

Public Offices (Candidacy and Taking Up Offices)(Miscellaneous Amendments) Bill 2021 gazetted today

The Public Offices (Candidacy and Taking Up Offices)(Miscellaneous Amendments) Bill 2021 (the Bill) was published in the Gazette today (February 26).

Article 104 of the Basic Law (BL) states that five categories of public officers, that is the Chief Executive (CE), principal officials, members of the Executive Council (ExCo) 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 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" (upholding the BL and bearing allegiance to the HKSAR) when assuming office. The Standing Committee of the National People's Congress (NPCSC) endorsed the Interpretation of Article 104 of the BL (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 BL 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 BL, 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 BL and swear allegiance to the HKSAR in accordance with the law.

To accurately implement the requirements stipulated in Article 104 of the BL and the Interpretation, and the National Security Law, the Bill mainly comprises the following six key areas of amendments which seek to:

(1) amend the Interpretation and General Clauses Ordinance (Cap. 1) to specify the legal requirements and conditions of "upholding the BL and bearing allegiance to the HKSAR" with reference to the Interpretation, the National Security Law and the "Decision on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region";

(2) introduce the oath-taking requirement for District Council (DC) members,

who should comply with the same oath-taking requirements as other specified public officers under Article 104 of the BL;

(3) specify concrete oath-taking requirements in the Oaths and Declarations Ordinance (Cap. 11), including that the oath-taking should comply with the oath-taking procedure and ceremony; 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;

(4) enhance the arrangement of the oath administrator by standardising the arrangement for the CE or a person authorised by the CE to administer the oaths for ExCo Members, LegCo Members, judges and other judicial officers, and DC Members;

(5) amend the Legislative Council Ordinance (Cap. 542) and the District Councils Ordinance (Cap. 547) to specify that a person who has breached an oath, or failed to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR will be disqualified from holding the office; and provide for the mechanism in case of such a breach or failure; and

(6) introduce restriction in CE, LegCo and DC elections such that persons who have been disqualified from entering on an office for declining or neglecting to take an oath, breached an oath or failed to fulfil the legal requirements and conditions on "upholding the BL and bearing allegiance to the HKSAR", would be disqualified from being nominated or elected in the relevant elections held within five years.

A Government spokesman said, "This legislative exercise seeks to implement Article 104 of the BL, and its Interpretation and other oath-requirements for public officers accurately, so as to fulfil the constitutional obligation of the HKSAR. We believe that the Bill is significant in upholding the constitutional order of the HKSAR, ensuring 'Hong Kong being governed by patriots', and is conducive to the progress of the 'one country, two systems' principle."

The Government spokesman added that the Bill will be introduced into the LegCo for first reading and second reading on March 17. The Government will fully complement the work of LegCo in scrutinising the Bill to strive for its early passage.