

LCQ5: Legislative amendments in respect of oath-taking by public officers

Following is a question by the Hon Leung Che-cheung and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, in the Legislative Council today (January 6):

Question:

The Chief Executive has indicated earlier on that to implement the Interpretation of Article 104 of the Basic Law made by the Standing Committee of the National People's Congress, and the requirements of the National Security Law for Hong Kong in respect of oath-taking by public officers, the Government is studying the introduction of amendments to the local legislation such as the Oaths and Declarations Ordinance and the Legislative Council Ordinance, in order to enhance the arrangements for public officers to take the oath, etc. In this connection, will the Government inform this Council:

(1) whether the contents of the legislative amendments will cover the District Councils Ordinance (DCO); if so, of the details; if not, the reasons for that; what other legislation that the contents of the legislative amendments will also cover;

(2) whether the contents of the legislative amendments will cover the interpretations of "public officer" in the existing legislation, and include the addition of provisions to DCO to make "having taken an oath to uphold the Basic Law and sworn allegiance to the Hong Kong Special Administrative Region" one of the eligibility requirements for being nominated as a candidate for District Council (DC) elections, and to require DC members to take the aforesaid oath on assuming the office; and

(3) of the progress of the study on the legislative amendments, and when it will introduce the relevant bill to this Council?

Reply:

President,

In response to the Hon Leung Che-cheung's questions, my consolidated reply is as follows:

Article 104 of the Basic Law states that five categories of public officers, that is the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council (LegCo), judges of the courts at all levels and other members of the judiciary in the Hong Kong

Special Administrative Region (HKSAR) must, in accordance with law, swear to uphold the Basic Law of the HKSAR of the People's Republic of China (PRC) and swear allegiance to the HKSAR of the PRC when assuming office. The Standing Committee of the National People's Congress (NPCSC) endorsed the Interpretation of Article 104 of the Basic Law (the Interpretation) on November 7, 2016, which explains that oath taking is the legal prerequisite and required procedure for public officers specified in Article 104 of the Basic Law to assume office, and must comply with the legal requirements in respect of its form and content. The Interpretation also makes it clear that an oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with the law.

It is the HKSAR's constitutional obligation to implement Article 104 of the Basic Law and the Interpretation accurately. In this relation, we will, with reference to the related requirements set out in the Interpretation, relevant local court judgments and the recent decision on the qualification of members of LegCo of the HKSAR made by the NPCSC on November 11, 2020, rationalise the local legislation including the Oaths and Declarations Ordinance (Cap. 11) (ODO) and relevant electoral laws. Based on our current study, we plan to make amendments in the following areas to better reflect the requirements in the Interpretation:

(i) Detailed oath taking requirements: Article 2(2) of the Interpretation states that "Oath taking must comply with the legal requirements in respect of its form and content. An oath taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law, the content of which includes 'will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China'". Article 2(3) of the Interpretation further states that "An oath taker is disqualified forthwith from assuming the public office specified in the Article if he or she declines to take the oath. An oath taker who intentionally reads out words which do not accord with the wording of the oath prescribed by law, or takes the oath in a manner which is not sincere or not solemn, shall be treated as declining to take the oath. The oath so taken is invalid and the oath taker is disqualified forthwith from assuming the public office specified in the Article". Currently, ODO does not contain any provisions regarding the detailed requirements on oath taking, save for the content of oaths prescribed in Schedule 2. We will study how to include provisions in ODO to better reflect the relevant requirements;

(ii) Arrangements relating to the retaking of oath: Article 2(4) of the Interpretation states that "...an oath which is not taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is invalid. If the oath taken is determined as invalid, no arrangement shall be made for retaking the oath". In this regard, we plan to amend ODO to better reflect the relevant requirements;

(iii) Arrangements relating to the oath administrator: An oath taken under Article 104 of the Basic Law is answerable to the HKSAR and the country.

Therefore, the oath administrator should be a person who can represent the HKSAR legally and be responsible to the Central People's Government (CPG). Article 2(4) of the Interpretation states that "The oath must be taken before the person authorised by law to administer the oath. The person administering the oath has the duty to ensure that the oath is taken in a lawful manner. He or she shall determine that an oath taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is valid". Currently, ODO specifies different persons to be the oath administrators for different categories of public officers. Considering the important role of the oath administrator to determine the legality of an oath, we will review to amend the related provisions in ODO to fully reflect the requirements of Article 104 of the Basic Law and the Interpretation in this regard; and

(iv) Legal consequences and statutory procedures in case of breach of the oath: Article 3 of the Interpretation states that "The taking of the oath stipulated by Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China is a legal pledge made by the public officers specified in the Article to the People's Republic of China and its Hong Kong Special Administrative Region, and is legally binding. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with law". We are reviewing the relevant legislation to ensure that the existing mechanism could handle and reflect the severity of breach of the oath.

