

## CHAPTER 4

### NOMINATION OF CANDIDATES

#### PART I : QUALIFICATION AND DISQUALIFICATION FOR NOMINATION

4.1 The law governing the qualification and disqualification for the nomination of candidates for the election of the EC subsectors is contained in the Schedule to the CEEO. The procedure for nomination of candidates for the EC subsector election is provided in the EAC (EP) (EC) Reg and EAC (NAC) (EC) Reg made by the EAC. *[Amended in September 2006]*

#### **Qualifications**

4.2 A person is eligible to be nominated as a candidate at an EC subsector election if he:

- (a) has reached the age of 18 years;
- (b) is both registered and eligible to be registered for a GC; and
- (c) is both registered and eligible to be registered as a voter for the relevant EC subsector or satisfies the RO for the relevant EC subsector that he has a substantial connection with the EC subsector.

[S 17 of the Schedule to the CEEO.]

### **Disqualifications**

4.3 A person is disqualified from being nominated as a candidate at a subsector election and from being elected as a member of the EC if he:

- (a) has ceased to have a substantial connection with the subsector concerned;
- (b) has ceased to be registered or eligible to be registered as an elector for a GC;
- (c) has in Hong Kong, or in any other place, been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or any substitute sentence or received a free pardon;
- (d) on the date of nomination or of the subsector election, is serving a sentence of imprisonment;
- (e) is or has been convicted within 3 years before the polling day:
  - (i) of having engaged in corrupt conduct or illegal conduct in contravention of the ECICO;
  - (ii) of an offence against Part II of the POBO; or
  - (iii) of any offence prescribed by the EAC Regulations;

- (f) is found for the time being under the Mental Health Ordinance to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or
- (g) is a member of the armed forces of the People's Republic of China or any other country or territory.

[S 18 of the Schedule to the CEEO.] *[Amended in September 2006]*

4.4 If a person is not a member of the Hong Kong and Kowloon DCs, New Territories DCs, a Hong Kong member of the National Committee of the CPPCC or the Chairman, a Vice-Chairman or a Councillor of the Full Council of the HYK, he is disqualified from being nominated as a candidate at a subsector election for the respective subsector, or from being elected as an EC member representing the respective subsector [s 18A of the Schedule to the CEEO]. *[Added in September 2006]*

## **PART II : NOMINATIONS ADVISORY COMMITTEES**

4.5 The EAC has the power to appoint NACs to provide advice, on request, to prospective candidates and ROs on the candidates' eligibility for nomination [s 3 of the EAC (NAC) (EC) Reg]. Each of these NACs is in the charge of either a Senior Counsel or a legal practitioner of not less than 10 years standing in accordance with established practice who, in the opinion of the EAC, is unconnected to any candidate or political organisation in Hong Kong, and is independent and impartial. *[Amended in September 2006]*

## **NAC's Service to Candidates**

4.6 NAC's service will be provided to candidates **only at an EC subsector ordinary election**. During a period to be announced by the REO – which normally ends 1 day before the commencement of the nomination – candidates may apply, by completing a specified application form obtainable from the REO or from any District Office, for the advice of the NAC as to whether he is qualified to be, or is disqualified from being, nominated as a candidate. He may make only 1 application in respect of a particular EC subsector election. While a prospective candidate may apply for advice only once in respect of a particular EC subsector, he may apply for advice in respect of more than 1 EC subsector.

4.7 The application must be:

- (a) sent to the Chief Electoral Officer (“CEO”) so as to be received by him:
  - (i) by post at the REO's office; or
  - (ii) by facsimile transmission; or
- (b) served on the CEO personally,

**on or before the deadline for application to be specified by the EAC.**

4.8 An NAC may, before giving its advice, request the applicant to make available to it within a specified period any information, particulars and evidence relating to his intended candidature. The NAC may also request the applicant to present himself before it at a specified time and place to assist it in the consideration of the application. The applicant may, at the specified time and

place, make representations to the NAC personally or through any person authorised by him in writing for the purpose.

4.9 Where an applicant does not make available any information, particulars or evidence as requested by the NAC, or fails to present himself before the NAC in response to a request, the NAC may:

- (a) refuse to consider the application or to give any advice on it; or
- (b) give qualified advice on the application having regard to either or both of the following:
  - (i) the fact that any information, particulars or evidence, or where appropriate, all of them, were not available to it;
  - (ii) the failure of the applicant to present himself before the NAC.

