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[English Translation]

Ms Angel WONG  
Clerk to Bills Committee on  
Public Offices (Candidacy and  
Taking Up Offices) (Miscellaneous  
Amendments) Bill 2021  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

14 April 2021

Dear Ms WONG,

**Supplementary Information on  
Public Offices (Candidacy and Taking Up Offices)  
(Miscellaneous Amendments) Bill 2021 (“the Bill”)**

In response to the letter from Hon Holden Chow Ho-ding dated 8 April 2021 and the issues raised by members and the legal adviser at the Bills Committee meetings on 9 and 12 April 2021, our consolidated reply is set out below.

**Powers of Oath Administrator**

2. As mentioned in our reply (LC Paper No. CB(4)759/20-21(01)) to the legal adviser’s letter, to better implement the requirements as prescribed by the “Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of

China” (“the Interpretation”), the Bill proposes to add a new section 20A in the Oaths and Declarations Ordinance (Cap. 11) (“ODO”) to provide that a person is to be regarded as declining or neglecting to take the oath if the person intentionally:

- (a) contravenes the oath-taking procedure of the person or desecrates the oath-taking ceremony;
- (b) alters or distorts the wording of the oath;
- (c) says words that do not accord with the wording of the oath; or
- (d) acts in a way that is **not sincere or not solemn** in purporting to take the oath.

3. The existing section 21 of the ODO provides that any person who declines or neglects to take an oath shall be disqualified from entering on the office (if he has not entered on it) or shall vacate the office (if he has already entered on it). The newly added section 21(2) also specifies that, no person may arrange for the person who declines or neglects to take the oath to retake it except that, in accordance with section 21(3)(b), the oath administrator is satisfied that the person did not intentionally decline or neglect to take the oath. As clauses 5, 6, 7 and 8 of the Bill have already specified that the oath of the relevant public officers must be administered by the Chief Executive or a person authorized by him/her, and section 21 of the ODO as amended has already empowered the oath administrator to make a ruling regarding the relevant oath taken, we consider that the powers of the oath administrator is adequately reflected by the provisions.

4. Members enquired if the actions mentioned in paragraph 2(a), (b) and (d) above are involved, whether there should be sufficient grounds to rule the oath-taker as “declining or neglecting” to take an oath regardless of whether the actions were done intentionally. In fact, the proposed wording in the Bill has made reference to the “Explanations on the Draft Interpretation” (extracted as follows): “if an oath taker **intentionally** contravenes or desecrates the oath-taking procedure and ceremony by means of conduct, words, attire or paraphernalia, etc., or **intentionally** alters, distorts the wording of the oath prescribed by law or reads out words which do not accord with the wording of the oath prescribed by law, such oath-taking conduct shall be regarded as not in compliance with the requirements in respect of oath taking in form or in substance”. As such, we consider it appropriate to retain the current drafting of the clause.

## **Mechanism for the Secretary for Justice (“SJ”) to bring proceedings**

5. The Bill proposes that once the SJ has brought legal proceedings against a Legislative Council (“LegCo”) member under section 73 of the Legislative Council Ordinance (Cap. 542) (“LCO”) on the grounds of breach of oath or failure to fulfil the legal requirements and conditions on upholding the Basic Law (“BL”) and bearing allegiance to the Hong Kong Special Administrative Region (“HKSAR”), the member’s functions and duties are immediately suspended until the decision of the Court in the relevant proceedings becomes final.

6. Regarding members’ concerns about whether the proposed amendments are too strict, we wish to reiterate that the proposed clauses seek to reflect the related requirements as stipulated in the Interpretation which provides that “[t]o uphold the BL and to bear allegiance to the HKSAR as stipulated in Article 104 of the BL, are not only the legal content which must be included in the oath prescribed by the Article, but also the legal requirements and preconditions for standing for election in respect of or taking up the public office specified in the Article” and “[t]he oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law”. In the “Decision on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region” (“the Decision on Qualification of LegCo Members”) made by the Standing Committee of the National People’s Congress on 11 November last year, it is also specified that if a member is decided in accordance with law that he or she does not fulfil the legal requirements and conditions on upholding the BL of the HKSAR and pledging allegiance to the HKSAR, he or she is immediately disqualified from being a LegCo member. Considering the important functions exercised by a LegCo member, we consider allowing a member who is being suspected of breaching or not complying with the legal requirements and conditions on upholding the BL of the HKSAR and pledging allegiance to the HKSAR to continue to stay and exercise the important functions in the LegCo to be extremely inconsistent with the spirit of the Interpretation and the Decision on Qualification of LegCo Members.

7. To strike a balance, the Bill has included the following to safeguard the interest of the member concerned:

- (a) the member concerned is entitled to apply to the Court of First Instance (“CFI”) to lift such suspension; and

- (b) a leap-frog appeal mechanism for proceedings brought under section 73 of the LCO is provided. A party who is not satisfied with a decision made by the CFI may lodge an appeal to the Court of Final Appeal (“CFA”) direct (instead of lodging an intermediate appeal to the Court of Appeal of the High Court), subject to leave being granted by the Appeal Committee of the CFA. The period within which an application for leave to appeal to the CFA must be lodged will be within 14 working days after the day on which the relevant CFI judgment is handed down. Such arrangement would facilitate speedy resolution of proceedings brought by the SJ on the grounds of breach of oath of a member or failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, thereby ensuring the final decision of the legal proceedings could be attained as soon as possible.

