



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會 LEGISLATIVE COUNCIL

謝偉俊 *Paul W. Tse*

16 April 2021

Mr. Roy Tang
Permanent Secretary for Constitutional and Mainland Affairs

Re: Bills Committee on Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Bill 2021

Dear Roy,

At the Bills Committee meetings, members have expressed concerns on the handling of the entitlements of Legislative Council ("LegCo") and District Council ("DC") members arising from the suspension of functions and duties under the proposed section 73(2A) of the Legislative Council Ordinance (Cap. 542) and section 79(2A) of the District Council Ordinance (Cap. 547) immediately after disqualification proceedings are brought by the Secretary for Justice ("SJ"). In response, the Administration has proposed to amend the relevant provisions in the Bill to the effect that the suspended member should not "enjoy corresponding entitlements", which would include remuneration, allowances and various kinds of entitlements during the suspension. Members of the Bills Committee welcome the proposed amendments.

However, the above proposed amendments would not cover the situation where the member concerned is disqualified by the Court. According to paragraph 2(1) of the Interpretation of Article 104 of the Basic Law by the Standing Committee of the National People's Congress ("Interpretation"), no public office shall be assumed, no corresponding

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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.

It is noted that the Bill has not expressly provided that a disqualified member shall not enjoy any corresponding entitlements. In the circumstances, to fully reflect the spirit of the Interpretation and avoid unnecessary litigation, the Administration is asked to consider proposing further amendments to the Bill to the effect that a LegCo or DC member who is declared as disqualified by the Court shall not enjoy any corresponding entitlements and shall return the remuneration (including allowances, etc.) paid to him/her from the date of disqualification (i.e. not the date of declaration/judgment) to The Legislative Council Commission (for disqualified LegCo member) and to the Government (for disqualified DC member).

Yours sincerely,

Paul Tse Wai Chun

c.c.

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