Apart from the five categories of public officers specified in Article 104 of the Basic Law, Article 6 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law) stipulates that a resident of the HKSAR who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law and swear allegiance to the HKSAR of the PRC in accordance with the law. In this regard, we notice that there are many opinions and discussions on the scope of "public officers", including that district councilors should also be included in the scope of the legislative amendments.

The Government considers the scope of "public officers" referred to in the National Security Law a very complex issue that needs careful study. The Government is now actively studying the subject matter, and will announce the implementation details of the related requirements at an appropriate juncture.

The legislative amendment exercise to accurately implement Article 104 of the Basic Law and the Interpretation is very important to maintain the constitutional order of the HKSAR. We will complete the relevant study and draft legislation as soon as possible with a view to introducing a bill to LegCo for consideration.

Thank you, President.

LCQ6: 612 Humanitarian Relief Fund

Following is a question by the Hon Holden Chow and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 6):

Question:

In June 2019, someone established a 612 Humanitarian Relief Fund (the 612 Fund) to raise funds through online crowdfunding so as to provide relief in terms of money, etc. for those injured and arrested in the movement of opposition to the proposed legislative amendments. As at the end of May last year, the total income of the 612 Fund stood at over \$140 million. A trustee of the 612 Fund indicated a few months ago that \$15 million of the Fund would be set aside to provide funding for certain defendants who had already been granted legal aid to additionally engage a second counsel as their legal representative. In this connection, will the Government inform this Council:

(1) whether it has monitored if the 612 Fund is operating legally, including if the Fund has received funding from outside the territory for conducting unlawful activities such as those endangering national security;

(2) given that the online fundraising activities conducted by the 612 Fund are not subject to any regulation, whether the Government will introduce legislation to regulate such kind of fundraising activities; and

(3) given that the aim of legal aid is to ensure that no one who has reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong is denied access to justice because of a lack of means, whether the authorities will discharge the legal aid granted to those defendants who have been subsidised by the 612 Fund to engage legal representatives, so as to ensure the proper use of public funds?

Reply:

President,

Over the ten months or so since June 2019, Hong Kong had seen a spate of violent and illegal acts. Rioters extensively blocked roads, wantonly vandalised shops and public facilities, and hurled a large number of petrol bombs. There were even rioters who tied up, falsely imprisoned and assaulted members of the public who held different views. The violence of the rioters had resulted in the injuries of many, including police officers. Among which, a member of the public was hit in his head by a brick hurled by rioters and

subsequently died, while another was seriously injured after being set ablaze by rioters. I strongly condemn these violent acts.

Having consulted the Financial Services and the Treasury Bureau and the Legal Aid Department (LAD), my consolidated reply to the Member's question is as follows:

(1) Different organisations have been crowdfunding online under various pretexts. Some have been found by the Police to be involved in criminal offences. The Police have arrested the people involved and frozen their relevant assets for further investigation. Members of the public should be mindful of the risks of being deceived by fraudsters through crowdfunding.

Any funds raised must be used in compliance with the law. Law enforcement agencies will, in light of the actual circumstances, monitor and keep an eye on the operation of such funds. Enforcement actions will be taken against illegal acts in accordance with the law. Illegal acts may involve the following offences: (a) in breach of the offence of money laundering under the Organized and Serious Crimes Ordinance or the Drug Trafficking (Recovery of Proceeds) Ordinance, with a maximum penalty of 14 years' imprisonment; (b) in breach of the offence of fraud under the Theft Ordinance, with a maximum penalty of 14 years' imprisonment; and (c) in breach of the National Security Law by providing pecuniary or other financial assistance or property for the commission by other persons of the offences stipulated therein, including violating the offence of collusion with a foreign country or with external elements to endanger national security under Article 29, with the maximum penalty of life imprisonment.

The Hong Kong Special Administrative Region Government will not comment on the operation of individual self-proclaimed funds. Before participating in the fundraising activities of such self-proclaimed funds, members of the public should have a clear understanding of their background and claimed objectives to avoid being deceived or suffering losses.

(2) As for the question on regulating online fundraising activities, the Secretary for Financial Services and the Treasury pointed out in his replies to similar questions in June and October 2020 that, depending on the purposes and nature of these activities, such activities may be subject to the provisions of the relevant legislation. For example, online fundraising activities which involve financial services-related activities such as an offer to the public to purchase securities or a lending element may be subject to regulation by the relevant legislation such as the Securities and Futures Ordinance (Cap.571), the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Money Lenders Ordinance (Cap. 163), etc. Depending on the purposes of the online fundraising activities, the relevant legislation applicable to fundraising activities may also be applicable to activities on online platforms that raise funds for use in Hong Kong. The Government also notes that while the regulation on fundraising activities and platforms in other places may vary, the relevant regulatory requirements are generally based on the nature of the fundraising activities and the use of funds collected, rather than the means of fundraising. The Government will

continue to keep in view and make reference to the latest development on regulation of online fundraising activities in other places.

