

**President's ruling on the validity of
the Legislative Council Oath taken by six Members
at the Council meeting of 12 October 2016**

At the first meeting of the Sixth Legislative Council (“LegCo”) on 12 October 2016, the Clerk to LegCo (“the Clerk”) as the oath administrator declined jurisdiction to administer the oath/affirmations taken by Dr Hon YIU Chung-yim, Hon Sixtus LEUNG Chung-hang and Hon YAU Wai-ching. After the meeting, a considerable number of Members have submitted written requests for me to rule on the validity of the oath/affirmations taken by not only the above three Members but also another two Members, namely Hon LAU Siu-lai and Hon Nathan LAW Kwun-chung. Meanwhile, Hon WONG Ting-kwong wrote to me seeking my permission for him to take his affirmation afresh as he had omitted two material words while subscribing his affirmation at the above meeting. In response to Members’ concerns and requests, I hereby provide my ruling on the validity of the oaths/affirmations taken by the above six Members.

2. In considering whether the oath/affirmations taken by the six Members are valid, I have taken into account the relevant constitutional and statutory requirements, and have carefully examined all the relevant evidence/information available to me, including the video-recordings and verbatim transcripts (**Appendix 1**) of their oath-taking, the relevant written explanation issued by the Clerk (**Appendix 2**), the advice of the Counsel to the Legislature on the Clerk’s powers and functions in administering the LegCo Oath (**Appendix 3**) and the external legal advice provided by a Senior Counsel (**Appendix 4**).

Criteria for validity of the LegCo Oath

3. Article 104 of the Basic Law (“BL 104”) provides that when assuming office, Members must, in accordance with law, swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China. According to the decision of the Court of First Instance in *Leung Kwok Hung v Clerk to the Legislative Council* (HCAL 112/2004), the phrase “in accordance with law” in BL 104 has a clear meaning, i.e. a Member must take his oath in a manner and form that accords with the law of Hong Kong; and the law governing the taking of oaths by Members is the Oaths and Declarations Ordinance (Cap. 11) (“the Ordinance”).

4. Section 5(2) of the Ordinance 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 LegCo Oath required to be taken by Members is set out in Part IV of Schedule 2 to the Ordinance. Apart from the above provisions, the Ordinance is silent on other criteria for the oath administrator to determine the validity of the LegCo Oath. As stated in the above court judgment, “it is manifest that the form of the oath to be taken by a Legislative Councillor is fixed by statute and, until, or unless, that form is amended by the Legislative Council itself, it must be adhered to if a Legislative Councillor is to take the oath in accordance with law”.

5. I accept the advice of the Counsel to the Legislature and the Senior Counsel that a Member should be regarded as having taken an oath validly under BL 104 and the Ordinance if:

- (a) the Member has sworn (or affirmed) the Oath exactly as prescribed in Part IV of Schedule 2 to the Ordinance; and
- (b) the Oath was made in such a manner to indicate to the oath administrator that the Member understands the seriousness of his/her oath, and undertakes publicly to be bound by the serious obligations under the oath.

My opinion

LegCo Oath taken by three Members

6. After examining the oath/affirmations taken by Dr Hon YIU Chung-yim, Hon Sixtus LEUNG Chung-hang and Hon YAU Wai-ching at the Council meeting of 12 October 2016, I affirm the Clerk’s decision to decline jurisdiction to administer their oath/affirmations as they altered the contents of their oath/affirmations. I notice the manner of the oath-taking by Mr LEUNG and Ms YAU, namely the display of a banner bearing the words “HONG KONG IS NOT CHINA” and the use of a derogatory term for China as well as the use of expletives by Ms YAU. In the circumstances and objectively assessed, the two Members could not be serious about their oath and were unwilling to be bound by it. In addition, I notice that Dr YIU has added words to the end of his affirmation, and as such, altered its content as prescribed by the Ordinance.

7. By virtue of section 19 of the Ordinance, a Member shall, as soon as possible after the commencement of his term of office, take the LegCo Oath which, if taken at a Council meeting other than the first one after a general election, shall be administered by me. As such, I accede to Dr YIU’s written request for taking his affirmation afresh at the Council meeting of 19 October

2016. I am prepared to allow Mr LEUNG and Ms YAU to take their oath afresh at a Council meeting if they put forward their requests in writing.

LegCo Oath taken by Hon LAU Siu-lai

8. Hon LAU Siu-lai subscribed an affirmation in Cantonese when taking the LegCo Oath. I notice that in her first attempt to subscribe the affirmation, she read out the words of the oath at a normal speed but was stopped by the Clerk as she had altered the content of the affirmation. In her second attempt, she subscribed the affirmation at a speed very much slower than that in her first attempt. She just read out each word of the oath prescribed by the Ordinance individually, with a long pause between words, making it objectively difficult for anyone to understand her affirmation. The conduct of Ms LAU's oath-taking, objectively assessed, has shown that she was not serious about the affirmation and had no intention to be bound by it.

9. Based on the above reasons, I rule that Ms LAU's affirmation was invalid, and consider that she should subscribe the affirmation afresh. I am prepared to allow her to do so at a Council meeting if she puts forward her request in writing.

