

## Government statement on matters in relation to oath-taking

\*\*\*\*\*

As regards how the Hong Kong Special Administrative Region Government will follow up on the oath-taking of individual Legislative Council (LegCo) members, a Government spokesman made the following statement today (December 2):

Article 104 of the Basic Law stipulates that, "When assuming office,...members of the ...Legislative Council ... must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China."

Section 21 of the Oaths and Declarations Ordinance (Cap 11) provides that:

### "Consequence of non-compliance

Any person who declines or neglects to take an oath duly requested which he is required to take by this Part, shall-

(a) if he has already entered on his office, vacate it, and

(b) if he has not entered on his office, be disqualified from entering on it."

On November 15, the Honourable Mr Justice Thomas Au of the Court of First Instance of the High Court, delivered a judgment (in HCAL 185/2016) on whether the oath-taking of Sixtus Leung Chung-hang (Leung) and Yau Wai-ching (Yau) on October 12 complied with the relevant legal requirements. Further to the case of Leung Kwok Hung v. Clerk to the Legislative Council (HCAL 112/2004) in 2004, Mr Justice Au explained relevant legal principles regarding oath-taking of LegCo members including paragraph 33 of

the judgment:

"In the premises, the fundamental and essential question to be answered in determining the validity of the taking of an oath is whether it can be seen objectively that the person taking the oath faithfully and truthfully commits and binds himself or herself to uphold and abide by the obligations set out in the oath."

Leung and Yau appealed against the above judgment of Mr Justice Au. After considering the Interpretation of Article 104 of the Basic Law adopted by the Standing Committee of the National People's Congress made on November 7, the relevant case law and other laws, the Court of Appeal dismissed their appeals on November 30 and upheld the judgment of Mr Justice Au.

The Hong Kong SAR Government and the Chief Executive have the constitutional responsibility to uphold and implement the Basic Law and execute the relevant laws under the Basic Law. As such, the Government has the responsibility to study the above judgments so as to decide whether or not to take any follow-up actions in respect of the question of validity of the oath-taking by other LegCo members.

Having studied in detail and taken into account the legal advice of independent senior counsel and counsel, the Government has on this (December 2) afternoon commenced legal proceedings against the following LegCo members and requested the Court to declare their oaths purportedly taken as invalid and their office as now vacant:

1. Lau Siu-lai;
2. Yiu Chung-yim;
3. Nathan Law Kwun-chung; and
4. Leung Kwok-hung

The Government stresses that the decision to initiate legal proceedings was purely a decision based on legal and

implementation consideration, without any political consideration.

The Government is aware that some members of the public have initiated legal proceedings against the above-mentioned and other LegCo members. However, the Government considers it inappropriate to take part in those legal proceedings only as an interested party. The main reasons are as follows:

1. As stated above, the Government has constitutional responsibility to uphold and implement the Basic Law and other relevant laws. While the Government respects the rights of members of the public in commencing legal proceedings, the view is that the Government should conduct legal proceedings of this nature which involve great public interests. The Department of Justice will seek directions from the Court as to how to proceed and handle all the relevant legal proceedings.
2. If the Government is not the Applicant of the legal proceedings, the Government may not have the legal or procedural rights to make decisions on important matters (such as the grounds and content of the application) and could lead to undesirable circumstances.

Ends/Friday, December 2, 2016