

## CHAPTER 1

### INTRODUCTION

#### **PART I : THE LEGISLATIVE COUNCIL**

1.1 The Legislative Council (“LegCo”) of the Hong Kong Special Administrative Region (“HKSAR”) is constituted under the Legislative Council Ordinance (Cap 542) (“LCO”) for the purpose of enacting laws, examining and approving budgets, taxation and public expenditure, receiving and debating the policy addresses of the Chief Executive (“CE”), raising questions on the work of the Government, debating issues concerning public interests and handling complaints from Hong Kong residents, etc.

1.2 In accordance with the Basic Law and the LCO, the term of office of the LegCo is 4 years except the first term which was 2 years. Each term of its office is to begin on a date to be specified by the CE in Council. The first term LegCo was between 24 May 1998 and 30 June 2000. The second and third term LegCo began on 1 October 2000 and 1 October 2004 respectively and each is for 4 years. The CE must specify a date for holding a general election to elect the members for each term of office of the LegCo. A person returned as a member at a general election holds office from the beginning of the term of office of the LegCo next following the election and vacates office at the end of the term. A by-election will be held to fill a vacancy in membership of LegCo. However, no by-election is to be held within the 4 months preceding the end of the LegCo’s current term of office or if the CE has published in the Gazette an order dissolving that LegCo in accordance with the Basic Law. *[Amended in October 2007]*

1.3 The composition of the third term of the LegCo as set out in Annex II of the Basic Law is as follows:

- |  |    |
|--|----|
| (a) Members returned by geographical constituencies (“GCs”) through direct elections | 30 |
| (b) Members returned by functional constituencies (“FCs”)                            | 30 |

The composition of the fourth term of the LegCo is the same as the third term.  
*[Amended in January 2010]*

### **Geographical Constituency**

1.4 The HKSAR is divided into 5 GCs, each having 4 to 8 seats. The GCs are geographically based and a total of 30 LegCo members will be returned through the following 5 GCs: Hong Kong Island to return 6 members; Kowloon East to return 4 members; Kowloon West to return 5 members; New Territories East to return 7 members; and New Territories West to return 8 members. The list system of proportional representation for voting is adopted. Details of the features of GC elections are set out in Chapter 2. *[Amended in July 2008]*

### **Functional Constituency**

1.5 There is a total of 28 FCs, with each representing a different economic, social, or professional sector of the community. 30 LegCo members will be returned through the following 28 FCs: (1) Heung Yee Kuk; (2) Agriculture and Fisheries; (3) Insurance; (4) Transport; (5) Education; (6) Legal; (7) Accountancy; (8) Medical; (9) Health Services; (10) Engineering; (11) Architectural, Surveying and Planning; (12) Labour; (13) Social Welfare; (14) Real Estate and Construction; (15) Tourism; (16) Commercial (first); (17) Commercial (second); (18) Industrial (first); (19) Industrial (second); (20)

Finance; (21) Financial Services; (22) Sports, Performing Arts, Culture and Publication; (23) Import and Export; (24) Textiles and Garment; (25) Wholesale and Retail; (26) Information Technology; (27) Catering; and (28) District Council (“DC”). Of these 28 FCs, the Labour FC is to return 3 members and the remaining 27 FCs is each to return 1 member.

1.6 Different voting systems apply to elections of different FCs. They are:

- (a) the preferential elimination system of voting for the election for the 4 special FCs, ie Heung Yee Kuk FC, Agriculture and Fisheries FC, Insurance FC and Transport FC; and
- (b) the first past the post voting system for the election of the 24 ordinary FCs.

Details of the features of FC elections are set out in Chapter 3.

### **Governing Legislation**

1.7 The LegCo elections are governed by the statutory requirements provided in three different ordinances, namely the LCO, the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”) and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”).

1.8 The LCO provides for the constitution and membership of LegCo, establishment of constituencies, registration of electors, conduct of elections, financial assistance for candidates, election petitions and other related matters.