LegCo Oath taken by Hon WONG Ting-kwong

10. Hon WONG Ting-kwong has written to me stating that he inadvertently omitted the words "Hong Kong" (香港) when subscribing his affirmation to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Whilst I accept that his mistake was genuine and inadvertent, the omission of the two words has rendered his LegCo Oath invalid. He requested me to allow him to subscribe the affirmation afresh at the Council meeting of 19 October 2016. I accede to his request.

LegCo Oath taken by Hon Nathan LAW Kwun-chung

11. Hon Nathan LAW Kwun-chung subscribed an affirmation in Cantonese when taking the LegCo Oath. I notice that Mr LAW used a different tone when pronouncing "China" in his affirmation. Based on the manner that he took his oath, objectively assessed, and taking into account that he read out all the words prescribed by the Ordinance during his oath-taking, I am prepared to accept that the manner in which he subscribed his affirmation was not inconsistent with the Ordinance.

My ruling

12. I rule that:

- (a) the oath/affirmations taken by Dr Hon YIU Chung-yim, Hon Sixtus LEUNG Chung-hang, Hon YAU Wai-ching, Hon LAU Siu-lai and Hon WONG Ting-kwong at the Council meeting of 12 October 2016 were invalid. In accordance with Rule 1 of the Rules of Procedure, they cannot attend a meeting or vote in the Council unless they have taken the LegCo Oath in accordance with the Ordinance; and
- (b) the affirmation subscribed by Hon Nathan LAW Kwun-chung at the Council meeting of 12 October 2016 was not inconsistent with the Ordinance.



(Andrew LEUNG Kwan-yuen)
President
Legislative Council

18 October 2016

2016 年 10 月 12 日立法會會議

姚松炎議員宣讀立法會誓詞逐字紀錄本

姚松炎議員：本人，姚松炎，謹以至誠，據實聲明及確認，本人就任中華人民共和國香港特別行政區立法會議員，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《中華人民共和國香港特別行政區基本法》，效忠中華人民共和國香港特別行政區，盡忠職守，遵守法律，廉潔奉公，為香港特別行政區服務。

立法會秘書：姚松炎議員，你剛才在誓言之中加了一些字句，改變了誓言的內容，如果你這樣做，我是沒有權為你監誓的。請你按照法例訂明的誓言字句，重新宣誓，否則根據《議事規則》第 1 條，你是不能夠參與立法會會議或表決，包括稍後進行的立法會主席選舉。

姚松炎議員：好的。我.....

立法會秘書：請你重新宣誓。

姚松炎議員：本人，姚松炎，謹以至誠，據實聲明及確認，本人就任中華人民共和國香港特別行政區立法會議員，定當擁護《中華人民共和國香港特別行政區基本法》，效忠中華人民共和國香港特別行政區，盡忠職守，遵守法律，廉潔奉公，為香港特別行政區服務，定當守護香港制度公義，爭取真普選，為香港的可持續發展服務。

立法會秘書：姚議員，你剛才在緊接誓言之後仍然加了一些誓言沒有包含的字句，我無法.....即我沒有權力為你監誓。請你先返回座位。我現在請下一位議員宣誓。

2016年10月12日立法會會議

梁頌恆議員宣讀立法會誓言逐字紀錄本

MR SIXTUS LEUNG: 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.

立法會秘書：梁頌恆議員，你改變了誓詞內容，你這樣做，我是沒有權為你監誓的。請按照法例訂明的誓言字句重新宣誓……

梁頌恆議員：秘書長……

立法會秘書：……否則，根據《議事規則》第1條，你是不能夠參與立法會會議或表決，包括稍後的立法會主席選舉。

梁頌恆議員：秘書長，我未完成。

立法會秘書：梁議員，請你返回座位。

梁頌恆議員：我說了我仍未完成。

MR SIXTUS LEUNG: 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 China¹, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China², bear allegiance to the Hong Kong Special Administrative Region of the

¹ Pronunciation heard by the Clerk on the floor.

² Ditto.

People's Republic of Shina³ and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

立法會秘書：梁頌恆議員，我注意到你在宣誓時展示印有"HONG KONG IS NOT CHINA"的標語，令我有合理的懷疑你是否了解立法會誓言，你這樣做，我是沒有權為你監誓的。請你先返回座位，我會請下一位議員宣誓。

³ Pronunciation heard by the Clerk on the floor.

2016年10月12日立法會會議

游蕙禎議員宣讀立法會誓詞逐字紀錄本

MISS YAU WAI-CHING: 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.

立法會秘書：游蕙禎議員，你剛才改變了誓詞的內容，你這樣做……

游蕙禎議員：我明白，你不需要重複。

立法會秘書：……我沒有權力為你監誓，請你按法例訂明的誓言字句重新宣誓。

MISS YAU WAI-CHING: 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-fucking⁴ of Shina⁵, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's re-fucking⁶ of Shina⁷, bear allegiance to the Hong Kong Special Administrative Region of the People's re-fucking⁸ of Shina⁹ and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

立法會秘書：游蕙禎議員，你的展示品令我對你是否了解立法會議員有合理的懷疑，我沒有權為你監誓。請下一位議員宣誓。

⁴ Pronunciation heard by the Clerk on the floor.

⁵ Ditto.

⁶ Ditto.

⁷ Ditto

⁸ Ditto.

⁹ Ditto.

