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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

20 April 2021

Dear Ms WONG,

**Bills Committee on Public Offices (Candidacy and Taking Up
Offices) (Miscellaneous Amendments) Bill 2021:
Response to submissions from deputations/individuals**

In response to the submissions from deputations and individuals to the Bills Committee on Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Bill 2021 (the Bill), our consolidated response is set out in as follows.

2. As of 16 April 2021, we have received 5 236¹ written submissions from the Clerk to the Bills Committee. All of them agreed with the approach of the amendments as provided in the Bill while some also made suggestions on the Bill.

3. The main reasons for supporting the Bill are broadly summarised as follows:

- (a) the Bill includes specific requirements of oath-taking by public officers and provides clear definition on “upholding Basic Law and bearing allegiance to the Hong Kong Special Administrative Region (HKSAR)”. Not only could it provide guidance for the oath-takers, but it could also facilitate the enforcing agents and the court to accurately implement the relevant laws. Meanwhile, the public can also have a clearer understanding on requirements of the law and thus avoiding any unnecessary misunderstandings and disputes²;
- (b) oath-taking is the basic requirement, obligation and responsibility of public officers and those administering Hong Kong. Imposing oath-taking requirement is also a common practice of the governments of democratic countries such as the United States, the United Kingdom and Germany³;
- (c) the Bill covers arrangements for taking oaths by public officers, including members of the District Councils (DCs). The requirement establishes a basic principle of “patriots administering Hong Kong” and ensures that the behaviors of public officers comply with constitutional requirements. It can enhance the effectiveness of governance and foster long-term development of “one country, two systems”⁴; and

¹ Legislative Council Paper Nos. CB(4)763 to 772/20-21(01) to (200), CB(4)781 to 790/20-21(01) to (200), CB(4)795 to 799/20-21(01) to (200), CB(4)800/20-21(01) to (34) and (50) to (200), and CB(4)801(01) to (51).

² Legislative Council Paper Nos. CB(4)763 to 772/20-21(01) to (200), CB(4)781 to 790/20-21(01) to (200), CB(4)795 to 798/20-21(01) to (200), and CB(4)800/20-21 (50) to (200).

³ Legislative Council Paper Nos. CB(4)763 to 772/20-21(01) to (200), CB(4)781 to 790/20-21(01) to (200), CB(4)795 to 798/20-21(01) to (200), CB(4)800/20-21 (50) to (200), and CB(4)801(01) to (51).

⁴ Legislative Council Paper Nos. CB(4)763 to 772/20-21(01) to (200), CB(4)781 to 790/20-21(01) to (200), CB(4)795 to 798/20-21(01) to (200), CB(4)800/20-21 (50) to (200), and CB(4)801(01) to (51).

- (d) it is hoped that the behaviors of DC members can be restrained and regulated with the passage of the Bill such that the DCs can be back on the right track and resume the role of a district organization which focuses on resolving livelihood issues⁵.
4. Main suggestions on the Bill are broadly summarised as follows:
- (a) all public officers should be mandated to swear allegiance to the HKSAR government and the central government⁶;
- (b) persons who fail to meet the standards of “patriots” should not be allowed to hold public offices⁷;
- (c) in addition to the responsibility of ensuring that the oath is taken in accordance with the legal requirement, the oath administrator should also be empowered to consider the past acts and deeds of the oath-taker to determine the validity of the oath. If it is found that the oath-taker did not uphold the Basic Law (BL) and bear allegiance to the government, the oath administrator should be empowered to follow up so as to determine if the oath is taken sincerely⁸;
- (d) public officers who decline to take or breach an oath should be dealt with immediately in accordance with laws and mechanisms, such as dismissal and prosecution⁹;
- (e) consideration should be given to whether it is necessary to introduce retrospective effect¹⁰; and

⁵ Legislative Council Paper Nos. CB(4)763 to 772/20-21(01) to (200), CB(4)781 to 790/20-21(01) to (200), CB(4)795 to 798/20-21(01) to (200), CB(4)800/20-21 (50) to (200), and CB(4)801(01) to (51).

⁶ Legislative Council Paper Nos. CB(4)763/20-21(114), CB(4)766/20-21(158) to (159), CB(4)772/20-21(91), CB(4)785/20-21(90) and CB(4)787/20-21(42).

⁷ Legislative Council Paper Nos. CB(4)763/20-21(114) and CB(4)772/20-21(124).

⁸ Legislative Council Paper No. CB(4)766/20-21(150).

⁹ Legislative Council Paper Nos. CB(4)766/20-21(158)to(159), CB(4)768/20-21(184), CB(4)769/20-21(114), (136), (137) and (163), and CB(4)770/20-21(188).

¹⁰ Legislative Council Paper Nos. CB(4)766/20-21(150), CB(4)768/20-21(02) and (04), CB(4)772/20-21(64), CB(4)787/20-21(93) and CB(4)798/20-21(21).

- (f) the power of Secretary for Justice (SJ) to bring proceedings should be restricted and an independent and credible organization should bring the proceedings instead¹¹.

5. We are satisfied that the Bill could accurately implement the requirements on oath taking by public officers as set out in Article 104 of BL, the “Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (NSL), 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) and 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.

6. Regarding the role of the oath administrator, 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 Oaths and Declarations Ordinance (Cap. 11) 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.

7. As regards the mechanism to deal with breach of oath, the Bill proposes that once the SJ has brought legal proceedings against a Legislative Council member under section 73 of the Legislative Council Ordinance (Cap. 542) (LCO) (or a DC member under section 79 of the District Councils Ordinance (Cap. 547) (DCO)) on the grounds of breach of oath or failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, the member’s functions and duties are immediately suspended until the decision of the Court in the relevant proceedings becomes final. Having considered members’ views, we have already proposed to move amendments to section 73(2C) of LCO and section 79(2C) of 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.

¹¹ Legislative Council Paper Nos. CB(4)772/20-21(130) and CB(4)798/20-21(21).

8. To strike a balance, the Bill also clearly stipulates that the member concerned is entitled to apply to the Court of First Instance to lift the suspension; and a leap-frog appeal mechanism for the relevant proceedings is also provided to ensure the final decision of the legal proceedings could be attained as soon as possible. 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.

Yours sincerely,



(Miss Pinky WONG)
for Secretary for Constitutional and Mainland Affairs

c.c.

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