

## LCQ5: Legislative amendments in respect of oath-taking by public officers

Following is a question by the Hon Leung Che-cheung and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, in the Legislative Council today (January 6):

Question:

The Chief Executive has indicated earlier on that to implement the Interpretation of Article 104 of the Basic Law made by the Standing Committee of the National People's Congress, and the requirements of the National Security Law for Hong Kong in respect of oath-taking by public officers, the Government is studying the introduction of amendments to the local legislation such as the Oaths and Declarations Ordinance and the Legislative Council Ordinance, in order to enhance the arrangements for public officers to take the oath, etc. In this connection, will the Government inform this Council:

(1) whether the contents of the legislative amendments will cover the District Councils Ordinance (DCO); if so, of the details; if not, the reasons for that; what other legislation that the contents of the legislative amendments will also cover;

(2) whether the contents of the legislative amendments will cover the interpretations of "public officer" in the existing legislation, and include the addition of provisions to DCO to make "having taken an oath to uphold the Basic Law and sworn allegiance to the Hong Kong Special Administrative Region" one of the eligibility requirements for being nominated as a candidate for District Council (DC) elections, and to require DC members to take the aforesaid oath on assuming the office; and

(3) of the progress of the study on the legislative amendments, and when it will introduce the relevant bill to this Council?

Reply:

President,

In response to the Hon Leung Che-cheung's questions, my consolidated reply is as follows:

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 the Legislative Council (LegCo), judges of the courts at all levels and other members of the judiciary in the Hong Kong

Special Administrative Region (HKSAR) must, in accordance with law, swear to uphold the Basic Law of the HKSAR of the People's Republic of China (PRC) and swear allegiance to the HKSAR of the PRC when assuming office. The Standing Committee of the National People's Congress (NPCSC) 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.

It is the HKSAR's constitutional obligation to implement Article 104 of the Basic Law and the Interpretation accurately. In this relation, we will, with reference to the related requirements set out in the Interpretation, relevant local court judgments and the recent decision on the qualification of members of LegCo of the HKSAR made by the NPCSC on November 11, 2020, rationalise the local legislation including the Oaths and Declarations Ordinance (Cap. 11) (ODO) and relevant electoral laws. Based on our current study, we plan to make amendments in the following areas to better reflect the requirements in the Interpretation:

(i) Detailed oath taking requirements: Article 2(2) of the Interpretation states that "Oath taking must comply with the legal requirements in respect of its form and content. An oath taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law, the content of which includes 'will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China'". Article 2(3) of the Interpretation further states that "An oath taker is disqualified forthwith from assuming the public office specified in the Article if he or she declines to take the oath. An oath taker who intentionally reads out words which do not accord with the wording of the oath prescribed by law, or takes the oath in a manner which is not sincere or not solemn, shall be treated as declining to take the oath. The oath so taken is invalid and the oath taker is disqualified forthwith from assuming the public office specified in the Article". Currently, ODO does not contain any provisions regarding the detailed requirements on oath taking, save for the content of oaths prescribed in Schedule 2. We will study how to include provisions in ODO to better reflect the relevant requirements;

(ii) Arrangements relating to the retaking of oath: Article 2(4) of the Interpretation states that "...an oath which is not taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is invalid. If the oath taken is determined as invalid, no arrangement shall be made for retaking the oath". In this regard, we plan to amend ODO to better reflect the relevant requirements;

(iii) Arrangements relating to the oath administrator: An oath taken under Article 104 of the Basic Law is answerable to the HKSAR and the country.

Therefore, the oath administrator should be a person who can represent the HKSAR legally and be responsible to the Central People's Government (CPG). Article 2(4) of the Interpretation states that "The oath must be taken before the person authorised by law to administer the oath. The person administering the oath has the duty to ensure that the oath is taken in a lawful manner. He or she shall determine that an oath taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is valid". Currently, ODO specifies different persons to be the oath administrators for different categories of public officers. Considering the important role of the oath administrator to determine the legality of an oath, we will review to amend the related provisions in ODO to fully reflect the requirements of Article 104 of the Basic Law and the Interpretation in this regard; and

(iv) Legal consequences and statutory procedures in case of breach of the oath: Article 3 of the Interpretation states that "The taking of the oath stipulated by Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China is a legal pledge made by the public officers specified in the Article to the People's Republic of China and its Hong Kong Special Administrative Region, and is legally binding. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. 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 law". We are reviewing the relevant legislation to ensure that the existing mechanism could handle and reflect the severity of breach of the oath.

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 of the PRC in accordance with the law. In this regard, we notice that there are many opinions and discussions on the scope of "public officers", including that district councilors should also be included in the scope of the legislative amendments.

The Government considers the scope of "public officers" referred to in the National Security Law a very complex issue that needs careful study. The Government is now actively studying the subject matter, and will announce the implementation details of the related requirements at an appropriate juncture.

The legislative amendment exercise to accurately implement Article 104 of the Basic Law and the Interpretation is very important to maintain the constitutional order of the HKSAR. We will complete the relevant study and draft legislation as soon as possible with a view to introducing a bill to LegCo for consideration.

Thank you, President.