

**立法會**  
***Legislative Council***

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Tel : 3919 3003

Date : 18 October 2016

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Issues relating to administration of Legislative Council Oath  
by Clerk to the Legislative Council  
at the Council meeting of 12 October 2016**

I attach for Members' information a paper setting out my considerations in declining jurisdiction to administer the oath/affirmations taken by three Members at the above meeting.

(Kenneth CHEN)  
Clerk to the Legislative Council

Encl.

**Issues relating to administration of Legislative Council Oath  
by Clerk to the Legislative Council  
at the Council meeting of 12 October 2016**

At the first meeting of the Sixth Legislative Council (“LegCo”) on 12 October 2016, I, as the Clerk to LegCo (“the Clerk”) performed the statutory function of administering the LegCo Oath taken by individual Members in accordance with section 19(a) of the Oaths and Declarations Ordinance (Cap. 11). Among the 70 Members who had taken the LegCo Oath, I declined jurisdiction to administer the oaths/affirmations taken by Dr Hon YIU Chung-yim, Hon Sixtus LEUNG Chung-hang and Hon YAU Wai-ching. I undertook to set out in writing my considerations in coming to the decision.

**Powers and functions of the Clerk in administering the Oath**

2. Section 5(2) of Cap. 11 requires a person authorized to administer an oath to administer the oath in the form and manner provided in section 5(1). Section 5(1) provides, among others, that a person taking an oath is required to say the words of the oath prescribed by law. The form of the LegCo Oath required to be taken by Members is set out in Schedule 2 to Cap. 11. Apart from the above provisions, Cap. 11 is silent on what other powers the Clerk has when administering the LegCo Oath. Based on the decision of the Court of First Instance in *Leung Kwok Hung v Clerk to the Legislative Council* (HCAL 112/2004), the Clerk may decline jurisdiction to administer the LegCo Oath if the form of the Oath is not in accordance with Schedule 2 to Cap. 11. In addition, under section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1), where any Ordinance confers upon any person power to do or enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

**LegCo Oath taken by Dr Hon YIU Chung-yim**

3. Dr Hon YIU Chung-yim chose to subscribe an affirmation in Cantonese when taking the LegCo Oath. When he first subscribed his affirmation, I noticed that extra words, namely, “定當守護香港制度公義，爭取真普選，為香港可持續發展服務，定當擁護” were added to the affirmation. I informed Mr YIU that the addition of those words constituted a change to the content of the affirmation and if he did so, I would not have jurisdiction to administer such an affirmation. I asked him to subscribe the affirmation with the words of the oath

prescribed by law; otherwise, according to Rule 1 of the Rules of Procedure (“RoP 1”), he shall not attend a meeting or vote therein, including voting in the election of the President to be held after the oath-taking ceremony.

4. When Mr YIU subscribed his affirmation afresh, I noticed that he added the same words to the end of his affirmation. As I could only hear those words as an immediate continuation of the last sentence of his affirmation, I considered that the added words were part and parcel of his affirmation. Accordingly, I considered that he had altered the content of the affirmation prescribed in Schedule 2 to Cap. 11. On this basis, I came to the view that I had no jurisdiction to administer the affirmation subscribed by him.

### **LegCo Oath taken by Hon Sixtus LEUNG Chung-hang**

5. Hon Sixtus LEUNG Chung-hang chose to swear in the LegCo Oath, and he took it in English. He began his oath by saying:

“I, Sixtus LEUNG Chung-hang, would like to declare that, as a member of the Legislative Council, I shall pay earnest efforts in keeping guard over the interest of the Hong Kong nations.”

6. As I noticed that the words of his oath were entirely different from those of the LegCo Oath prescribed in Schedule 2 to Cap. 11, I informed Mr LEUNG that he had altered the content of the LegCo Oath and if he did so, I would not have jurisdiction to administer such an oath. I asked him to take the oath afresh in accordance with the words of the oath prescribed by law; otherwise, according to RoP 1, he shall not attend a meeting or vote therein, including voting in the election of the President held after the oath-taking ceremony. Instead of proceeding to take the oath afresh, Mr LEUNG said he had not finished yet. As he did not appear to be taking the oath as requested, I asked him to return to his seat. Mr LEUNG told me again he had not finished, and then unfurled a blue banner bearing the words “HONG KONG IS NOT CHINA”, put it on his shoulders, and proceeded to take the oath as follows:

“I, Sixtus LEUNG Chung-hang, swear by Almighty God that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People’s Republic of Shina<sup>1</sup>, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of Shina<sup>1</sup>, bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of Shina<sup>1</sup> and serve the

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<sup>1</sup> Pronunciation heard by me on the floor.

Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.”.

7. I noticed Mr LEUNG’s manner of taking the oath, namely, draping himself with the said banner and using a derogatory term for “China” in three separate places of his oath. I found that his manner of taking the oath alone, not to mention the alterations to the content of the LegCo Oath he had made, caused me reasonable doubts as to whether he understood the content of the LegCo Oath, which, among others, requires him to swear that he bears allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China. Given that I had such doubts, I considered that I had no jurisdiction to administer Mr LEUNG’s oath.

### **LegCo Oath taken by Hon YAU Wai-ching**

8. Hon YAU Wai-ching chose to take the LegCo Oath in English. She began her oath by saying:

“I, YAU Wai-ching, do solemnly swear that I would be faithful and bear true allegiance to the Hong Kong nation, and will to the best of my ability preserve, protect and defend the values of Hong Kong.”.

9. I informed Miss YAU that she had altered the content of the LegCo Oath. Before I could continue, Miss YAU interrupted me by saying that she understood and said that I did not need to repeat. I then told her that I had no jurisdiction to administer her oath and asked her to take the LegCo Oath afresh in accordance with the words of the Oath prescribed by law. Miss YAU then proceeded to lay in front of the oath-taking rostrum a blue banner that bears the words “HONG KONG IS NOT CHINA”, and took the oath. This time, I noticed that she chose to affirm instead of swearing. The following was what she said:

“I, YAU Wai-ching, solemnly, sincerely, and truly declare that and affirm that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People’s re-fucking<sup>2</sup> of Shina<sup>3</sup>, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s re-fucking<sup>2</sup> of Shina<sup>3</sup>, bear allegiance to the Hong Kong Special Administrative Region of the People’s re-fucking<sup>2</sup> of Shina<sup>3</sup> and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.”.

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<sup>2</sup> Pronunciation heard by me on the floor.

<sup>3</sup> Pronunciation heard by me on the floor.

10. I noticed Ms YAU's manner of subscribing an affirmation, namely, displaying the said blue banner prominently in front of her, adding expletives and using a derogatory term for "China" in three separate places of her affirmation. I found that her manner of subscribing the affirmation alone, not to mention the expletives and the derogatory term she had uttered and the alterations to the content of the LegCo Oath she had made, caused me reasonable doubts as to whether she understood the LegCo Oath, which, among others, requires her to declare and affirm that she bears allegiance to the Hong Kong Special Administrative Region of the People's Republic of China. Given my doubts, I considered that I had no jurisdiction to administer Miss YAU's affirmation taken in such circumstances.



(Kenneth CHEN)  
Clerk to the Legislative Council

18 October 2016