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# 立法會秘書處

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## Legislative Council Secretariat

### 新聞稿 Press Release

LegCo President's ruling on proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 proposed by Hon Tanya CHAN

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The President of the Legislative Council (LegCo) Hon Jasper TSANG Yok-sing ruled today (October 11) that Hon Tanya CHAN's proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("Amendment Order") was in order under the Rules of Procedure and might be moved at the first LegCo meeting of the 2010-2011 legislative session this Wednesday (October 13) after the Chief Executive has delivered his Policy Address.

Mr TSANG said that when considering whether the proposed resolution was in order under the Rules of Procedure, he had invited the Administration to comment on the proposed resolution and Hon Tanya CHAN to respond to the Administration's comments, and sought the advice of Counsel to the Legislature as well as a legal opinion from Senior Counsel Mr Philip Dykes.

In his written ruling, Mr TSANG stated that LegCo had the constitutional duty to scrutinize subsidiary legislation and correspondingly had the power to amend or repeal when it was appropriate to do so. The statutory provisions in any ordinance which grant powers to make subsidiary legislation should not in the absence of clear words or manifest legislative intention be interpreted to mean that LegCo had abdicated its control over the exercise of those powers. It

was only reasonable that Members would be wary if LegCo's power to intervene in the process of law making under delegated authority were to be restricted beyond what was permissible under Basic Law.

Mr TSANG said that the key question that he had to consider was whether in the passage of Cap.208 (Country Parks Ordinance), in particular section 14, LegCo had agreed to abdicate its control over the power for CE to make orders under section 14. He had made comparison with the relevant provisions of the Town Planning Ordinance (Cap.131) which deal with the notification in the Gazette of plans submitted by the Town Planning Board and approved by CE in Council.

The President found that there was an obvious difference between the two cases. Unlike the plans approved by CE in Council under Section 9(2) of Cap.131, the statutory process for the designation of a country park was not yet completed when CE in Council approved the draft map. The final step in the statutory process for the designation of a country park was for CE to make a designation order under section 14 of Cap.208. Such designation was made by an order published in the Gazette which was subject to LegCo's scrutiny under section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1.)

Mr TSANG added that the powers which CE should have, in the discharge of his duty section 14, include the power to determine when an order for the designation should be made and came into effect, and initiated a motion in LegCo to repeal the order which he had already made, if there were good reasons to do so. Moreover, the repeal of the Amendment Order by LegCo's exercise of its power to amend under section 34(2) of Cap.1 would not go against the mandatory obligations of CE as signified by the expression "shall". He said he was not convinced that section 14 of Cap.208 ruled out CE's power to move a motion of repeal.

In response to the Administration's argument that the repeal of the Amendment Order would put the statutory process for the designation that had gone before to naught, Mr TSANG said that Counsel to the Legislature advised him that if the Amendment Order was repealed by LegCo, the Amendment Order would be taken as if it had never been made, and CE might make another order under section 14 of Cap.208.

He was also satisfied that repeal of an order made under section 14 would not lead non-compliance with the requirements in Cap.208 or result in unreasonable consequences. If the Administration failed to persuade LegCo not to exercise its power to repeal an order made by CE under section 14 for the designation of a country park, referrals might be made under section 15(1) of Cap.208 after taking into account the views of LegCo.

In view of the above reasons, Mr TSANG was of the opinion that neither section 14 of Cap.208 nor Cap.208 when read as a whole expressed or manifested any contrary intention that the power of LegCo to amend, and therefore repeal, subsidiary legislation under section 34 of Cap.1 had been displaced.

He ruled that Hon Tanya CHAN's proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 was in order under the Rules of Procedure and might be moved at the LegCo meeting this Wednesday.

Ends/Monday, October 11, 2010

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