2016年10月12日立法會會議 劉小麗議員宣讀立法會誓詞逐字紀錄本

劉小麗議員：本人，劉小麗，謹此承諾，本人由街頭進入議會，定必秉承雨傘運動，命運自主精神，與香港人同行，連結議會內外對抗極權，我們要活在真誠磊落之中，打破冷漠犬儒，在黑暗中尋找希望，共同開創民主自決之路，推倒高牆，自決自強。

我……謹……此……宣……誓……，本……人……就……任……
中……華……人……民……共……和……¹⁰

立法會秘書：劉小麗議員，你改變了誓詞內容。

劉小麗議員：我沒有。

立法會秘書：你如果這樣做，我沒有權為你監誓，請你重新宣誓。

劉小麗議員：我如何改變？

劉小麗議員：本……人……，劉小麗，謹……以……至……誠……，據……實……
聲……明……及……確……認……，本……人……就……任……中……華……人……
民……共……和……國……香……港……特……別……行……政……區……立……法……
會……議……員……，定……當……擁……護……《中……華……人……民……共……
和……國……香……港……特……別……行……政……區……基……本……法》……，
效……忠……中……華……人……民……共……和……國……香……港……¹¹

(有議員要求劉小麗議員停止這種愚昧行為)

劉小麗議員：……特……別……行……政……區……，盡……忠……職……守……，
遵……守……法……律……，廉……潔……奉……公……，為……香……港……特……
別……行……政……區……服……務。¹² 爭取全民退休保障……

立法會秘書：劉國勳議員。

劉小麗議員：……落實墟市政策，捍衛香港人生活尊嚴。

¹⁰ 宣讀誓詞時字與字之間停頓數秒。

¹¹ 同上。

¹² 同上。

**2016年10月12日立法會會議
黃定光議員宣讀立法會誓詞逐字紀錄本**

黃定光議員：本人，黃定光，謹以至誠，據實聲明及確認，本人就任中華人民共和國香港特別行政區立法會議員，定當擁護《中華人民共和國香港¹³特別行政區基本法》，效忠中華人民共和國香港特別行政區，盡忠職守，遵守法律，廉潔奉公，為香港特別行政區服務。

¹³ 黃定光議員在宣誓時沒有讀出刪去的這兩個字。

2016年10月12日立法會會議 羅冠聰議員宣讀立法會誓詞逐字紀錄本

羅冠聰議員：誓詞，英文是Affirmation，它的拉丁文原意是使其更堅定、更堅強。宣誓，就是一個莊嚴的儀式，要我們向香港人承諾，未來要知行合一，捍衛香港人的權利。但今天這個神聖儀式已經淪為政權工具，強行令民意代表屈服於制度和極權之下。You can chain me, you can torture me, you can even destroy this body, but you will never imprison my mind. 我今天要完成必要的程序，但並不代表我會屈服於極權之下，香港市民永遠都是我們服務和團結的對象，我絕對不會效忠於殘殺人民的政權，我一定會堅持原則，用良知守護香港。

希望在於人民，改變始於抗爭！

本人，羅冠聰，謹以至誠，據實聲明及確認，本人就任中華人民共和國¹⁴香港特別行政區立法會議員，定當擁護《中華人民共和國¹⁵香港特別行政區基本法》，效忠中華人民共和國¹⁶香港特別行政區，盡忠職守，遵守法律，廉潔奉公，為香港特別行政區服務。

權力歸於人民！暴政必亡！民主自決，抗爭到底！

另外，我想問陳維安秘書長有甚麼資格裁定3位議員，包括姚松炎、游蕙禎及梁頌恆的宣誓無效？你根據《議事規則》哪一條，阻止他們參與接下來的選舉？

立法會秘書：羅冠聰議員，宣誓儀式已經完畢。

羅冠聰議員：《議事規則》第6條，秘書處有甚麼權力阻止議員參與接下來的會議？陳維安秘書長，我問你一句，他們3位到底能否參與接下來的主席選舉？

立法會秘書：羅冠聰議員，請你返回座位。

¹⁴ 以有別於慣常的音調讀出"國"字。

¹⁵ 同上。

¹⁶ 同上。

**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 Shina¹, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of Shina¹, bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of Shina¹ and serve the

¹ 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-fucking² of Shina³, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s re-fucking² of Shina³, bear allegiance to the Hong Kong Special Administrative Region of the People’s re-fucking² of Shina³ and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.”.

² Pronunciation heard by me on the floor.

³ 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

立法會
Legislative Council

LC Paper No. LS 63/15-16

Ref: LS/A/05B

Issues relating to the Legislative Council Oath

This paper examines the powers and functions of the Clerk to the Legislative Council ("LegCo") in administering the LegCo Oath.

Requirement to take the LegCo Oath

2. The requirement to take the LegCo Oath originates from Article 104 of the Basic Law ("BL 104"), which provides that:

"when assuming office ... members ... of the Legislative Council ... 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."

3. Section 19 of the Oaths and Declarations Ordinance (Cap. 11) requires a LegCo member to take the LegCo Oath as soon as possible after the commencement of his term of office. The form of oath required to be taken by Members is set out in Schedule 2 to Cap. 11. Under section 19 of Cap. 11, the LegCo Oath, if taken at the first sitting of the session of LegCo immediately after a general election of all members of LegCo and before the election of the President of LegCo ("the President"), shall be administered by the Clerk to LegCo ("the Clerk"). If the Oath is taken at any other sitting of the Council, it shall be administered by the President. Under section 21, a Member who declines or neglects to take the LegCo Oath is required to vacate his office if he has already entered on his office; if the Member has not entered on his office, he will be disqualified from entering on the office. Further, Rule 1 of the Rules of Procedure ("RoP") provides that 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 Cap. 11.

