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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,

**Public Offices (Candidacy and Taking Up Offices)
(Miscellaneous Amendments) Bill 2021 (the Bill):
Proposed amendments**

In response to the letter from Hon Paul Tse Wai-chun dated 16 April 2021, we would like to propose further amendments to the Bill as appended at **Annex** for members' perusal.

2. As we pointed out at the meeting, 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") clearly stipulates that "[t]o uphold the Basic Law (BL) and to bear allegiance to the Hong Kong Special Administrative Region (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”. Section 2(1) of the Interpretation also 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”. In addition, 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 also clearly provides 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 bearing allegiance to the HKSAR, he or she is immediately disqualified from being a member of the Legislative Council (LegCo).

3. In line with the above principles, if the Court has ruled that a member was disqualified from acting as a member beginning on a date, the member should cease to be entitled to any corresponding entitlement beginning on that date. The original proposal in the Bill is silent on this issue having considered that the remuneration of LegCo members and District Council (DC) members are the internal matter of LegCo and administrative arrangement of DC, and they should have sufficient powers to handle the matter. As such, the Bill did not provide express provisions relating to the member’s remuneration.

4. Nevertheless, after consideration, we agree with Hon Tse’s proposal that we could provide relevant provisions in the Bill to clarify the policy intent. On this basis, the proposed amendments 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 Mainland Affairs

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**

| Clause No. in the Bill <i>(Page no. in the mark-up version)</i> | Proposed CSAs <i>(proposed amendments are <u>bolded in italic</u>)</i> |
|--|---|
| <p>21. Section 73 of the Legislative Council Ordinance amended (proceedings against persons on grounds of disqualification)</p> <p><i>(0026-0027)</i></p> | <ul style="list-style-type: none"> ● Propose to add new subsection (4AA¹) after subsection (4A): <p style="text-align: center;"><u><i>“(4AA) If, in proceedings brought under this section, it is proved that the defendant was disqualified from acting as a Member beginning on a date, the defendant ceased to be entitled to any corresponding entitlement beginning on that date.”</i></u></p> |
| <p>26. Section 79 amended (proceedings against persons on grounds of disqualification)</p> <p><i>(0037)</i></p> | <ul style="list-style-type: none"> ● Propose to add new subsection (4AA²) after subsection (4A): <p style="text-align: center;"><u><i>“(4AA) If, in proceedings brought under this section, it is proved that the defendant was disqualified from acting as a Member beginning on a date, the defendant ceased to be entitled to any corresponding entitlement beginning on that date.”</i></u></p> |

¹ The provisions will be renumbered if the amendment is passed.

² The provisions will be renumbered if the amendment is passed.