

CIVIL SERVICE BUREAU CIRCULAR NO. 2/2021
Oath-taking / Declaration Requirement for Civil Servants
Appointed to the Civil Service before 1 July 2020

Annex B

Explanatory Note on the Content of the Oath or Declaration
for Civil Servants

In connection with the requirement for civil servants to declare by taking an oath or signing a declaration that they will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law"), bear allegiance to the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China ("PRC"), be dedicated to their duties and be responsible to the Government of the HKSAR, this note elaborates on the content of the oath or declaration and what constitutes a breach of the oath or declaration.

Oath-taking / Signing of Declaration

2. It has always been the duty of civil servants to uphold the Basic Law, bear allegiance to the HKSAR, be dedicated to their duties and be responsible to the Government of the HKSAR according to the Basic Law and the Civil Service Code ("the Code"). This has also been what the Government and society expect and require of them all along. All persons holding civil service posts should in no uncertain terms acknowledge and accept these duties. Civil servants' oath-taking or signing of declaration is to enhance their awareness of the expectations and responsibilities brought on them by their official capacity. These expectations and responsibilities have already been in existence whether before or after a civil servant has taken an oath or signed a declaration.

"Uphold the Basic Law, bear allegiance to the HKSAR"

3. The Basic Law is the constitutional document of the HKSAR, enacted by the National People's Congress in accordance with the Constitution of the PRC. The Constitution of the PRC and the Basic Law have jointly provided the constitutional basis for the HKSAR. The Basic Law prescribes the systems to be practised in the HKSAR in order to ensure the implementation of the basic policies of the PRC regarding Hong Kong, including "One Country, Two Systems", "Hong Kong People Administering Hong Kong" and a high degree of autonomy. The above are clearly set out in the Preamble and various articles under Chapters I and II of the Basic Law. The Preamble of the Basic Law clearly stipulates that "[u]pholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of

its history and realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China". Article 1 of the Basic Law also spells out clearly that the HKSAR is an inalienable part of the PRC.

4. Accordingly, the core of upholding the Basic Law and bearing allegiance to the HKSAR are to recognise that the HKSAR is an inalienable part of the PRC and to support the implementation of "One Country, Two Systems" in the HKSAR.

5. As provided in Article 1 of its Chapter I, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law") is enacted for the purpose of "ensuring the resolute, full and faithful implementation of the policy of One Country, Two Systems under which the people of Hong Kong administer Hong Kong with a high degree of autonomy; safeguarding national security; preventing, suppressing, and imposing punishment for the offences of secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to the Hong Kong Special Administrative Region; maintaining prosperity and stability of the Hong Kong Special Administrative Region; and protecting the lawful rights and interests of the residents of the Hong Kong Special Administrative Region." As civil servants of the HKSAR, their allegiance to the HKSAR should also be manifested in supporting and acting in accord with the Government of the HKSAR in the administration of Hong Kong, including supporting the implementation of the National Security Law, so as to act in accord with the Government of the HKSAR in the discharge of its constitutional duty of safeguarding national security.

6. Under "One Country, Two Systems", when considering and handling policy matters and issues, civil servants of the Government of the HKSAR should discharge their duties in accordance with the Basic Law, as well as the laws and systems of Hong Kong, while at the same time take into consideration the perspective that Hong Kong is part of the country, so as to enable them to discharge their duties in a comprehensive and thorough manner.

7. For civil servants with non-Chinese nationalities or holding foreign passports, it remains their duty to comply with all provisions under the Basic Law and the National Security Law, and also fulfill the responsibilities of civil servants as elaborated in

paragraphs 4 to 5 above.

“Be dedicated to my duties and be responsible to the Government of the HKSAR”

8. Both the Basic Law and the Code clearly require civil servants to be dedicated to their duties and be responsible to the Government of the HKSAR. Under Article 99 of the Basic Law, civil servants must be dedicated to their duties and be responsible to the Government of the HKSAR. Civil servants, being a key component of the public service, have the constitutional role to give their best in serving the Chief Executive and the Government of the day. According to the Code, civil servants shall serve the Chief Executive and the Government of the day with total loyalty and to the best of their ability.