Relevant court decision

4. In *Leung Kwok Hung v Clerk to the Legislative Council* HCAL 112/2004 ("HCAL 112/2004"), the following principles were set out by Mr Justice Hartmann in relation to the taking of the LegCo Oath:

- (a) the taking of the oath that accords with the requirement of BL 104 is a mandatory constitutional obligation imposed on all members-elect of the LegCo.¹ BL 104 demands that a Legislative Councillor must commit himself to the two obligations in BL 104, i.e. uphold the Basic Law and allegiances to Hong Kong;²
- (b) the LegCo Oath constitutes a solemn declaration, a form of promise, which binds the maker to a particular code of conduct. A failure to adhere to that code of conduct may render the maker liable to expulsion from office;³
- (c) "in accordance with law" as prescribed in BL 104 means the law of Hong Kong which includes the relevant statutory law i.e. the law governing the taking of the LegCo Oath;⁴ and
- (d) the form of the oath to be taken by a Member as prescribed in Schedule 2 to Cap. 11 is fixed by the statute and, until, or unless, that form is amended by the LegCo itself, it must be adhered to if a Member is to take the oath "in accordance with law".⁵

5. The Court held that the amended oath or affirmation that the applicant wished to take went further than merely defining how he wished to take his oath; it would alter the form and thereby the substance of the oath itself.⁶ The amended oath or affirmation would offend BL 104 and would therefore be unlawful and of no effect.⁷ It must follow that the Clerk had no jurisdiction to administer such an oath.⁸ In considering whether the requirement to take the LegCo Oath in a prescribed form amounts to a violation of a Member's right to freedom of conscience under BL 32, the Court held that the oath does not attempt to reduce the applicant's beliefs; it is no form of indoctrination nor can it be described as any form of attempt to influence the applicant's conscious or subconscious mind. The applicant may state his beliefs provided the rules of

¹ See paragraph 4 of the Judgment.

² See paragraph 20 of the Judgment.

³ See paragraph 5 of the Judgment.

⁴ See paragraphs 22 and 23 of the Judgment.

⁵ See paragraph 27 of the Judgment.

⁶ See paragraph 36 of the Judgment.

⁷ See paragraph 40 of the Judgment.

⁸ See paragraph 41 of the Judgment.

LegCo permit him to do so. The taking of the oath is but one manifestation of the public life that he has chosen.⁹

Administration of the LegCo Oath by the Clerk

Meaning of "administer" or "administered"

6. The word "administer" or "administered" is not defined in Cap. 11. Neither can we find any judicial authority on the meaning of "administer" or "administered" in the context of oath taking. The expression should therefore be understood in its ordinary meaning. According to *Shorter Oxford English Dictionary* (Sixth edition), "administer", among others, means offering an oath for swearing to a person. *The Concise Oxford English Dictionary* (Twelfth Edition) defines "administer" as directing the taking of an oath.

Powers and functions of the Clerk in administering the LegCo Oath

7. Cap. 11 sets out some of the powers and functions of a person administering an oath. 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) of Cap. 11 provides, among others, that a person taking an oath is required to say the words of oath prescribed by law. According to the proviso in section 5(2), in the case of a person who is neither a Christian nor a Jew, the oath may be administered in any manner which is appropriate to his religious belief. Section 7 allows an affirmation to be made if a person required by law to take an oath objects to be sworn. Under section 8, if a person taking an oath or making an affirmation is unfamiliar with the official language in which the oath or affirmation is taken or made, the oath or affirmation shall be interpreted to him by a sworn interpreter.

8. Apart from the above provisions, Cap. 11 is silent on what other powers the Clerk has when administering the Oath. Based on HCAL 112/2004, the Clerk may decline jurisdiction to administer the Oath if the form of the Oath is not in accordance with Schedule 2 to Cap. 11. In addition, it may be useful to refer to section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1), which provides that 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. An objective test should be used in determining whether an act done by the person with power is "reasonably

⁹ See paragraph 38 of the Judgment.

necessary" in the circumstances.¹⁰ The UK House of Lords also ruled that "whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires".¹¹

9. To consider what could fall under "reasonably necessary" powers in the context of administering an oath, it may be useful to examine the duties of a person administering an oath. We cannot find any direct judicial authorities on this subject. With reference to some related court cases, it could be said that a person authorized to administer an oath needs to be satisfied that the person taking the oath knows the content as well as the nature of the oath and that the necessary formality is followed.¹² The word "oath" is not defined in Cap. 11. The nature of an oath was however considered in *Leung Kwok Hung v Clerk to LegCo*.¹³ According to that case, an oath is a solemn declaration and in its original form it was invariably a promise to one's deity.¹⁴ While deviations may be made to an oath by virtue of sections 5 and 7 of Cap. 11, the Court found that Cap. 11 does no more than recognize that a person of religious belief may bind himself to the Supreme Being in which he believes while a person not of religious belief is entitled to bind himself by the honour of his name and the fact itself of making a public declaration of intent.¹⁵ Further, the Court found that an oath taken in accordance with BL104 is no empty form of words. It constitutes a solemn declaration, a form of promise, which binds the maker to a particular code of conduct.¹⁶ Hence, whether a person is willing to be bound by his oath or affirmation is a relevant consideration to an oath administrator.