8. We would like to stress that the SJ as the guardian of public interest has the duty in handling the relevant matters seriously and properly in accordance with law. When considering whether the relevant legal proceeding should be brought, the SJ must have full regard to public interest, strictly abide by the rights and obligations granted or imposed by the law, and take timely legal actions against the persons concerned.

#### **Arrangement during suspension of functions and duties**

9. In addition, some members also suggested that in relation to the suspension of the concerned member, the corresponding entitlements should also be suspended together with the functions and duties so as to adhere more closely to section 2(1) of the Interpretation which provides that “[n]o public office shall be assumed, no corresponding powers and functions shall be exercised, and **no corresponding entitlements shall be enjoyed** by anyone who fails to lawfully and validly take the oath or who declines to take the oath”.

10. As mentioned in our reply (LC Paper No. CB(4)759/20-21(01)) to the legal adviser’s letter, the original proposal in the Bill has taken into account that the remuneration of LegCo members and DC members are the internal matter of LegCo and administrative arrangement of DC, and hence has not specified whether the remuneration of a member should also be suspended while the member’s functions and duties are being suspended. However, at the Committee meeting, members considered it reasonable that a member being suspended from exercising his powers or performing

his duties should also be suspended from enjoying the corresponding entitlements.

11. Having considered members' views, we propose to move amendments to section 73(2C) of LCO and section 79(2C) of the District Councils Ordinance (Cap. 547) ("DCO") to the effect that the member concerned should "not enjoy corresponding entitlements", which would include remuneration, allowances and various kinds of reimbursements for expenses, during the suspension.

### **Other drafting proposals**

12. In addition, in light of the opinions of the legal adviser, we propose to move the following amendments:

- (a) to ensure consistency of the wording in the Chinese text of section 79 of the DCO, we propose to amend the existing heading of that section and the proposed subsection (2A) by replacing references to "提出" by "提起"; and
- (b) to amend the Chinese text of the proposed section 79(2D) of the DCO, to reflect that the member concerned is not allowed to attend the relevant meeting.

### **Next Steps**

13. The proposed amendments as mentioned in paragraphs 11 and 12 are at **Annex**. Subject to the agreement of members of the Committee, we will move the amendments at the Committee Stage.

Yours sincerely,



(Miss Pinky WONG)  
for Secretary for Constitutional and  
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c.c.

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**Public Offices (Candidacy and Taking Up Offices)  
(Miscellaneous Amendments) Bill 2021:  
Committee Stage Amendments (CSAs) Proposed by the Administration**

<p style="text-align: center;"><b>Clause No. in the Bill</b> <i>(Page no. in the mark-up version)</i></p>	<p style="text-align: center;"><b>Proposed CSAs</b> (proposed amendments are <b><i>bolded in italic</i></b>)</p>
<p><b>21.</b> <b>Section 73 of the</b> <b>Legislative Council</b> <b>Ordinance amended</b> <b>(proceedings against</b> <b>persons on grounds of</b> <b>disqualification)</b>  (0026-0027)</p>	<ul style="list-style-type: none"> <li>● Propose to add paragraph (ba<sup>1</sup>) in the new subsection (2C):  “(2C) If a person’s functions and duties as a Member are suspended under subsection (2A), the person— (a) must not act as a Member; (b) must neither exercise any function nor perform any duty of a Member; <del>and</del> <b><i>(ba) must not enjoy any corresponding entitlement; and</i></b> (c) is not to be regarded as a Member for the purposes of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).”</li> </ul>
<p><b>26.</b> <b>Section 79 amended</b> <b>(proceedings against</b> <b>persons on grounds of</b> <b>disqualification)</b>  (0037)</p>	<ul style="list-style-type: none"> <li>● Propose to add a new amendment to the Chinese text of the heading of section 79 of the DCO as follows:  “以喪失資格為理由針對某人提<del>出</del><b><i>起</i></b>法律程序”</li> <li>● Propose to amend the Chinese text of the new subsection (2A) as follows:  “凡律政司司長根據本條以某人因以下事宜而已喪失以議員身分行事的資格為理由，針對該人提<del>出</del><b><i>起</i></b>法律程序，則在緊接該法律程序提<del>出</del><b><i>起</i></b>後...”</li> </ul>

<sup>1</sup> The provisions will be renumbered if the amendment is passed.

<p><b>Clause No. in the Bill</b> (Page no. in the mark-up version)</p>	<p><b>Proposed CSAs</b> (proposed amendments are <b><i>bolded in italic</i></b>)</p>
	<p>● Propose to add paragraph (ba) in the new subsection (2C):</p> <p>“(2C) If a person’s functions and duties as a member are suspended under subsection (2A), the person —</p> <p>(a) must not act as a member;</p> <p>(b) must not do anything for the purpose of carrying into effect the provisions of this Ordinance or any other enactment conferring functions on a District Council; <del>and</del></p> <p><b><i>(ba) must not enjoy any corresponding entitlement; and</i></b></p> <p>(c) is not to be regarded as a member for the purpose of section 86.”</p> <p>● Propose to amend the Chinese text of the new subsection (2D) as follows:</p> <p><b><i>“如某人的議員職能和職務根據第(2A)條被暫停，而該人在該職能和職務被暫停的期間沒有出席區議會的會議，則就第 19(4)及 24(5)條而言，該人不得視為沒有出席該會議”。</i></b></p>