(3) The LAD is the department responsible for enforcing the Legal Aid Ordinance (Cap. 91). Generally speaking, any person who applies for legal aid must pass both means test and merit test as stipulated in the Legal Aid Ordinance. If both tests are passed, the LAD may, in accordance with the established criteria, assign lawyers in private practice who are on the Legal Aid Panel to act on his behalf.

When assigning legal aid cases to lawyers in private practice, the LAD will consider the aided persons' interests and, having regard to the type and complexity of the case concerned, decide whether a particular case requires the assignment of an additional legal representative, usually a second counsel, to assist the assigned solicitor and counsel to handle the case. If a legal aid recipient requests the LAD to assign a second legal representative, the LAD will consider the suggestion having regard to the complexity of the case concerned. The fees payable to the legal representatives assigned by the LAD (including the second counsel) are borne by the LAD. In criminal cases, the situation where the LAD assigns a second counsel is rare.

According to the LAD, apart from the above situation, a legal aid recipient or a counsel assigned by the LAD, with the former's consent, may suggest engaging an additional counsel who is not assigned by the LAD to assist in the case. These counsel are less senior or less experienced, and are yet to be qualified for being assigned legal aid cases. They are engaged on a pro bono basis or only receive honorarium for assisting in handling these cases, with a view to gaining experience. Such practice for training young counsel has been established in the field and senior counsel often subsidise such honorarium. As pointed out by the LAD, double payments would not exist in legal aid cases. According to the LAD, as with established practice, it will monitor and consider the development and circumstances of individual cases, and decide whether to continue providing legal aid to the recipients on the premise that the recipients' interest and the proper use of public fund are balanced.

Thank you, President.

[Missing man in Hung Hom located](#)

A man who went missing in Hung Hom has been located.

Yeung Kam-mun, aged 52, went missing after he left an elderly home on Lok Shan Road, Hung Hom on December 31, 2020 afternoon. A staff member of the

elderly home made a report to Police on January 2 this year.

The man returned to the elderly home last night (January 5).

LCQ3: “LeaveHomeSafe” mobile application

Following is a question by the Hon Yung Hoi-yan and a reply by the Secretary for Innovation and Technology, Mr Alfred Sit, in the Legislative Council today (January 6):

Question:

To cope with the epidemic, the Government launched the "LeaveHomeSafe" mobile application (app) on November 16 last year for members of the public to record their whereabouts by themselves through scanning a QR code. Later on, the Government required that the persons-in-charge of specified premises such as those for catering businesses must apply for a QR code of the app, and then display it at the entrance or a conspicuous position of the premises. In this connection, will the Government inform this Council:

(1) of the number of premises at which a QR code is now displayed, with a breakdown by whether such premises belong to the public or private sector and, among the private-sector premises, the number of those which are not specified premises; in respect of each type of specified premises, the number and percentage of those at which a QR code has been displayed; the number of those premises whose persons-in-charge have been prosecuted for not displaying a QR code as required, and the penalties imposed on the convicted persons;

(2) of the up-to-date number of downloads of the app and its percentage in the population of Hong Kong; whether the response of the members of the public and persons-in-charge of private-sector premises to the app to date has met the expectation of the authorities; and

(3) whether it has reviewed, under the circumstances that members of the public are not mandated to use the app, the contribution towards combating the epidemic made by the measure of requiring specified premises to display a QR code; whether it will consider afresh requiring members of the public to use the app to scan the QR code at specified premises before they may enter them?

Reply:

President,

The Government launched the "LeaveHomeSafe" mobile app on November 16, 2020 to provide members of the public with a convenient digital tool for recording the time of their visits to different venues and taxi rides. The mobile app will notify a user if he or she is later identified to have visited the same venue that a confirmed patient has visited at about the same time or taken the same taxi that a confirmed patient (either the driver or the passenger) has taken on the same day. In the unfortunate event of infection, the user's visit records stored in the app can assist the Department of Health's Centre for Health Protection (CHP) in epidemiological investigations and trace other close contact.

In consultation with the Food and Health Bureau, the replies to the three parts of the question are as follows:

(1) To date, over 67 000 public and private venues have participated in the scheme to display the "LeaveHomeSafe" venue QR code for members of the public to scan and record their visits, of which about 54 000 are private venues. A breakdown of the venues is at table.