10. In view of the nature of an oath and the duties of a person authorized to administer an oath and given the provision in section 40(1) of Cap. 1, it would seem that the Clerk would have the power to clarify with the Member concerned or require him/her to take the LegCo Oath again in circumstances where the Clerk has doubts as to whether the Member taking the oath knows the content and nature of the oath, for example, where the LegCo Oath taken or purportedly taken by a Member is not audible to or understood by the Clerk, or if the Member expressly declares that he/she will not be bound by the Oath. If the Clerk is not satisfied that that the LegCo Oath is taken in accordance with

¹⁰ See *Annotated Ordinance of Hong Kong – Interpretation and General Clauses Ordinance* (Cap. 1), Part VI, note [40.02].

¹¹ See *AG & Ephraim Hutchings (Relator) v Great Eastern Railway Co* (1879 – 80) LR 5 App Cas 473 at page 478.

¹² Refer to *HKSAR v Chan Hung Ching*, HCMA551/2001, Magistracy Appeal No. 551 of 2001. See also *The Ka Wah Bank Limited v Low Chung Song and Others*, H.C. Action No. 4191 of 1987 and *HKSAR v Ng Se Man, Michael*, Magistracy Appeal No. 278 of 1997.

¹³ HCAL 112/2004.

¹⁴ See paragraph 35 of the Judgment in HCAL 112/2004.

¹⁵ Ibid.

¹⁶ See paragraph 5 of the Judgment in HCAL 112/2004.

the relevant requirements, having regard to the decision in HCAL 112/2004, he may decline jurisdiction to administer the LegCo Oath. He should then inform the Member concerned of this and advise the Member on the consequences of not taking the oath in accordance with the provisions of Cap. 11. If the Member insists on his/her way, the Clerk may advise the Member that he would not be in a position to administer his/her oath. The Member concerned may seek to take the LegCo Oath afresh and have the Oath administered by the President at another Council meeting. It is noted that there is a precedent case where the President allowed a Member to take the LegCo Oath afresh upon the Member's request.¹⁷

Prepared by

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19 September 2016

¹⁷ On 10 October 2012, when Hon WONG Yuk-man took his oath, some words were apparently missing or not audible. In response to Mr WONG's request, the President allowed Mr WONG to take the LegCo Oath again at the Council meeting on 17 October 2012 to avoid any doubt on the validity of the oath he took on 10 October 2012.

JOINT ADVICE

A. Introduction

1. On 14 October 2016, we are instructed to advise the President of the Legislative Council (respectively “**President**” and “**LegCo**”) on the following questions:
 - 1.1 As we understand it, a sizable number of LegCo members have written to the President requesting him to review the validity of the oath given by the Hon. Lau Siu-lai on 12 October 2016. We are asked to advise whether her oath was valid under Article 104 of the Basic Law (“**BL 104**”) and the Oaths and Declarations Ordinance (Cap. 11) (“**Ordinance**”). We are also asked to consider whether the President is empowered to review or determine the validity of her oath despite that the Clerk to the LegCo (ie. the Secretary General “**SG**”) did not reject her oath on that occasions.
 - 1.2 Whether the Legislative Council Oath taken with the use of other words or conduct that the administrator of oath considers to alter the form and substance of the oath prescribed under Part IV of Schedule 2 to the Ordinance is valid under the Ordinance and/or BL 104.
 - 1.3 According to Hartmann J in *Leung Kwok-hung v Clerk to Legislative Council* (HCAL 112/2004, § 5), an oath taken in accordance with BL 104 is no empty form of words. It constitutes a solemn declaration, a form of promise, which binds the maker to a particular code of conduct. If the President, in administering the Legislative Council Oath in accordance with section 19(b) of the Ordinance, considers that a LegCo member has not made the oath solemnly, whether he could rule that the oath taken by the member is

not valid under the Ordinance and/or BL 104 and, if so, what are the relevant considerations?

1.4 If the President, in administering the Legislative Council Oath in accordance with section 19(b) of the Ordinance, is of the view that the LegCo member concerned is not willing to be bound by the oath by virtue of certain words spoken by the member immediately before or during the oath taking or immediately after the oath taking and/or conduct (e.g. use of props, displaying banner containing signs or message) performed immediately before or during the oath taking or immediately after the oath taking, whether he could rule that the member's oath has not been validly taken under the Ordinance and/or BL 104.

2. We are asked to provide our advice by 17 October 2016 (for preparation of the next sitting of LegCo on 19 October 2016), which we do below.
3. Given the urgency of the matter, we do not propose to set out the relevant background facts. Further, we trust the President will excuse us for keeping our advice as succinct as possible.

