

Transcript of remarks by CS and SJ

Following is the transcript of remarks by the Chief Secretary for Administration, Mr Henry Tang, and the Secretary for Justice, Mr Wong Yan Lung, SC, at a media session today (January 4):

Reporter: Why doesn't the Government consider a judicial review?

Chief Secretary for Administration: This question is something I have elaborated on before. I would let the Secretary for Justice respond in a detailed and more comprehensive manner.

Secretary for Justice: The Chief Secretary has in fact explained the reasons. But before going into and repeating those reasons, may I first of all emphasise that the Government has not changed its legal position. As to whether or not LegCo has the power to repeal the designation order made by the Chief Executive, we maintain the view that they do not have the power to do so. We have in fact been very careful in going into all different angles. We have also retained two independent leading counsel to look into this matter for us. Apart from Mr Michael Thomas SC, we have also retained Lord Pannick QC to look into this matter. They have come to the view, agreeing with the Government, that the repeal order did not have sufficient legal basis. However, in order to proceed, we have to consider what is best in the interest of Hong Kong. We have not taken the matter lightly. That's why today, we have reiterated our legal position. We have maintained that we are not agreeing with the LegCo and that in appropriate circumstances, should the matter crop up again, we do not preclude the possibility of having to seek the court's help to resolve the matter. However, as the Chief Secretary has explained, we have considered the matter comprehensively. There are three main reasons as to why we have decided not to seek a judicial review.

First of all, we emphasise very much the good relationship between the executive and the legislature. That's of paramount importance. Unless there is really no other alternative, we do not resort to litigation lightly.

Secondly we have also considered the nature of the difference between LegCo and the administration on this matter. We do not believe that the matter hinges on very fundamental differences on the constitutional role of LegCo in vetting subsidiary legislation. I think the difference really lies in the interpretation of the Country Parks Ordinance. That is the second matter that we have taken into account in assessing the dispute in question.

Thirdly, at the same time when we are considering the legal position, colleagues are also looking into the question of how to deal with waste management in Hong Kong in a very comprehensive manner. Mr Edward Yau will deal with the matter in great detail later on this afternoon and you'll appreciate the work that has been put in. After doing the comprehensive study and analysis, we have come to the view that we don't have to, at this stage, proceed with the five hectares, the subject matter of the designation order

converting the Country Park into the landfill. Because of that policy decision, the immediate need to resort to judicial review in order to achieve the position - that the five hectares could be used as landfill purpose - that immediate need is not there. After taking into account of all these considerations without in any way compromising our legal position, we have decided not to pursue the judicial review.

(Please also refer to the Chinese portion of the transcript)

Ends/Tuesday, January 4, 2011