

LCQ10: Legal professional privilege

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (January 11):

Question:

On December 5 last year, the then Financial Secretary stated in his opening remarks at a meeting of the Panel on Financial Services of this Council that the Chief Executive and the Secretary for Justice had commenced legal proceedings to request the court to declare the Legislative Council (LegCo) oaths taken by four LegCo members, namely Leung Kwok-hung, Yiu Chung-yim, Lau Siu-lai and Nathan Law Kwun-chung, as invalid (and to declare the relevant offices of LegCo members to be vacant); under such circumstances and in accordance with the legal advice of the Department of Justice (DoJ), public officers including himself would not respond to the questions and comments from the four LegCo members before the court made the final judgment. The authorities subsequently indicated on December 14 that in the current circumstances, it was not appropriate for them to disclose the contents of the aforesaid legal advice which was subject to the protection under legal professional privilege (the privilege). In this connection, will the Government inform this Council:

(1) whether it will, having regard to public interest (e.g. the public's right to know), give up the privilege and disclose the contents of the aforesaid legal advice, particularly the reasons or justifications based on which DoJ suggested that public officers should not respond to the questions and comments from the four members when the court has not yet ruled that they have vacated their offices of LegCo members; and

(2) whether it has assessed if the Government, by acting in

accordance with the aforesaid legal advice, will contravene the following provisions under the Basic Law: "The Government of the Hong Kong Special Administrative Region must ... be accountable to the Legislative Council of the Region: ... it shall answer questions raised by members of the Council" as stipulated in Article 64, and "The Legislative Council ... shall exercise the following powers and functions: ... (5) To raise questions on the work of the government; ..." as stipulated in Article 73?

Reply:

President,

A consolidated reply to the question raised by the Hon Dennis Kwok is as follows:

As the Government pointed out in its earlier reply to a relevant request of the Panel on Financial Affairs, having considered the Chairman's request carefully, the Government does not consider that, in all the circumstances, it is appropriate to disclose the advice it has obtained which is subject to legal professional privilege. When making the said decision, the Government has already taken into account all relevant factors, including public interest as mentioned by Hon Dennis Kwok. The request to waive legal professional privilege therefore cannot be acceded to.

The Government agrees that, according to Article 64 of the Basic Law, the Government has the duty to answer questions raised by Member of the Legislative Council, and that according to Article 73(5) of the Basic Law, the LegCo has the power and function to raise questions on the work of the Government. Nevertheless, as pointed out in the Government's letters to the LegCo President and members concerned during the period from October 31 to December 16, 2016, it has always been the Government's position that public officers attending meetings of the LegCo or its

committees will only respond to questions and comments from such members who have duly taken the oath in accordance with the law. Yet, with a view to avoiding unnecessary arguments and maintaining a smooth operation in the LegCo in the overall public interest, but entirely without prejudice to the Government's position and legal proceedings, Government officials will respond to questions and comments from all members and persons who purported to act as members.

Ends/Wednesday, January 11, 2017