In view of the development of the local epidemic, the Government on November 24, 2020 required all persons responsible for carrying on catering businesses and scheduled premises that are allowed to open (excluding bars or pubs, bathhouses, clubs or nightclubs and party rooms which are required to close under the direction) to apply for a "LeaveHomeSafe" venue QR code from the Government on or before December 2 in accordance with the directions and specifications under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F). Subsequently the Government also issued directions that except club-houses and hotels or guesthouses, all scheduled premises regulated under Cap. 599F must be closed from December 10 onwards. Club-houses, hotels or guesthouses and catering businesses are required to display the QR code poster in the prescribed dimension at the entrance to the premises or at a conspicuous position within two working days upon receipt. Persons responsible for carrying on catering businesses and managers of scheduled premises who contravene the statutory requirements under Cap. 599F commit a criminal offence and is liable to a maximum fine of \$50,000 and imprisonment for six months.

Catering businesses and other scheduled premises which are still open for business are required to display the "LeaveHomeSafe" venue QR code at a conspicuous place. The various law enforcement agencies have been deploying additional staff to step up inspections in all districts across the territory to ensure that relevant premises operators and staff comply strictly with the directions and meet the requirements and restrictions under Cap. 599F, including proper display of the "LeaveHomeSafe" venue QR code. From December 2, 2020 to January 4, 2021, the law enforcement agencies conducted over 87 000 inspections of premises regulated under Cap. 599F. In respect of the requirement to display QR code, they issued 70 and 24 verbal warnings to catering businesses and scheduled premises respectively, and initiated prosecution procedures against 18 catering business operators for failing to display the QR code appropriately.

(2) The latest number of downloads of the "LeaveHomeSafe" mobile app exceeds 430 000. Since the launch of the scheme, the number of private venues from various sectors participating in the scheme has increased from 1 000 or so at the beginning to about 54 000. We have also continuously enhanced the app having regard to the views of the public and the industry to facilitate the use by the public, including updating the access permissions required for the app, adding new functions for reviewing personal visit records, auto check-out and simplifying steps for visiting different venues. We will continue to explore different technologies and solutions to improve user experience, and continue to invite different sectors to display the QR code and promotional poster at their venues and encourage the public to use the app. In addition, we will continue to promote and educate the public to use the "LeaveHomeSafe" mobile app through TV advertisements and promotional video clips, and solicit the public's support in using technology to record their whereabouts in order to fight the virus together.

(3) In designing the "LeaveHomeSafe" mobile app, the Government's objective is to facilitate members of the public to record more effectively and precisely the dates and times of their visits to different venues under the new normal in the fight against the epidemic, with a view to helping the public establish a habit of recording their whereabouts to minimise the risk of further transmission of the virus and enhance the public's confidence in visiting different venues. Regardless of whether those confirmed cases are using the "LeaveHomeSafe" mobile app, they are required to provide the CHP with information on the venues they visited during the infectious period. Relevant information will be released in the form of open data for the "LeaveHomeSafe" mobile app to download for comparison and sending notifications to relevant users. We will continue to promote display of the QR code in more venues and encourage users to scan and record the time of their visits so that the app can play a greater role in increasing vigilance and self-protection of the public, enhancing their confidence in visiting different venues, and assisting the CHP in epidemiological investigations.

Depending on the changes in the epidemic and expert advice, the Government will continue to explore more effective ways to deploy the "LeaveHomeSafe" mobile app and other technologies to help the public in the prevention and fight against the epidemic.

Thank you, President.

Number of venues participating in the Scheme to display the "LeaveHomeSafe" QR Code:

Public venues	
Government and public organisation buildings and facilities	About 5 600

Community facilities, e.g. sports centres, swimming pools, libraries, museums, community halls, community centres and playgrounds	About 2 600
Public works and construction sites, transportation and related facilities	About 1 100
Public rental estate blocks and related facilities	About 1 900
Education institution venues	About 900
Hospitals and clinics	About 600
Others	About 300
Total:	About 13 000

Private venues	
Food and beverage venues, e.g. restaurants, cafes, cake shops, bakery shops and food and beverage related companies	About 24 800
Non-government organisations and residential buildings	About 9 300
Stores and shopping malls	About 7 000
Sports, recreation and leisure facilities	About 4 900
Hair salons, massage establishments and beauty parlours	About 3 000
Hotels and guesthouses	About 1 500
Bank branches and financial institutions offices	About 1 400
Others	About 2 100
Total:	About 54 000

Effective Exchange Rate Index

The effective exchange rate index for the Hong Kong dollar on Wednesday, January 6, 2021 is 100.1 (down 0.1 against yesterday's index).