9. To be dedicated to their duties and be responsible to the Government of the HKSAR mean that civil servants must work towards the policy objectives of the Government of the HKSAR when discharging their duties, act in accordance with the policies and decisions of the Government of the HKSAR, and not be influenced or even dominated by other factors. In practical terms, civil servants shall:

- (a) be committed to the rule of law;
- (b) uphold probity and integrity;
- (c) be politically neutral, i.e. they shall not allow their own political beliefs or personal political affiliation to determine or influence the discharge of their official duties, and be impartial; and
- (d) fulfill their duties and obligations responsibly, and devote their abilities, energies and attention first and foremost to their work whenever so needed by the Government of the HKSAR.

What constitutes a breach of the oath or declaration of “uphold(ing) the Basic Law, bear(ing) allegiance to the HKSAR”

10. Improper conduct which constitutes a breach of the oath or declaration of “uphold(ing) the Basic Law” and/or “bear(ing) allegiance to the HKSAR” may take many different forms. While it is not feasible to list exhaustively all types of such improper conduct, a person who commits any of the following improper conduct could not be genuinely upholding the Basic Law or bearing allegiance to the HKSAR:

- (a) advocating or supporting “Hong Kong independence”;
- (b) refusing to recognise the PRC’s sovereignty over Hong Kong and the exercise of the sovereignty;
- (c) soliciting intervention by foreign or external forces in the HKSAR’s affairs; or
- (d) carrying out other activities endangering national security.

11. A civil servant shall have already breached the oath or declaration of “uphold(ing) the Basic Law” and/or “bear(ing) allegiance to the HKSAR” if he / she is convicted by a court of an offence endangering national security. According to Article 35 of the National Security Law, the officer shall be removed from his or her office upon conviction and disqualified from holding public office.

What constitutes a breach of the oath / declaration of “be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR”

12. The rule of law is the cornerstone of the HKSAR Government in the administration of Hong Kong. Civil servants who are dedicated to their duties and responsible to the Government of the HKSAR must comply with the law to be able to support and act in accord with the Government of the HKSAR in the administration of Hong Kong. Accordingly, any serious violation of the law, including (but not limited to) violent acts that disrupt public order and safety or illegal activities in the community that undermine or damage the capabilities of law enforcement agencies in law enforcement and their credibility, with a view to undermining the Government of the HKSAR in the governance and administration of Hong Kong, amounts to a breach of the oath or declaration of “be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR”. Apart from that, any civil servant who knowingly or recklessly incites illegal behaviour in society, or participates in organisations or activities that aim to undermine the Government of the HKSAR in the governance and administration of Hong Kong, shall also be in breach of the oath / declaration of “be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR”.

13. As an officer dedicated to his / her duties and responsible to the Government of the HKSAR, a civil servant who exhibits improper conduct that “aims to undermine the Government of the HKSAR in the governance and administration of Hong Kong”,

and by way of which seeks to incite discontent in the society against the administration of the Government of the day thus instigating or aggravating social instability is in breach of the oath or declaration. Such improper conduct does not only totally violate the responsibilities and conduct required of a civil servant, but it is also extremely unfair to the majority of civil servants who are dedicated and committed to their duties, and will seriously tarnish the well-established reputation of the civil service. What amounts to improper conduct that “aims to undermine the Government of the HKSAR in the governance and administration of Hong Kong” depends on the circumstances of individual cases. Merely expressing views in public to oppose a certain policy or decision of the Government (regardless of whether this has breached any other applicable civil service disciplinary rules and regulations) will not normally constitute improper conduct that “aims to undermine the Government of the HKSAR in the governance and administration of Hong Kong”.

14. Apart from illegal conduct that “aims to undermine the Government of the HKSAR in the governance and administration of Hong Kong”, other misconduct that seriously violates the law may also amount to a breach of the oath or declaration of “be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR”. Whether any illegal conduct by a civil servant constitutes a breach of the oath or declaration of “be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR” depends on the actual circumstances of the case and other relevant factors for consideration, such as the gravity of the illegal conduct concerned, the position and duties of the officer concerned, etc.