1.9 The EACO tasks the Electoral Affairs Commission (“EAC”) with making recommendations regarding the delineation of GCs for the LegCo election and demarcation of their boundaries and regulating the printing of

particulars relating to candidates on ballot papers and financial assistance for candidates. The EAC is also responsible for the conduct and supervision of elections and matters incidental thereto.

1.10 The ECICO prohibits election-related corrupt and illegal conduct and is administered by the Independent Commission Against Corruption (“ICAC”).

1.11 These ordinances are complemented by a number of pieces of subsidiary legislation, including those set out in paras. 1.12 – 1.19 below, which provide the detailed procedures for the conduct of the LegCo elections.  
*[Amended in October 2007]*

1.12 The electoral procedures for conducting the LegCo elections are provided in the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”).

1.13 The Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A) (“EAC (ROE) (GC) Reg”) and the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“EAC (ROE) (FCSEC) Reg”) set out the procedures for registration of electors for the LegCo elections.

1.14 The Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap 541M) (“PCBP (LC & DC) Reg”) sets out the procedures for printing specified particulars relating to candidates on ballot papers for use in the LegCo elections.

1.15 The Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap 541N) (“EAC (FA) (APP) Reg”) stipulates the detailed implementation procedures for the Financial Assistance Scheme for candidates standing in LegCo elections. *[Amended in October 2007]*

1.16 The Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap 542C) (“LC Subscribers & Deposit Reg”) sets out the requirements for subscription and payment and return of election deposit for the LegCo elections.

1.17 The Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap 541C) (“EAC (NAC) (LC) Reg”) stipulates the appointment and functions of the Nominations Advisory Committees (“NACs”) and the procedures for seeking the NAC’s advice on the candidates’ eligibility for nomination for the LegCo elections.

1.18 The Maximum Amount of Election Expenses (Legislative Council Election) Regulation sets out the maximum amount of election expenses that may be incurred by or on behalf of a candidate, or all the candidates on a list, for election to the LegCo. *[Added in October 2007 and amended in July 2008]*

1.19 The Legislative Council (Election Petition) Rules (Cap 542F) set out the procedures for the lodgement of an election petition against the result of the LegCo elections. *[Added in October 2007]*

## **PART II : THE GUIDELINES**

1.20 According to s 6 of the EACO, the EAC may, in connection with an election, issue guidelines relating to:

- (a) the conduct or supervision of or procedure at an election;
- (b) election-related activities of a candidate, an agent of a candidate or any other person assisting a candidate, or any other person;
- (c) election expenses;
- (d) the display or use of election advertisements (“EAs”) or other publicity material; and
- (e) the procedure for making a complaint.

1.21 The aim of such guidelines is to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities and some directions in layman’s language on how to comply with the relevant electoral legislation so that candidates can avoid breaching them due to inadvertence. Guidelines are issued for reference by the public to ensure that all public elections are conducted in an open, honest and fair manner.

1.22 This set of Guidelines applies to both the LegCo general election and by-election. It explains the various electoral arrangements made for LegCo elections, the legislative provisions and regulations as well as guidelines that should be observed by all parties concerned before, during and after an election and the procedure for lodging an election-related complaint. An action checklist for candidates can be found in **Appendix A**.

1.23 In the context of this set of Guidelines, the term “election” means general election and by-election, as appropriate.

### **PART III : SANCTION**

1.24 Members of the public, in particular, electors, candidates and their agents as well as government officials engaged in election-related duties should read, familiarise themselves with, and strictly observe, these Guidelines.

1.25 The EAC is committed to ensuring that all elections are conducted openly, honestly and fairly. If it comes to know that any candidate or person is in breach of the Guidelines, apart from notifying the relevant authorities for actions to be taken, it may make a reprimand or censure in a public statement which will include the name of the candidate or person concerned and, where appropriate, other relevant parties (if any). The reprimand or censure is separate from and additional to the criminal liability for any offences committed. *[Amended in July 2008]*