4.10 The NAC's advice to an applicant, including a decision to refuse to consider an application or to give advice, will be in writing and will be sent to the applicant not later than a date to be specified by the EAC.

4.11 The NAC's service is also available to designated bodies in the religious subsector nomination process, regarding the qualification or disqualification of persons proposed to be nominated by such designated bodies and the proposed nominees themselves.

4.12 Any advice given by an NAC or a refusal to give any such advice does not preclude a person from seeking nomination as a candidate in an election or proceeding with a nomination, if he so wishes.

[S 6 of the EAC (NAC) (EC) Reg.]

### **NAC's Service to ROs**

4.13 NAC's service will be provided to ROs **at both EC subsector ordinary elections and by-elections**. During the period from the commencement, up to 1 day after the close, of the nomination period, ROs may seek the advice of an NAC, where they consider necessary, on the eligibility for nomination of (a) the candidates who have submitted their nominations; and (b) for the religious subsector, the nominees proposed by designated bodies.

4.14 The RO is required, in making a decision as to (a) whether a particular candidate is validly nominated in respect of the subsector for which the candidate seeks nomination, or (b) whether a particular nominee is validly nominated in respect of the religious subsector for which a designated body proposes the nomination, to have regard to any advice given by an NAC on that candidate/nominee [s 14 of the EAC (EP) (EC) Reg]. The decision on the validity of nomination, however, remains with the RO alone.

[S 7 of the EAC (NAC) (EC) Reg.]

## **PART III : WHEN AND HOW TO NOMINATE**

### **When to Nominate**

4.15 Nominations may be made during the **nomination period** specified in the Notice of Election published in the Gazette [ss 4 and 5 of the EAC (EP) (EC) Reg]. An election timetable will be provided to each candidate by the RO. The ordinary business hours on each working day (ie any day other than a general holiday or Saturday) in the nomination period for the ROs to

accept nominations are from 9 am to 5 pm, and on a Saturday, from 9 am to 12 noon. **Candidates are encouraged to submit their nominations well before the expiration of the nomination period to allow time for any errors in their nomination forms to be corrected.**

### **How to Nominate**

4.16 Nomination forms specified by the EAC are available from any District Office of the Home Affairs Department or from the REO.

4.17 The nomination form comprises:

(a) The nomination

It must be subscribed by not less than **5 voters registered for the EC subsector concerned** (other than the candidate himself), and each voter may only subscribe **as many nominations** regarding a particular EC subsector **as there are vacancies** to be filled [s 8(1), (2) and (3) of the EC Subscribers & Deposit Reg]. *[Amended in September 2006]*

If, however, the nomination subscribed by a voter has been held to be invalid, or the candidate withdraws his nomination, he may subscribe another one instead before the end of the relevant nomination period, and his signature shall not be inoperative on that other nomination form. Under this scenario, if he subscribes more than 1 nomination form in contravention of the regulations, his signature shall be operative only on the first one delivered [s 8(4) of the EC Subscribers & Deposit Reg]. *[Amended in September 2006]*

**IMPORTANT :**

A candidate who submits a nomination form on the last few days of the nomination period is advised to include more than the minimum required number of subscribers for his nomination, to avoid the risk of invalidation of the nomination should one or more of the subscribers be subsequently found not to be qualified as subscribers. A candidate should make his best endeavour to ensure that the voters subscribing his nomination form are eligible. Voters subscribing a nomination should sign the nomination form **personally**. *[Amended in October 2006]*

No illegal act shall be used to cause a voter to subscribe or not to subscribe a nomination. Intimidation is an offence under s 24 of the Crimes Ordinance (Cap 200), punishable by a fine or up to 5 years' imprisonment. Bribery is also an offence punishable by fine or imprisonment. *[Amended in September 2006]*

(b) The candidate's consent to nomination and declarations

This must be completed and signed by each candidate and endorsed by a witness. A candidate must sign a declaration to the effect that the candidate is eligible to be nominated as a candidate for the particular subsector, is not disqualified from being so nominated, and consents to being so nominated.

[For details, see s 8 of the EAC (EP) (EC) Reg.]

