

CHAPTER 3

FUNCTIONAL CONSTITUENCIES

PART I : COMPOSITION

3.1 This chapter describes the FCs and the features relating to electoral procedure that electors of FCs may need to know. Electors of the GCs may refer to Chapter 2 : Geographical Constituencies.

3.2 In the general election for the fourth term of the LegCo, the 28 FCs are to return 30 of the 60 members of the LegCo. *[Amended in July 2008]*

3.3 The electorates of the 28 FCs are from particular professional, industrial or trade groups, etc. Except the Labour FC that is to return 3 members to LegCo, each of the other 27 FCs will return 1 member [s 21 of the LCO]. The FCs and their electors are provided for in ss 20A to 20ZB of and Schedules 1 to 1E to the LCO, and are set out in **Appendix B**.

PART II : REGISTRATION OF ELECTORS

Eligibility to Vote

3.4 Only a registered elector, ie a person whose name appears on the final register of FC which is in force at the time of the election is eligible to vote. An elector may vote at an election in respect of an FC if he is registered as an elector in that constituency [s 48 of the LCO].

Qualification for Registration as an Elector

The 28 FCs [s 25 of the LCO]

3.5 Two kinds of persons (ie a natural person (individual) and a body) are eligible to be registered as FC electors. A person who is one specified in column 2 of Appendix B opposite an FC is eligible to be registered as an elector for that FC but if the person is an individual, he must **also** be either registered for a GC or eligible to be registered for a GC and has made an application to be so registered. (For registration as an elector for a GC, please refer to para. 2.4 of Chapter 2.)

3.6 If a person is **already registered** in the existing final register for one of the 28 FCs in Appendix B and is eligible to be, and not disqualified from, being registered as an elector for the FC, then his/its name and address will be repeated in the next provisional register for FCs, and he/it **needs not apply** to be registered.

3.7 A body specified in item 3, 12, 20, 21(1), 22(2), (4), (5), (10) or (11), 23(1) to (3), 24(4) or (5), 26(14) or 27(1) of Appendix B is eligible to be registered as a corporate elector for the relevant FC only if it has been operating for the 12 months immediately before making its application for registration as an elector. *[Amended in October 2007]*

3.8 A body that is a corporate member of a representative organisation specified in item 2(1), 14 to 19, 21(2), 22(1) or (7) to (9), 23(5), 24(1) or (2), 25 or 26(10), 12(a) or (13) of Appendix B is eligible to be registered as a corporate elector for the relevant FC if it has been a corporate member of the representative organisation and has been operating for the 12 months immediately before making its application for registration as an elector.

3.9 An individual who is a member of a representative organisation specified in item 14, 17, 18, 22(7) to (9), 23(5), 24(3) or 25 of Appendix B is eligible to be registered as an elector for the relevant FC only if the person has been a member of the body for the 12 months immediately before making an application for registration as an elector. *[Amended in October 2007]*

3.10 No person may be registered in 2 or more FCs. If he/it is eligible to be registered in 2 or more FCs, except any one of the 4 FCs shown in the following paragraph, he/it may choose to be registered in any one of the FCs.

3.11 A person who is eligible to be registered in one of the following 4 FCs, and if he wants to be registered as an FC elector, has **no choice** but to be registered in that FC although he may be eligible for any other FC. The voting system for these 4 FCs is different from that for the other 24 FCs [see paras. 3.28-3.30 below]:

- (a) Heung Yee Kuk FC,
- (b) Agriculture and Fisheries FC;
- (c) Insurance FC; and
- (d) Transport FC.

These 4 special FCs (FCs specified in s 20(1)(a) to (d) of the LCO) (items 1 - 4 of Appendix B) are referred to as “SFCs” below.

Authorised Representative [s 26 of the LCO]

3.12 A corporate elector is required to select an eligible individual to be its authorised representative (“AR”) for the purpose of casting its vote at any election, otherwise it cannot vote [see also s 48(8) of the LCO]. An individual is eligible to be appointed as an AR of a corporate elector only if he:

- (a) is registered, or eligible to be and has applied to be registered, as an elector of a GC;
- (b) is a member, partner, officer or employee of the corporate elector or has a substantial connection with it;
- (c) is not registered, and has not applied to be registered, as an elector for the FC of the corporate elector; and
- (d) is not disqualified from being registered or voting under s 31 or 53 of the LCO [see para. 3.15 below].

