

LCQ16: Measures of government departments and public bodies to safeguard national security

Following is a question by the Hon Edmund Wong and a written reply by the Acting Secretary for Security, Mr Michael Cheuk, in the Legislative Council today (May 22):

Question:

It has been reported that in recent years, a number of the Director of Audit's reports have pointed out that many government departments have failed to (i) formulate guidelines related to safeguarding national security or (ii) incorporate clauses concerning safeguarding national security in the service agreements they have signed with their contractors. In this connection, will the Government inform this Council:

(1) whether various policy bureaux are currently responsible for formulating measures to safeguard national security for the government departments under their purview (e.g. drawing up guidelines related to safeguarding national security and incorporating clauses concerning safeguarding national security in the relevant service agreements); if so, of the measures taken by various policy bureaux to ensure that the government departments under their purview implement these guidelines; and

(2) whether the Department of Justice and the Security Bureau have any supervisory role in the process of formulating and implementing the guidelines related to safeguarding national security by various government departments, agencies, other public bodies and public organisations; if so, of the details; if not, whether a mechanism will be introduced in the future; if so, of the details?

Reply:

President,

It is the constitutional duty of the Hong Kong Special Administrative Region (HKSAR) to safeguard national security. Article 3 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (HKNSL) provides that the executive authorities of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the HKNSL and other relevant laws.

Section 8(3) of the Safeguarding National Security Ordinance stipulates that if the law of the HKSAR confers any function on a person (including all government departments, public officers and institutions performing statutory functions), the function is to be read as including a duty to safeguard

national security; and accordingly, any person, in making any decision in the performance of the function, must regard national security as the most important factor, and give appropriate consideration to it accordingly, and a reference in any Ordinance in connection with such a function is to be read accordingly.

All policy bureaux and departments (B/Ds) of the HKSAR Government, including each and every public officers serving in B/Ds, must discharge the duty to safeguard national security, which is a continuing duty that subsists throughout every stage of the formulation and implementation of any policies, programmes, projects and plans. In the implementation of policies, programmes, projects and plans, B/Ds should conduct assessment of national security risks as necessary, which includes considering whether there are needs to establish codes, guidelines and procedures, or implement other measures to safeguard national security (including stipulating any conditions in contracts or agreements, such as incorporating provisions in tender documents and procurement contracts which specify that the Government may, in the interest of national security, disqualify individual tenderers in the procurement and terminate contracts) in order to mitigate national security risks as far as possible. Where necessary, B/Ds may seek advice from the Security Bureau and/or the Department of Justice (DoJ) on specific issues.

The DoJ acts as the legal adviser to B/Ds in the HKSAR. B/Ds may seek advice from the DoJ on legal issues encountered in discharging their day-to-day functions, including that of safeguarding national security. In this regard, the DoJ will provide legal advice to B/Ds from time to time and review the legislative and administrative measures under their purview to determine if they should be amended or supplemented to fulfil the requirement of safeguarding national security, thereby ensuring effective prevention, suppression and imposition of punishment for acts and activities endangering national security.