**IMPORTANT :**

In the EC subsector election, no person shall be nominated for more than 1 EC subsector [s 20 of the Schedule to the CEEO]. When a person submits his nomination form, he must have withdrawn all his prior nominations, if any, and make a declaration (contained in the specified form) that either he has not been nominated before for any other subsector in the election, or if he has been so, he has withdrawn all those prior nominations. Where a candidate stands nominated [see para. 4.24 below], any of his subsequent nominations will be rejected as invalid.

In the nomination form, a candidate is required to state his occupation, and he is free to state his political affiliation for publication if he so prefers. Candidates should make sure that their nomination forms are properly completed before submission.

4.18 Each nomination form must be submitted to the RO for the subsector concerned together with the payment of an appropriate election deposit (see Part IV of this chapter for details). The RO may refuse to accept any nomination form where there is a material alteration of its content.

4.19 The completed nomination form must be lodged with the RO for the subsector concerned by the candidate **in person** during ordinary business hours, ie the hours between 9 am and 12 noon on a Saturday and the hours between 9 am and 5 pm on any day other than a general holiday, within the nomination period. The CEO may, in exceptional circumstances, eg the nominee's temporary absence from Hong Kong or incapacity due to illness, authorise any other form of delivery of the nomination form to the RO [s 8(13) of the EAC (EP) (EC) Reg].

### **False Declarations**

4.20 A candidate who knowingly and wilfully makes a statement which is false in a material particular in the declaration in the nomination form shall be guilty of an offence under the Crimes Ordinance punishable by a fine and imprisonment for up to 2 years. Under the EAC (EP) (EC) Reg, he shall be punishable by a fine and imprisonment for 6 months with the disqualifying effect as described in paras. 16.38 and 17.31 of these Guidelines [s 101(4) of the EAC (EP) (EC) Reg]. *[Amended in September 2006]*

## **PART IV : ELECTION DEPOSIT**

### **Payment of Election Deposit**

4.21 Each nomination form must be presented with the payment of an election deposit of \$1,000, in cash or by cheque, as prescribed by regulation made by the CE in Council [s 19 of the Schedule to the CEEO and s 3 of the EC Subscribers & Deposit Reg].

4.22 A nomination form will not be received by the RO unless it is accompanied by the required sum of election deposit.

### **IMPORTANT :**

Candidates are encouraged to pay their election deposit by cash or cashier order although they may pay by crossed cheque. In the event that a cheque is dishonoured, the nomination will be ruled

invalid unless the sum of deposit is made good before the expiration of the nomination period. In order to avoid the risk of invalidation of the nomination due to dishonoured cheque, candidates are strongly advised to submit the election deposit in cash or cashier order if they submit nomination in the last 3 working days (excluding Saturday) of the nomination period.

### **Return of Election Deposit**

4.23 The deposit will be returned to the candidate:

- (a) if he is not validly nominated;
- (b) if his nomination has been withdrawn;
- (c) if he has passed away or is disqualified from being nominated;
- (d) if he is elected; or
- (e) if he secures in his favour not less than 2.5% of the total number of ballot papers containing valid votes received in the EC subsector election or 5 such ballot papers, whichever is the greater.

The deposit will be forfeited if none of the above conditions is satisfied.

[For details, see ss 4 and 5 of the EC Subscribers & Deposit Reg.]

**PART V : VALIDITY OF NOMINATIONS**

[Ss 13, 14 and 15 of the EAC (EP) (EC) Reg and s 22 of the Schedule to the CEEEO]

4.24 Where the RO has received a nomination form within the nomination period, the candidate will be deemed to stand nominated unless the RO decides that the nomination is invalid.

4.25 The RO will make a decision as to the validity of a nomination as soon as practicable after receipt of the nomination form and will publish a notice stating which persons are validly nominated as candidates [s 22 of the Schedule to the CEEEO].

4.26 Where the RO has doubts as to whether or not a particular candidate is qualified to be nominated, he may apply to an NAC for advice.

4.27 Where a nomination appears to the RO to be invalid because of some errors that can be corrected within the nomination period, the RO will, if practicable, give the candidate a reasonable opportunity of correcting the errors before making a decision that the nomination is invalid. For example, if the entitlement of any subscriber is in doubt, a prospective candidate may be allowed to make a substitution as soon after the submission of his nomination form as practicable. However, no substitution for any subscriber or re-submission of a nomination form will be accepted after the close of the nomination period.

4.28 A nomination may be ruled invalid if any errors on the nomination form are not corrected by the close of the nomination period.