3.13 An AR of a corporate elector is not eligible to be selected as the AR of another corporate elector.

3.14 An AR must be registered with the ERO. **A corporate elector is required to give notice of appointment of its AR to the ERO in its application form for registration as a corporate elector.** It may thereafter from time to time appoint a replacement AR by sending a specified form to reach the ERO not later than 14 days before the polling day of its FC. If the ERO is satisfied that the AR is dead or seriously ill or physically or mentally incapacitated, the deadline of 14 days for replacement is extended to 3 working days before the relevant polling day [s 20 of the EAC (ROE) (FCSEC) Reg].

Disqualifications

3.15 A natural person is disqualified from being registered as an elector and voting at an election for an FC or as an AR if he:

- (a) has ceased to be eligible to be registered as an elector for the GC;
- (b) has ceased to remain qualified for the FC (this does not apply to an AR or an elector for a GC);
- (c) is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs; or
- (d) is a member of any armed forces.

[Ss 31 and 53 of the LCO] *[Amended in January 2010]*

Application for Registration

3.16 The registration of electors is undertaken in accordance with the provisions of the EAC (ROE) (FCSEC) Reg.

3.17 A person (either an individual or a body) may send in his/ its application for voter registration on the specified form to the ERO any time in the year. However, for inclusion of his/ its name in the final register to be published on or before 25 July in a non DC election year (or 25 September in a DC election year), his/ its application form must be received by the ERO **on or before 16 May of that year** (or 16 July in a DC election year).

3.18 The ERO will process the application forms after they have been received. The ERO will send written inquiries to applicants to seek information or proof if the information on their applications is incomplete or incorrect. An applicant who qualifies for registration will be allocated to the relevant FC, as appropriate, in accordance with his qualification and choice (if so entitled). Applicants who are not qualified for registration will also be informed by registered mail. *[Amended in January 2010]*

3.19 The name and residential address of all eligible applicants will be entered in the registers of electors, including the name and business address of the relevant body, and the name of the AR of the body.

Change of Residential Address and other Personal Particulars

3.20 It will not be necessary for a registered elector (either individual or body) to re-apply for registration every year. *[Amended in January 2010]*

3.21 However, in the case of a registered individual elector, please note the following:

- (a) If he has changed his residential address, he **must notify** the ERO **of his new address** in Hong Kong to ensure that he will be registered in the current register of electors.
- (b) He should notify the ERO of any change of circumstances that may affect his eligibility (eg his connection with a particular FC). Based on such information from the elector, the ERO will decide whether he remains eligible to be registered, and if so, in which constituency.
- (c) Apart from address, any registered elector who has changed his

other personal particulars (eg name, telephone numbers and email address), should also notify the ERO of such change.

- (d) He should notify the ERO of any change of any registration particulars in writing or by sending in a new registration form with the altered particulars. In order to allow the alteration of his particulars to be effected in the next final register of electors, the elector **must notify** the ERO as soon as possible and the **latest by 29 June in a non DC election year** (or 29 August in a DC election year). An elector who has reported change of particulars will be sent a notice by the ERO showing his updated electoral record [s 26 of the EAC (ROE) (FCSEC) Reg].
- (e) If the elector has **failed to update the ERO of his new address in Hong Kong**, or if he has emigrated overseas or ceased to be ordinarily resided in Hong Kong, **his name and particular may be removed from the register of electors.**

[Amended in January 2010]

3.22 In the case of a registered corporate elector, if it has changed its particulars (eg name, address, telephone number), it should also notify the ERO. In this regard, paragraph 3.21 (b) and (d) apply to a corporate elector in the same way as they apply to an individual elector. For the AR of a corporate elector, paragraph 3.21 (a), (b), (c) and (e) above apply to change in his particulars. *[Added in January 2010]*

The Provisional Registers

3.23 The provisional register for FCs will be published **not later than 15 June in a non DC election year** (or 15 August in a DC election year). It

includes:

- (a) the names and addresses of those electors whose names appear in the relevant register currently in force, updated and corrected by the ERO based on reported or available information;
- (b) the names and addresses of the eligible new applicants who have applied for registration in the constituency concerned on or before 16 May of that year (or 16 July in a DC election year); and
- (c) the names of the ARs of the corporate electors.