B. Validity of Legislative Council Oath

4. As the common theme of the questions is what constitutes a valid Legislative Council Oath under BL 104 and the Ordinance, it is necessary to consider this issue first.
5. The relevant part of BL 104 provides that:

“When assuming office...members of the...Legislative Council...must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the Hong Kong of the People’s Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”

6. Hence, BL 104 imposes a mandatory constitutional duty on all members of LegCo to: **first**, swear to uphold the Basic Law, **second**, swear allegiance to the Hong Kong Special Administrative Region (“HKSAR”) and **third**, swear to these two matters “in accordance with law”.
7. In *Leung Kwok Hung v. Legislative Council Secretariat* (unreported), HCAL 112/2004, 6 October 2004, Hartmann J (as his Lordship then was) explained at §§22-23 that the phrase “in accordance with law” in BL 104 means that a member of LegCo must take the oath in a manner and form that accords with the laws of Hong Kong and the relevant statutory law is the Ordinance.
8. Section 19 of the Ordinance provides that LegCo member shall as soon as possible after the commencement of his or her term of office take the Legislative Council Oath which (a) if taken at the first sitting of LegCo immediately after a general election and before the election of the President, shall be administered by the Clerk to the LegCo i.e. the SG, and (b) if taken at any other sitting of LegCo, shall be administered by the President or any LegCo member acting in his place.
9. The “Legislative Council Oath” referred to in section 19 is prescribed in Part IV of Schedule 2 to the Ordinance:

“I 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.”

10. In the *Leung Kwok Hung* case, a LegCo member proposed to add certain words to the Legislative Council Oath. Hartmann J held at §§18-27 that the oath that a LegCo member has to take in order to comply with BL 104 is the Legislative Council Oath prescribed in Part IV of Schedule 2, nothing more, nothing less. More specifically,

his Lordship made it clear that a LegCo member is not permitted to pen his or her own oath even if the proposed version meets the constitutional requirements prescribed in BL 104 of upholding the Basic Law and swearing allegiance to the HKSAR. This is because the proposed oath is not the Legislative Council Oath prescribed by the Ordinance, therefore a LegCo member taking a different form of oath cannot discharge the constitutional duty of swearing “in accordance with law” as required under BL 104.

11. The *Leung Kwok Hung* case concerns the **content** of the Legislative Council Oath. What about the **manner** in which the oath is to be taken?
12. Section 5 of the Ordinance concerns the manner in which an oath may be administered (for convenience we shall call the person authorised to administer the oath “**Administrator**”).¹ Section 5(1) gives details of how a Christian or Jew can normally take the oath. Section 5(2), however, provides that:

“The officer shall, unless the person about to take the oath objects thereto, or is physically incapable of so taking the oath, administer the oath in the form and manner aforesaid:

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath may be administered in any manner which is appropriate to his religious belief.”
13. Thus section 5(2) makes it clear that section 5(1) is not the only way in which an oath could be validly taken.
14. In the short time available, we have not been able to find any useful authority on the manner in which an oath is to be taken and what would constitute a validly taken oath.
15. Nevertheless, it seems to us reasonably clear that swearing an oath is a solemn matter and must be taken seriously. As Hartmann J observed at §§5 & 35 of the *Leung Kwok Hung* case, the Legislative

¹ Section 5 is supplemented by section 7 which permits the use of affirmation instead of oath.

Council Oath is no empty form of words. It constitutes a solemn declaration, a form of promise that binds the maker to a particular code of conduct, *viz*: to uphold the Basic Law, bear allegiance to the HKSAR and serve the HKSAR conscientiously, dutifully, in full accordance with the law, honestly and with integrity. Failure to adhere to that code of conduct may render the maker liable to expulsion from office: article 79(7) of the Basic Law.

16. Accordingly, we are of the view that the manner in which the LegCo members take the oath must be commensurate with the solemnity of the occasion, so as to indicate that he/she understands the serious obligations he/she is undertaking by swearing the Legislative Council Oath.
17. This is supported by the longstanding rule in the United Kingdom that the Parliamentary oath must be "*solemnly and publicly made*": see section 3 of the Parliamentary Oaths Act 1866. Some (limited) guidance on what is meant by due solemnity can be found in *AG v Bradlaugh* (1885) 14 QBD 667 at 701-702, where Brett MR stated:

"... the question arises, what is the meaning of "due solemnity," in and before that place which I call the theatre, the House of Parliament. That can only be decided by hearing what are the due solemnities in Parliament. And what are they? The due solemnities are that the member should go up through the House to the table and there do certain acts. He is called to come forward by the Speaker. He must take the oath at a time certainly when it is not out of order to do it. A member cannot be doing a thing with the due solemnities of the House, which by the rules of the House is disorderly and unsolemn. Therefore, if he was breaking the orders of the House, and acting in spite of the House, I should say he could not be doing the thing with the due solemnities." (emphasis added)
18. We cannot find anything in the Rules of Procedure of LegCo relating to the manner in which the Legislative Council Oath should be taken.² Nevertheless, one may legitimately draw assistance from the

² Rule 1 provides that "*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.*" It does not mention the manner in which the oath should be taken.

requirements on decorum and order imposed by Rule 42 of the Rules of Procedure. We also note that in relation to the use of signs and messages on clothing of LegCo members, these must not give rise to unreasonable interference with the proceedings or would compromise the dignity of the Council. As regards the use of objects for display, they are only allowed if they are used as visual aids to assist LegCo members when speaking and should be related to the agenda item(s) of the meeting. Further, if a LegCo member displays a sign or message the content of which is improper, or if he or she refuses to stop the display of objects as ordered by the President, the conduct may constitute grossly disorderly conduct such that he or she may be ordered to withdraw for the remainder of the meeting. See *The Companion to the history, rules and practices of the Legislative Council of the HKSAR* §§8.48, 8.52-8.58.

