



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2840 1976)  
8 April 2021

Ms WONG Nga-ping, Pinky  
Assistant Secretary for  
(Constitutional & Mainland Affairs)3  
Constitutional and Mainland Affairs Bureau  
12/F, East Wing, Central Government Offices  
2 Tim Mei Avenue, Tamer  
Hong Kong

Dear Ms WONG,

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

We are scrutinizing the captioned Bill with a view to advising Members.

Please find attached an Appendix setting out our observations in relation to the Bill. We should be grateful if you could let us have your response in both English and Chinese as soon as possible.

Yours sincerely,

(Clara TAM)

Acting Senior Assistant Legal Adviser

Encl.

c.c. Department of Justice  
(Attn: Mr PENG Si-yun, Lawrence) (By Fax: 2536 8127)  
Legal Adviser  
Clerk to Bills Committee

**Legal Service Division's observations on  
the Public Offices (Candidacy and Taking Up Offices)  
(Miscellaneous Amendments) Bill 2021**

**Interface with the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)**

1. It is noted that under the proposed section 3AA of Cap. 1, a person's intent as evidenced in his words and deeds would be relevant in determining whether he is in breach of a specified oath or fails to fulfil the legal conditions and requirements on upholding the Basic Law ("BL") and bearing allegiance to the Hong Kong Special Administrative Region ("HKSAR") (i.e. "positive list" and "negative list"). At the meeting of the Bills Committee on 7 April 2021, in response to members' questions on the interface between the Bill and BL 77 and sections 3 and 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), the Administration has explained that it is not the legislative intent of the Bill to restrict the freedom of speech and debate in the Council or proceedings before a committee protected under BL77 and sections 3 and 4 of Cap. 382. To address members' concern, please let us know whether the Administration would consider adding to the Bill a provision to such effect to reflect the legislative intent.

**Powers of the oath-administrator**

2. According to paragraph 2(4) of the Interpretation adopted by the Standing Committee of the National People's Congress on 7 November 2016, the person administering the oath has the duty to ensure the oath is taken in a lawful manner and such person shall determine whether an oath taken is in compliance with the Interpretation and the requirements under the laws of HKSAR. Please consider whether it is appropriate to add an express provision to the Bill to provide for the powers and duties of the oath-administrator to reflect paragraph 2(4) of the Interpretation.

**Proposed new grounds of disqualification of LegCo members and DC members**

3. The Bill proposes to add two new grounds of disqualification of a member of the Legislative Council ("LegCo") or a member of a District Council ("DC") respectively under section 15 of the Legislative Council Ordinance (Cap. 542) and sections 19 and 24 of the District Councils Ordinance (Cap. 547), namely, breach of oath and failure to fulfil the legal requirements and conditions on upholding BL and bearing allegiance to HKSAR ("legal requirements and conditions"). Please clarify:

- (a) whether a person who fails to fulfil the legal requirements and conditions would be in breach of a specified oath;
- (b) if the answer to (a) is in the affirmative, the reasons for providing breach of oath and failure to fulfil the legal requirements and conditions as two separate grounds under the abovementioned proposed sections;
- (c) if the answer to (a) is in the negative, the differences between the two proposed grounds of disqualification with illustration(s);
- (d) whether the Administration would consider adding to the Bill a provision to explain the circumstances under which a person would be regarded as being in breach of a specified oath;
- (e) who would have the legal authority to determine whether a LegCo member or DC member is in breach of an oath or fails to fulfil the legal requirements and conditions and under what procedure or process such determination should be made; and
- (f) what types of declarations or decisions and the relevant laws are envisaged under the reference "declared or decided in accordance with any law" in respect of the ground of failure to fulfil the legal requirements and conditions, and why such reference is not included under the ground of breach of a specified oath.

Proposed removal of time limit for instituting legal proceedings on the grounds of disqualification

4. The Bill proposes to amend section 73(2) of Cap. 542 and section 79(2) of Cap. 547 to remove the existing time limit of six months within which the Secretary for Justice ("SJ") may institute proceedings before the Court of First Instance ("CFI") against a person who is acting, claims to be entitled to act as a Member on the ground that the person is disqualified from acting as such. According to paragraph 21 of the LegCo Brief on the Bill, the proposal would allow SJ to bring such proceedings any time. As such, the proposal might have an effect that LegCo/DC members would be subject to institution of legal proceedings on the ground of disqualification during the whole term he/she is serving or even after the term of his/her office. Please explain whether there would be any legal safeguards for ensuring that the relevant proceedings would be brought without delay so as to avoid unfairness caused to the respondents as the relevant evidence might have been diminished after a long lapse of time from the alleged act was committed.

Proposed suspension of functions and duties of a LegCo/DC member

5. Under the proposed new section 73(2A) of Cap. 542 and section 79(2A) of Cap. 547, immediately after the proceedings are brought by SJ against a person on the ground of breach of an oath or failure to fulfil the legal requirements and conditions, the person's functions and duties as a LegCo member or DC member would be suspended until the decision of CFI in the proceedings becomes final. The Bill does not provide for the handling of the remuneration of the member concerned for the period of suspension. In view of the newly added Rule 45A of the Rules of the Procedures of LegCo relating to suspension of a member by reason of the grossly disorderly conduct and amendments to the relevant legislation to be proposed by the Administration to impose a financial penalty on a suspended member, please consider whether amendments should also be made to the Bill or any other legislation to provide for the handling (i.e. withholding) of the remuneration of a LegCo member during the suspension under the abovementioned proposed sections to avoid dispute or unnecessary litigation.

6. The proposed section 79(2D) of Cap. 547 expressly provides that a DC member would not be regarded as being absent from a DC meeting during the suspension under section 79(2A) for the purposes of sections 19(4) and 24(5) of Cap. 547. Please explain the reasons for not providing a similar provision under Cap. 542 or any other legislation to clarify whether a LegCo member would be regarded as being absent from a LegCo meeting during the suspension.