The provisional registers will be **available for public inspection** at the REO and certain District Offices, as specified in the Gazette notice of publication for a period after its publication and on or before the appeal deadline referred to in para. 3.26 below. Upon request by a person imprisoned or held in custody by a law enforcement agency, the ERO may make available, at a penal institution or the premises of a law enforcement agency as the case may be, a copy of the provisional register for his inspection if the ERO considers it appropriate to do so. The ERO may require persons who want to inspect the provisional register to produce an identity document and complete a form furnished by him. [Ss 27 and 29 of the EAC (ROE) (FCSEC) Reg] *[Amended in January 2010]*

The Omissions List

3.24 By the time when the provisional registers are published, the ERO will also publish an omissions list each in respect of FCs containing the names and addresses of persons who were formerly registered as FC electors, but are struck out from the provisional register and proposed to be omitted from the next final register, based on the information received by the ERO who is satisfied on reasonable grounds that the concerned persons are no longer

eligible to be registered or are disqualified. For an imprisoned person who has used his last dwelling-place in Hong Kong at which he resided or the address last recorded under the Registration of Persons Regulations (Cap. 177A) as the address for registration as an elector, if the ERO is satisfied on reasonable grounds that he has served his sentence of imprisonment and left the prison without reporting his new residential address to the ERO, the ERO must enter his name and address on the omissions list according to the procedures prescribed in the relevant legislation [s 9(2A) of the EAC (ROE) (GC) Reg].
[Amended in January 2010]

3.25 The names and addresses of the persons included in the omissions list will not appear on the provisional register [s 32(4)(a) and (b) of the LCO and ss 24 and 25 of the EAC (ROE) (FCSEC) Reg].

Appeals – Objections and Claims

3.26 Members of the public may lodge in person with the ERO objections as regards entries in the relevant provisional register **not later than 29 June in a non DC election year** (or 29 August in a DC election year). On or before that date, a dissatisfied applicant or a person whose name has been included in the omissions list may lodge a claim in person with the ERO in respect of the entry or any omission concerning himself/itself. To facilitate a person imprisoned or held in custody by a law enforcement agency to make such an objection or claim, he is allowed to deliver a notice of objection or claim to the ERO by post. Cases of objections and claims will be referred to the Revising Officer for consideration. The Revising Officer, who is a member of the Judiciary, will rule on each objection or claim and decide on the inclusion, exclusion or correction of the entry concerned in the relevant final register [s 34 of the LCO and Part VI of the EAC (ROE) (FCSEC) Reg].
[Amended in January 2010]

The Final Registers

3.27 The final register for FCs will be published **on or before 25 July in a non DC election year** (or 25 September in a DC election year). It includes the entries in the relevant provisional register, the updated names and addresses of electors who have applied to alter their particulars on or before 29 June of that year (or 29 August in a DC election year), and the names and addresses of those who were subject to a notice of objection or claim, updated and corrected to reflect the decisions of the Revising Officer as appropriate. The ERO will also take the opportunity to delete those entries of electors who are known to be dead and to correct any mistakes in the relevant provisional register. The final registers may also contain notations to show if a person registered for a GC is also registered in an FC. The final registers for FCs remain valid until the publication of the relevant final register in the following year. The final registers in force will be available for public inspection at the REO and District Offices. Upon request by a person imprisoned or held in custody by a law enforcement agency, the ERO may make available at a penal institution or the premises of a law enforcement agency as the case may be a copy of the final register for his inspection if the ERO considers it appropriate to do so. The ERO may require persons who want to inspect the final register to produce an identity document and complete a form furnished by him. [S 38 of the EAC (ROE) (FCSEC) Reg] *[Amended in January 2010]*

IMPORTANT :

Information relating to a person contained in any register of electors or in any extract of any register of electors **can only be used for election-related purposes** under the electoral legislation. Any **abuse** or **misuse** of such information is an **offence** punishable with a fine at level 2 (up to \$5,000) and imprisonment for 6 months [s 42(3) of the EAC (ROE) (FCSEC) Reg].

PART III : THE VOTING SYSTEMS

3.28 Different voting systems apply to elections of different constituencies, namely,

- (a) for the 4 SFCs referred to in para. 3.11 above (items 1 – 4 of Appendix B), the preferential elimination system of voting; and
- (b) for the 24 ordinary FCs (items 5 – 28 of Appendix B), the first past the post voting system.

