegCo members 'must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China'. According to the Interpretation of BL Article 104 made by the NPCSC on November 7, 2016, if a person, after taking the oath, engages in conduct in breach of the oath, the person shall bear legal responsibility in accordance with the law.

"In view of the severe epidemic situation of COVID-19, the HKSAR Government announced on July 31 that the 2020 LegCo General Election would be postponed for a year. To resolve the problem of a lacuna in the legislature arising from the postponement of the election of the seventh-term LegCo for a year, the NPCSC made a decision on August 11 that the sixth-term LegCo 'will continue to discharge its duties for no less than one year until the commencement of the seventh-term LegCo of the HKSAR.' That decision of the NPCSC was made for handling the continued operation of the sixth-term LegCo, and did not touch on whether members of the sixth-term LegCo should stay or not.

"Meanwhile, four members of the sixth-term LegCo, namely Mr Alvin Yeung, Dr Kwok Ka-ki, Mr Dennis Kwok and Mr Kenneth Leung, have applied to join the

2020 LegCo General Election that was originally scheduled for September 6. Their nominations were invalidated by Returning Officers before the end of the nomination period, and they hence lost the qualification for participating in the election of the seventh-term LegCo. The Returning Officers clearly stated that their nominations were invalid since these nominations were not in compliance with the declaration requirement under section 40(1)(b)(i) of the Legislative Council Ordinance (Cap. 542), i.e. to uphold the BL and pledge allegiance to the HKSAR of the People's Republic of China (PRC).

"The issue we had to handle now is whether the four people, whose nominations were invalidated for they were decided in accordance with the law to be not genuinely upholding the BL and honouring the pledge of allegiance to the HKSAR of the PRC, hence not having the qualification for participating in LegCo election, should continue to be allowed to perform the duties of a LegCo member. As the above-mentioned issue involves the NPCSC's decision made on August 11 and its Interpretation of BL Article 104, the HKSAR Government could not decide on its own. Therefore it requested the Central People's Government to invite the NPCSC to resolve the problem from a constitutional perspective.

"In light of the NPCSC's decision today, the HKSAR Government announced that the four members of the sixth-term Legislative Council, whose nominations for the election of the seventh-term Legislative Council originally scheduled for September 6 were invalidated in accordance with the law, have lost their qualification as members of the Legislative Council with immediate effect. This announcement, together with the NPCSC's decision, will be gazetted later today. The Chief Secretary for Administration has also written to the LegCo President, requesting him to, in accordance with the NPCSC's Decision, arrange for the Clerk to LegCo to announce the vacancy of the four LegCo members concerned since July 30 according to section 35(1) of the Legislative Council Ordinance.

"The NPCSC's decision is a constitutional, lawful and reasonable arrangement. It is necessary and complies with the relevant stipulations of the BL. The HKSAR Government is not targeting any LegCo member. The current arrangement is purely based on the Interpretation of BL Article 104 made by the NPCSC and its decision made on August 11, and is to ensure that LegCo members who continue to serve comply with the legal requirements and preconditions under BL Article 104.

"In addition, since the NPCSC endorsed the Interpretation of BL Article 104 on November 7, 2016, the HKSAR Government has been actively examining proposals to rationalise local legislations in a bid to better reflect the specific requirements regarding public officers' oath-taking in the Interpretation and to enable the HKSAR Government to accurately fulfil its relevant constitutional duty. The HKSAR Government will endeavour to finish the examination and law drafting work at an early juncture, with a view to submitting a bill for LegCo's scrutiny as soon as possible."

In response to a reporter's question, Mrs Lam said she believes that the

NPCSC decision has provided clear guidance on the legal consequence of a LegCo member's failure to comply with the legal requirements of "upholding the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" and "swearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China". It is a very significant decision as it will help ensure the resolute and faithful implementation of "One Country, Two Systems".