



Should You Sue the Legislative Council?

If you are not happy with a resolution passed or a piece of legislation enacted by the Legislative Council, should you sue the Legislative Council?

The short answer is that you should not. That is because the Legislative Council (LegCo) is not a legal entity and could not be sued as such¹. It is also the view of this author that after LegCo has lawfully passed a resolution or enacted an ordinance, it is *functus officio* so far as that particular resolution or ordinance is concerned.

This does not mean that an aggrieved person is without any remedy. The primary and normal remedy in respect of a statutory provision whose content contravenes a higher law is a declaration, made after the enactment has been passed, that the offending provision is void². Any legal action should therefore be directed not against the LegCo or its members but against the very resolution that was passed or ordinance enacted. Usually in such proceedings, the Secretary of Justice (SoJ) would be the defendant. But when it is SoJ himself who wants to challenge the validity of a LegCo resolution or an enacted ordinance, it is unclear who should be the defendant in such circumstances. However, legal proceedings may not be the only means. If the Government could muster the necessary number of votes in LegCo, it could repeal an ordinance or revoke a resolution.

**KW Kau
Consultant**

kwkau@cmkoo.com.hk

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1. Glory Success Transportation Limited v. Secretary for Justice HCAL93/2006 (CFI, Chu J). Also see Glory Success Transportation Limited v. Secretary for Justice HAMP2059/2008 (CA, Appeals Committee).
 2. See dicta of Lord Nicholls in *The Bahamas District of the Methodist Church in the Caribbean and the Americas v. Speaker of the House of Assembly* (2002-2003) 5 ITELR 311 which was adopted by Hartmann J in *Leung Kwok Hung v. President of Legislative Council* [2007] 1 HKLRD 387, 395.
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Mr. Kau Kin Wah is former Senior Assistant Legal Adviser of the Legal Service Division of the Legislative Council Secretariat. He has extensive experience in legislation scrutiny, public law issues and investigatory committees. He is also experienced in land law and conveyancing.

PLEASE NOTE

The law and procedure on this subject are very specialized. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

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