

立法會
Legislative Council

**Bills Committee on
National Security (Legislative Provisions) Bill**

**Legislative Council Members' Constitutional Duty to Consider Bills
under The Basic Law and Their Obligation to Uphold The Basic Law**

At the meeting of the Bills Committee held on 26 April 2003, a question was raised as to whether a Member of the Legislative Council opposing the enactment of the National Security (Legislative Provisions) Bill would be acting in breach of the Legislative Council Oath.

2. Legal Adviser would like to advise that it is the constitutional duty of Members to consider bills presented to the Legislative Council in accordance with the Rules of Procedure of the Legislative Council. A Member's expression of opposition to the enactment of the National Security (Legislative Provisions) Bill as a form of discharging that duty does not amount to a breach of the Legislative Council Oath¹ for not upholding the Basic Law.

Encl.

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¹ Relevant provisions in the Basic Law, Rules of Procedure of the Legislative Council and the Oaths and Declarations Ordinance (Cap. 11) are attached.

Article 73(1) of the Basic Law provides:

"The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;"

Article 79(7) of the Basic Law provides:

"The President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office ... :

...

- (7) When he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present."

Article 104 of the Basic Law provides:

"When assuming office, the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region 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."

Rule 1 of the Rules of Procedure of the Legislative Council provides:

"1. Oath or Affirmation

Except for the purpose of enabling this Rule to be complied with, no Member of the Council shall attend a meeting or vote therein until he has made or subscribed an oath or affirmation in accordance with the provisions of the Oaths and Declarations Ordinance (Cap. 11). Where a general election is held, a Member who had previously made or subscribed such oath or affirmation shall again do so in compliance with this Rule before he attends a meeting or votes in the Council."

Section 19 of the Oaths and Declarations Ordinance (Cap. 11) provides:

"A member of the Legislative Council shall, as soon as possible after the commencement of his term of office, take the Legislative Council Oath which-

- (a) if taken at the first sitting of the session of the Legislative Council immediately after a general election of all members of the Council and before the election of the President of the Council, shall be administered by the Clerk to the Council;
- (b) if taken at any other sitting of the Council, shall be administered by the President of the Council or any member acting in his place."

The Legislative Council Oath as provided in Part IV of Schedule 2 of Cap. 11:

"I, (name of person making the oath), swear that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I 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 and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity."