

HKSARG's response to Law Society of Hong Kong's statement on disqualification of legislative councillors

In response to the statement by the Law Society of Hong Kong on disqualification of Legislative Councillors, the Hong Kong Special Administrative Region Government today (November 14) makes a statement as below:

Article 104 of the Basic Law (BL) clearly stipulates that Legislative Council (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 Standing Committee of National People's Congress (NPCSC) (the Interpretation) 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.

Four members of the sixth-term LegCo, namely Mr Alvin Yeung, Dr Kwok Ka-ki, Mr Dennis Kwok and Mr Kenneth Leung, have submitted nomination to run for 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 running for the election of the seventh-term LegCo. The Returning Officers (ROs) found that all four members solicited intervention by foreign governments or political authorities in relation to HKSAR's affairs whereas Mr Alvin Yeung, Dr Kwok Ka-ki and Mr Dennis Kwok also expressed an intention to indiscriminately vote down any legislative proposals, appointments, funding applications and budgets introduced by the HKSAR Government after securing a majority in the LegCo so as to force the Government to accede to certain political demands. The ROs were of the view that the behaviour of these four persons was 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 Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC).

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 focused only on the handling of the continued operation of the sixth-term LegCo, and did not touch on whether individual members of the sixth-term

LegCo would be able to stay or not.

As the ROs had determined under section 40(1)(b)(i) of Cap. 542 that the four former LegCo members were not genuinely upholding the BL and honouring the pledge of allegiance to the HKSAR of the PRC, they must bear legal responsibility in accordance with the law as set out in the Interpretation. As the above-mentioned issue involves the NPCSC's decision made on August 11 and the Interpretation, 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.

The NPCSC Decision of November 11 has provided clear guidance on the legal consequence of a LegCo member's failure to comply with the legal requirements of "upholding the BL of the HKSAR of the PRC" and "swearing allegiance to the HKSAR of the PRC". It helps ensure the resolute and faithful implementation of "One Country, Two Systems".

The HKSAR Government fully recognises that the rule of law is the cornerstone of Hong Kong's long-term prosperity and stability, and is determined to safeguard this core value at all times.