19. These requirements, in our view, exemplify the expectation that LegCo members would conduct themselves properly and with dignity, appropriate to the solemnity and seriousness of the proceedings in LegCo.
20. To sum up, we consider that a LegCo member validly takes the Legislative Council Oath under BL 104 and the Ordinance if:
 - 20.1 **First**, the member swears (or affirms) the Legislative Council Oath exactly as prescribed in Part IV of Schedule 2 to the Ordinance, nothing more, nothing less.
 - 20.2 **Second**, the Legislative Council Oath is made in such a manner to indicate to the Administrator that the member understands the seriousness of his/her oath, and undertakes publicly to be bound by the serious obligations under the oath. In other words, the member is swearing the oath **as an oath**, not reading out a series of words.
21. In relation to the second requirement, we should add that:
 - 21.1 The Administrator plainly has a duty under section 19 of the Ordinance to ensure that the Legislative Council Oath is

validly taken. However, the Administrator cannot be required or expected to investigate into whether the LegCo member in question actually considers himself or herself bound by the oath.

- 21.2 In our view, the Administrator must determine **objectively** taking into account the way in which the LegCo member swears the Legislative Council Oath as well as his conduct immediately before, during and immediately after the swearing (i.e. before the member leaves the table where he or she takes the oath), to determine whether the oath is validly taken.
- 21.3 It is impracticable, indeed impossible, to provide an exhaustive list of the relevant objective evidence and circumstances. Doing the best we can, we consider the words uttered and the member's conduct (including the props used or messages displayed) immediately before the making of the oath, during the taking of the oath, and immediately after the oath (i.e. before the member leaves the table where the member takes the oath) to be relevant.
- 21.4 We do not think that words uttered and conduct **after** the member leaves the table having completed the process of taking the oath is relevant. Clearly, a line has to be drawn somewhere: the validity of the oath taken cannot depend on events which took place or things said long before or after the taking of the oath had been completed. But where should the line be drawn? We venture to suggest that the line should be drawn when the process of taking the oath could reasonably be said to have completed, ie. when the member finishes the process and leaves the table where he or she took the oath. For example, if after completing the process of taking the oath and on his way back to his seat, a LegCo member chants slogans to the effect that he renounces the Basic Law, we consider that his oath is nevertheless effective. Whether his subsequent conduct gives rise to other consequences is a different question.

22. With these principles in mind, we turn to the individual questions.

C. First question

23. We understand that a sizable number of LegCo members have written to the President asking him to review the validity of Ms. Lau's oath taken on 12 October 2016. We have looked at a video clip of Ms. Lau taking the oath. She made a pledge immediately before taking the oath. Her first attempt at taking the oath (by swearing) was stopped by the SG on the basis that she had changed the content of the oath. On her second attempt she read out (by affirming) all of the prescribed words of the Legislative Council Oath but like the first attempt, she read out the words of the oath one at a time slowly and paused several seconds between each word. She then chanted a slogan after completing the oath before she left the table to go back to her seat.

24. We do not consider that she has changed the Legislative Council Oath: in her second attempt she did say exactly all the words of the Legislative Council Oath. The pledge she made before her first attempt and the slogan she chanted after her second attempt were clearly not part of her oath taking. Nor were these statements necessarily inconsistent with the oath.

25. However, we regard that her conduct when taking the oath, objectively assessed, shows that she was not serious about the oath and had no intention to be bound by it. She was plainly reading out a series of words which bear no coherence. We do not think she was swearing the oath as an oath. On that basis, we think her oath is invalid under BL 104 and the Ordinance.

26. We should say that we have been referred to and have looked at Ms. Lau's Facebook page where she posted a statement to the effect that the 90 odd words (of the Legislative Council Oath) that she read out were not linked to one another, and had no continuity or meaning. We do not think it is appropriate to and we have not taken the statement into account in arriving at our view as to the validity of her

oath. This is because her statement was made on 13 October 2016, a day after she took the oath.

27. In respect of whether the President has the power to review the validity of Ms. Lau's oath, rule 1 of the Rules of Procedure provides that a LegCo member is not entitled to attend a meeting or vote until he or she has made or subscribed the Legislative Council Oath in accordance with the Ordinance. In the circumstance, it seems to us that the President is obliged to come to a decision in order to determine whether Ms. Lau is entitled to attend the next meeting or vote.
28. We do not consider that there is any impediment to the President revisiting the oath taken by Ms. Lau. Although section 19 empowers the SG to administer the oath before the President is elected, there is no legal reason why if a clear error is made the matter could not be re-visited. Take the example of Mr. Wong Ting-kwong. The video recording of his swearing in shows that he omitted two words in the Legislative Council Oath. Thus as a matter of law, the oath he took was invalid. However, this was not detected by the SG at the time. The SG's acceptance of Mr. Wong's oath cannot turn what is legally an invalid oath into a valid one. Another way of looking at the matter is that the SG has no power under section 19 to administer an oath which is not in compliance with the Legislative Council Oath.
29. We have no doubt that the omissions on the part of Mr. Wong and the SG were genuine mistakes. There seems to us no reason why the President, when alerted to the errors (and we understand that he has been so alerted), could not require Mr. Wong to re-take the oath at the next meeting of the LegCo. We understand that a similar situation occurred with regard to Mr. Wong Yuk-man in 2012 and the then President allowed Mr. Wong Yuk-man to re-take the oath. We see no reason why this course could not be adopted.
30. In the present case, the invalidity of Ms. Lau's oath did not, in our view, arise because of a genuine mistake. Nevertheless, we consider it would be appropriate for the President to require her to take the oath again.