The Preferential Elimination System for the 4 SFCs

3.29 For each of the 4 SFCs, an elector is entitled to cast a single vote. The vote is transferable amongst the candidates nominated for the election, with the elector marking his preference or preferences for those candidates on the ballot paper against one or more of those candidates in descending order. In order to be elected, a candidate must obtain an absolute majority of the valid votes. If no candidate obtains an absolute majority of the votes at a particular stage of the counting of votes, the candidate with the least number of votes is to be eliminated at that stage, and that candidate's votes are to be transferred to the candidates then remaining in accordance with the next available preferences marked on the ballot papers. This process is to continue until one candidate obtains an absolute majority over the other candidate or candidates then remaining [s 50 of the LCO]. If, after the counting of votes is finished but before the result of an election of an FC is declared, proof is given to the satisfaction of the RO that the candidate who was successful at the election has died or is disqualified from being elected, that RO must not declare that candidate as elected and must publicly declare that the election has failed [ss 46A(3) and 50(8) of the LCO]. Details of how the votes are to be counted are set out in **Appendix C**.

The First Past the Post Voting System for the 24 Ordinary FCs

3.30 An elector of each of the 24 ordinary FCs is entitled to vote for as many candidates as there are vacancies and no more. The candidate who obtains the greatest number of votes will be elected, followed by the next candidate who has the next greatest number of votes, and so on, until all the vacancies are filled [s 51 of the LCO]. Out of the 24 ordinary FCs, only the Labour FC has 3 seats to be filled and electors of that ordinary FC can therefore vote for up to 3 candidates. In each of the remaining 23 ordinary FCs, only 1 seat is to be filled and the elector can only vote for 1 candidate. In the event that more than 1 candidate has the equal highest number of votes, the RO will have to draw lots to determine which one of these candidates should be elected to fill the vacancy.

3.31 When the successful candidate has to be determined by the drawing of lots, 10 table-tennis balls each marked with a number from 1 to 10 will be put into an empty opaque bag, to be provided by the REO. Each candidate is to draw 1 ball from the bag. The number marked on the ball should be noted by the RO and the ball should be put back into the bag. The other candidate(s) will draw in the same way. The candidate on whom the lot falls is to be returned at the election. The RO would draw the lot on behalf of the candidate if the latter is absent at the time of drawing lots.

- (a) Where there is only 1 vacancy to be filled and there are 2 candidates, the candidate who draws the larger number from 1 to 10 will be the winner. 1 is the smallest number and 10 is the largest number.
- (b) Where there is only 1 vacancy to be filled and there are more than 2 candidates, if in the first draw, the numbers drawn by the candidates are different, then the candidate who draws the largest number will win. If, on the other hand, 2 or more of the candidates have drawn the same larger number and the remaining

candidate(s) has/have drawn a smaller number, there must be a second draw. As the system of voting for the election is “first past the post”, only those candidates who have drawn the same larger number in the first draw will participate in the second draw.

- (c) Where there are 3 candidates having an equal number of votes and there are only 2 vacancies to be filled, if the 3 candidates have obtained respectively the largest, the larger and the smallest numbers, the 2 candidates who have obtained the largest and the larger numbers should be successful in getting the 2 vacancies, and the remaining candidate will fail. If the 3 candidates have obtained respectively 2 larger equal and 1 smaller numbers, then again the 2 candidates who have obtained the larger equal numbers will be the winners to fill the 2 vacancies. If the 3 candidates have obtained respectively a larger and 2 equal smaller numbers, the candidate who has obtained the larger number will be successful and the remaining 2 candidates will participate in a second draw. The same principle will apply where there are more than 3 candidates having an equal number of votes and there are 3 vacancies to be filled as in the case of the Labour FC.

3.32 As soon as practicable after the result of the elections has been determined, the RO should publicly declare the successful candidate as elected.

3.33 In the event that before the declaration of the result of the elections, proof is given to the RO's satisfaction that the successful candidate for a constituency has passed away or has been disqualified from being elected, the RO should not declare that candidate as elected and should declare that the election has failed or has failed to the extent that the number of candidates returned at the election was less than the number of members to be returned [ss 46A and 51(8) of the LCO].