15. When discharging their duties¹, civil servants shall work towards the policy objectives of the Government of the HKSAR and act in accordance with the policies and decisions of the Government. They shall not allow themselves to be influenced or dominated by other factors. Should he / she use his / her official position to further personal interests or the private interests of others, it will constitute a breach of the oath or declaration of “be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR”.

16. Likewise, it will constitute a breach of the oath or declaration of “be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR” if civil servants allow their own political beliefs or personal party political affiliation to influence or dominate the discharge of their duties, express opinion contrary to the

¹ Discharge of duties include giving advice, making decisions and taking actions, and allocating public resources.

Government's stance in their official capacity, or use public resources for party political purposes. It will also be in conflict with the oath / declaration of "be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR" if civil servants express personal views without having regard to the appropriateness of the media or channel through which the views are expressed, or the presentation or audience of the views expressed, etc., thereby causing the community to associate such views with their official capacity as civil servants, and possibly cast doubts on their impartiality in the discharge of duties or on the principles and core values upheld by them as civil servants, by their bureaux/departments, grades or the entire civil service. Depending on the gravity and severity of the case, it may also constitute a breach of the oath or declaration. In sum, while civil servants enjoy the rights enshrined in the Basic Law and the Hong Kong Bill of Rights Ordinance (such as the freedoms of speech, peaceful assembly and association), they must also be well aware of the requirements and responsibilities brought on them by their official positions.

17. Civil servants who have committed any misconduct as mentioned in paragraphs 12 to 16 above are not only in breach of the oath or declaration of "be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR", but are also in breach of the oath or declaration of "bear(ing) allegiance to the HKSAR".

18. Civil servants shall deliver their work to the best of their ability. Those who, not merely out of incompetence, are grossly negligent of their duties, grossly fail to discharge their duties or grossly deliver their duties in a wrongful manner are also in breach of the oath or declaration of "be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR".

19. Chapters 3, 4 and 5 of the Code provide detailed elaborations on the fundamental standards of conduct required of civil servants, including what constitutes commitment to the rule of law, probity and integrity, political neutrality, dedication to their duties, etc. Any violation of the standards provided in the above-mentioned Chapters may amount to a breach of the oath or declaration of "be(ing) dedicated to my duties and be(ing) responsible to the Government of the HKSAR".

Handling mechanism

20. The Government of the HKSAR has an established mechanism to handle disciplinary matters of civil servants. The mechanism is applicable to a civil servant both before and after he/she has taken the oath or signed the declaration. If a civil

servant commits a misconduct, the Government will, having regard to the specific circumstances of the case, take appropriate disciplinary action(s) in accordance with the established mechanism against the officer for the misconduct committed. The above applies to misconduct mentioned in paragraphs 10, 12 to 16 and 18 above. In determining the punishment arising from the misconduct involved, the Government will take into account the circumstances, nature and gravity of the case, etc., and will certainly also take into consideration the fact that the misconduct is committed by the civil servant even though the officer has taken an oath or signed a declaration to acknowledge the expectations and responsibilities brought by the official position on him/her. For any case which involves a breach of the oath / declaration by a civil servant, the disciplinary authority will consider whether it is suitable for the officer to continue to discharge his / her official responsibilities.

Views and advice expressed by civil servants in the course of discharging duties

21. Maintaining a work force of civil servants who are dedicated to their duties, committed to the rule of law, objective and impartial in the discharge of duties is of vital importance to the effective operation of the Government. It is a duty of civil servants, as the backbone of the HKSAR Government, to express their views and analysis throughout the course of policy deliberation, formulation and implementation, as well as on the ways to enhance the quality and efficiency of the work involved. Within policy bureaux and departments, active participation, offer of advice and contribution of views via different channels by civil servants in the course of discharging duties would enable constructive discussions to take place internally. The Government cherishes the views and advice tendered by civil servants for enhancing governance. Expression of such views and advice by civil servants is a manifestation of their dedication to duties, and would not be regarded as a breach of the oath or declaration.

Civil Service Bureau
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