D. Second question

31. It is clear that if a LegCo member adds to, amends or omits part of the Legislative Council Oath, the oath is invalid.
32. Where objectively determined, a LegCo member's conduct immediately before, during and immediately after the swearing (i.e. before the member leaves the table where he or she takes the oath) indicates (a) he or she is not serious about taking the Legislative Council Oath or (b) he or she has no intention to be bound by the serious obligations set out in the oath, we take the view that the oath is not valid under BL 104 and the Ordinance.
33. To take an extreme example, if a LegCo member displays a sign or a banner with the message "Fxxx the Legislative Council Oath" when taking the oath, any objective bystander would reasonably understand that the member has no intention to be bound by the oath despite his literal reading of the words. In such a case, we consider that the oath would be invalid.

E. Third question

34. In our view, when Hartmann J said that the Legislative Council Oath is a "solemn declaration" (*Leung Kwok Hung* case §§5 and 35), we think what is meant is that the oath has to be taken in such a manner to indicate to the Administrator – perhaps also the other members of LegCo and the public – that the member in question understands the seriousness of the oath, and undertakes publicly to be bound by the serious obligations under the oath.
35. Lack of solemnity may be a factor, even a strong factor, indicating that the LegCo member taking the Legislative Council Oath does not treat the oath seriously or has no intention to be bound by the oath. But we wish to stress that whilst we accept that lack of solemnity may suggest that the member is not serious about or does not mean what he says, one has to be careful before equating the two. For example, a LegCo member who wears a comical dress or funny hat

when he is taking the oath may be said to be not respecting the solemnity of the occasion but he may nevertheless still be serious about the oath he takes and is willing to be bound by it. What is important is that the President has to assess the totality of the member's conduct objectively and form a view as to whether the member taking the Legislative Council Oath understands the seriousness of the oath and undertakes to be bound.

F. Fourth question

36. If the words or conduct of a LegCo member immediately before, during and immediately after the swearing (i.e. before the member leaves the table where he or she takes the oath), objectively determined, shows that he or she is not willing to be bound by the Legislative Council Oath, then we consider the oath taken is invalid under BL 104 and the Ordinance.
37. A related question arises in the cases of Mr. Leung Chung-hang and Ms. Yau Wai-ching, who mis-pronounced the words "Republic" and "China". We are asked to consider whether they have "decline or neglect" to take the Legislative Council Oath under section 21 of the Ordinance, so that they have vacated their office or disqualified from entering into it.
38. We have viewed the video recording of their oath-taking on 12 October. It seems to us clear that the "mis-pronunciation" was deliberate. Coupled with the use of the banners bearing the words "Hong Kong IS NOT China" and their declarations immediately before they purported to take the oath, it seems to us that they have not validly taken the Legislative Council Oath. We should add that although at the time the SG did not notice the "mis-pronunciation", which was pointed out by the media afterwards, the SG's decision is nevertheless correct.
39. Whether the two did "decline or neglect" to take the oath is more contentious.

40. In its ordinary meaning, “decline” connotes a conscious refusal to do an act, whereas “neglect” covers inadvertent or careless failure to do an act.
41. In our view, a reasonably arguable case could be advanced that the conduct of Mr. Leung and Ms. Yau demonstrate that they have indeed declined (although probably not neglected) to take the Legislative Council Oath. In particular, we bear in mind that although the SG had specifically advised them that he had doubt as to whether he had power to administer the oath for them, they deliberately when purporting to take the oath mis-pronounced those words.
42. However, we would strongly advise the President to allow them to re-take the oath. We say this because it would be a very strong step for the President to take to rule that they have declined to take the oath and hence section 21 applies. Although in our view a reasonable argument can be advanced in support of that conclusion, whether section 21 applies is far from clear-cut. If, however, the President allows them another opportunity to re-take the oath, and they still refuse to do so, the President would be on much stronger grounds to determine that section 21 applies.
43. It has been suggested to us that if the President is satisfied that Mr. Leung and Ms. Yau are not willing to be bound by the oath, he is not required or bound to give them any further opportunity to take the oath again. Moreover, it is suggested that if the two members have vacated or disqualified from their office by the operation of section 21 as a matter of law, the President has no power to administer the oath on their behalf.
44. We have not found anything to support or negate these arguments. We are of the view that these arguments do have logical force, but whether they will withstand challenge would be difficult to predict. Bearing in mind the potentially serious, perhaps even disastrous, consequences that may follow if the President’s decision is found to be wrong, we cannot advise the President to take that risk.

45. Therefore, for all the reasons stated above, we would strongly advise the President to allow Mr. Leung and Ms. Yau to take the oath at the next meeting of LegCo. If despite being given this chance they or either of them continue to demonstrate by their conduct that they are not prepared to take the oath properly, the President would have solid grounds to decide that they have declined to take the oath, with the consequences that follow under section 21.

17 October 2016.



Jat Sew-Tong, SC



Anthony Chan

Temple Chambers
One Pacific Place
Hong Kong

Re: Legislative Council Oath



JOINT ADVICE



Dated 17 October 2016

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