



**THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION**
Hong Kong Economic and Trade Office
香港特別行政區政府
香港駐倫敦經濟貿易辦事處
18 Bedford Square, London WC1B 3JA, UK

17 November, 2020

Editor
The Guardian

Dear Editor,

The Hong Kong Special Administrative Region (HKSAR) Government announced on 11 November the disqualification of four Legislative Council (LegCo) members, namely Mr Alvin Yeung, Dr Kwok Ka-ki, Mr Dennis Kwok and Mr Kenneth Leung. This letter sets out the background to the announcement in the hope of putting the matter in perspective.

Article 104 of the Basic Law (BL), the constitutional document of the HKSAR, clearly stipulates that LegCo members “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”. According to the Interpretation of BL Article 104 made by the Standing Committee of National People's Congress (NPCSC) on 7 November, 2016, if a person, after taking the oath, engages in conduct in breach of the oath, the person shall bear legal responsibility in accordance with the law.

The aforementioned members of the sixth-term LegCo had submitted nominations to run for the 2020 LegCo General Election originally scheduled for 6 September. Their nominations were invalidated by Returning Officers before the end of the nomination period, and they hence lost the qualification for running for the election of the seventh-term LegCo. The Returning Officers clearly stated that the behaviour of the four persons was not in compliance with the declaration requirement for candidates under relevant section of the Legislative Council Ordinance (Cap. 542), i.e. to uphold the Basic Law and pledge allegiance to the HKSAR of the People’s Republic of China (PRC).

In view of the severe epidemic situation of the COVID-19 epidemic, the HKSAR Government announced on 31 July that the 2020 LegCo General Election

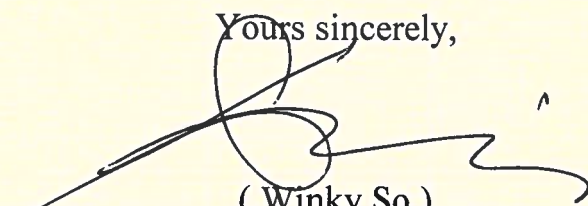
would be postponed for a year. To resolve the problem of a lacuna in the legislature arising from the postponement of the election of the seventh-term LegCo for a year, the NPCSC made a decision on 11 August that the sixth-term LegCo “will continue to discharge its duties for no less than one year until the commencement of the seventh-term LegCo of the HKSAR.”

The four LegCo members were decided by Returning Officers in accordance with the law to be not genuinely upholding the BL and honouring the pledge of allegiance to the HKSAR of the PRC. It would be illogical to allow persons who were ineligible to contest in a LegCo election to continue to discharge their duties as LegCo members. As this involves the NPCSC’s decision made on 11 August and its Interpretation of Article 104 of the BL, the HKSAR Government requested the Central People's Government to invite the NPCSC to resolve the problem from a constitutional perspective.

The decision made by the NPCSC on 11 November sets out clearly the legal consequence of a LegCo member’s failure to comply with the legal requirements of “upholding the Basic Law of the HKSAR of the PRC” and “swearing allegiance to the HKSAR of the PRC”. It also stipulates that such consequences were applicable to LegCo members who were confirmed in accordance with the law to be ineligible to become candidates for LegCo election.

The HKSAR Government fully recognises that the rule of law is the cornerstone of Hong Kong’s long-term prosperity and stability, and is determined to safeguard this core value at all times. Bills and funding proposals tabled by the HKSAR Government still require LegCo’s approval in accordance with the law. The HKSAR Government will, as always, endeavour to address the concerns of LegCo members, and ensure that our policies meet public needs.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winky So', written over a large, faint circular stamp or watermark.

(Winky So)
Director-General