4.29 The RO may require such additional information from a candidate as he considers necessary to satisfy himself with regard to the validity of the nomination.

4.30 A nomination will not be valid unless it contains all the information and signatures required to be shown on the nomination form or by the RO and the candidate has made the declaration referred to in para. 4.17(b) above.

4.31 The RO can decide that a nomination is invalid only where:

- (a) the number or qualifications of the subscribers are not as required by the regulation made by the CE in Council regarding the EC subsector election [s 8 of the EC Subscribers & Deposit Reg];
- (b) the nomination form, including the nomination and declaration, has not been completed or signed as required by s 8 of the EAC (EP) (EC) Reg;
- (c) he is satisfied that the candidate is not qualified to be, or is disqualified from being, nominated as a candidate, having regard to any advice given by the NAC to an application made by him or by that candidate [see paras. 4.14 and 4.26 above];
- (d) the candidate has been nominated in another subsector and the RO is not satisfied that he has withdrawn that candidature;
- (e) the cheque for the payment of the election deposit of the candidate is dishonoured and has not been made good before the expiration of the nomination period;

- (f) he is sure that the candidate has passed away; or
- (g) the nomination form is not duly lodged within the nomination period [see paras. 4.15 and 4.19 above].

4.32 If, having decided that a candidate is validly nominated, but before the polling day, proof is given to the satisfaction of the RO that the candidate has passed away, he must publicly declare that the candidate has passed away and further declare which candidate is or candidates are validly nominated by the subsector. The RO does not have to make any such declaration if the candidate who has died is uncontested in the election by the subsector and the RO has publicly declared that the candidate was duly elected. [S 23 of the Schedule to the CEEO and s 20 of the EAC (EP) (EC) Reg.]

4.33 If, having decided that a candidate is validly nominated, but before the polling day, proof is given to the satisfaction of the RO that the candidate is disqualified from being nominated as a candidate, the RO must vary the decision to the effect that the candidate is not validly nominated. He must then publicly declare his varied decision and which candidate is or candidates are validly nominated. The RO may not vary his decision if the candidate who has been disqualified is uncontested and the RO has publicly declared that the candidate was duly elected. [S 23 of the Schedule to the CEEO and s 21 of the EAC (EP) (EC) Reg.]

## **PART VI : WITHDRAWAL OF CANDIDATURE**

4.34 An EC subsector election candidate may withdraw his candidature only before the close of nomination. He should complete and sign a specified

form titled “Withdrawal of Candidature” and lodge it with the RO concerned [s 21 of the Schedule to the CEEEO].

**IMPORTANT :**

It is an offence under ss 7 and 8 of the ECICO for a person to bribe, or use or threaten to use force or duress, against a candidate to withdraw his candidature, and for a candidate to solicit or accept a bribe to withdraw his candidature.

**PART VII : NOTICE OF NOMINATION**

4.35 The RO concerned will publish a notice in the Gazette within 14 days after the close of the nomination period, stating the name and address of each of all the validly nominated candidates, together with the number (which will be shown on the ballot paper) allocated by the drawing of lots to each candidate [s 18 of the EAC (EP) (EC) Reg]. Each validly nominated candidate will also be separately informed. *[Amended in September 2006]*

**PART VIII : PUBLICITY**

4.36 After the close of nomination, the RO will inform each validly nominated candidate the time and date on which he will draw lots to allocate a number to each candidate to be shown on the ballot paper and they may attend if they so wish. Thereafter, the REO will publish a brief introduction of the candidates in the form of a leaflet. The number of each candidate on the ballot

paper allocated to him by the drawing of lots will also be shown on this introductory leaflet. The leaflet will be mailed to the voters close to the time of the polling day.

4.37 Candidates are free to make use of this introductory leaflet to promote themselves. Any candidate who so wishes should submit the following to the relevant RO **before the close of the nomination:**

- (a) an introductory message in a specified form provided by the RO;  
and
- (b) 3 identical copies of his photograph with his name on the back, which must be in specified size, in colour and taken within the last 6 months.

4.38 The contents, nature and presentation of the candidate's messages in the introductory leaflet are exclusively the idea and work of the candidate himself. They will not be subject to alteration or edition by the REO unless they are considered to be indecent, defamatory or in any other way unlawful. Candidates are reminded that some voters are only able to read English.