

CHAPTER 4

NOMINATION OF CANDIDATES

PART I : ELIGIBILITY AND DISQUALIFICATION FOR NOMINATION

4.1 The law governing the eligibility for and disqualification from nomination of candidates for the LegCo election is contained in the LCO. The procedure for nomination of candidates for the LegCo election is provided in the EAC (EP) (LC) Reg and EAC (NAC) (LC) Reg made by the EAC. *[Amended in October 2007 and June 2016]*

Eligibility

4.2 To be eligible for nomination as a candidate at an election for a GC, a person must:

- (a) be 21 years of age or over;
- (b) be both registered and eligible to be registered as an elector for a GC;
- (c) not be disqualified from being elected by virtue of s 39 of the LCO [see para. 4.5 below];
- (d) have ordinarily resided in Hong Kong for the 3 years immediately preceding the date of his/her nomination; and
- (e) be a Chinese citizen who is a permanent resident of Hong Kong with no right of abode in any country other than the People's

Republic of China.

[S 37(1) of the LCO] [*Amended in June 2016*]

4.3 To be eligible for nomination as a candidate at an election for a FC, a person must:

- (a) satisfy para. 4.2(a) to (e) above, save that for the following 12 FCs, para. 4.2(e) does not apply, namely,
 - (i) Legal FC,
 - (ii) Accountancy FC,
 - (iii) Engineering FC,
 - (iv) Architectural, Surveying, Planning and Landscape FC,
 - (v) Real Estate and Construction FC,
 - (vi) Tourism FC,
 - (vii) Commercial (first) FC,
 - (viii) Industrial (first) FC,
 - (ix) Finance FC,
 - (x) Financial Services FC,
 - (xi) Import and Export FC,
 - (xii) Insurance FC;
- (b)
 - (i) be both registered and eligible to be registered as an elector for the relevant FC (other than the DC (second) FC); or
 - (ii) in the case of a FC other than the DC (first) FC and the DC (second) FC, satisfy the RO for the constituency that he/she has a substantial connection with that FC; and
- (c) in the case of the DC (first) FC and the DC (second) FC, is a

member of any DC established under the District Councils Ordinance (Cap 547) (“DCO”) who is elected under Part V of that Ordinance.

[S 37(2) and (3) of the LCO] *[Amended in June 2012 and June 2016]*

4.4 A person is considered to **ordinarily reside in Hong Kong** when he/she habitually and normally lives there lawfully for a settled purpose, apart from temporary and occasional absences such as holidays and absence abroad for studying purposes. Each case has to be examined upon its own facts. Matters like the length of the person’s absence, the reason for his/her absence, the location of the home of him/her, his/her spouse, children and parents and his/her maintenance of connections with Hong Kong are all relevant factors. In case of doubt, a prospective candidate should consult his/her independent legal adviser. In a LegCo general election, a candidate may also seek the advice of the NAC. [see paras. 4.7 to 4.13 below] *[Amended in June 2016]*

Disqualification

4.5 A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if he/she:

- (a) is a judicial officer, or a prescribed public officer⁴;

⁴ A prescribed public officer means any of the following:

- (a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the ICAC and the holder of any other office under the ICAC Ordinance (Cap 204);
- (c) the Ombudsman and the holder of any appointment under s 6 of The Ombudsman Ordinance (Cap 397);
- (d) a member of the EAC;
- (e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (f) the Privacy Commissioner for Personal Data and any person employed or engaged by him/her under the Personal Data (Privacy) Ordinance (Cap 486);
- (g) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480); or
- (h) any person holding an office, whether permanent or temporary, in a government department or bureau and employed in the department or bureau.

- (b) is an officer of the LegCo or a member of staff of The LegCo Commission;
- (c) has, in Hong Kong, or 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 pardon⁵;
- (d) has been convicted of treason;
- (e) on the date of nomination, or of the election, is serving a sentence of imprisonment;
- (f) is or has been convicted, within 5 years before the polling day,
 - (i) of any offence in Hong Kong or in any other place, the sentence for which is imprisonment (suspended or not) for not less than 3 months;
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the ECICO;
 - (iii) of any offence against Part II of the Prevention of Bribery Ordinance (Cap 201) (“POBO”); or
 - (iv) of any offence prescribed by the regulations made by the EAC;

⁵ The Court of First Instance delivered written judgment on 21 June 2012 on *Wong Hin Wai & another v Secretary for Justice* (HCAL 51 & 54/2012) and declared section 39(1)(b) of the LCO to be unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. The future LegCo Election will be organised in accordance with the prevailing electoral laws. Any person who would like to be nominated as a candidate for LegCo Election and is doubtful about his/her eligibility for nomination may seek independent legal advice, and in a LegCo general election, may also apply to the NAC appointed by the EAC for advice where appropriate.

- (g) is ineligible or disqualified because of operation of the LCO or any other law;
- (h) is a representative or a salaried functionary of the government of a place outside Hong Kong;
- (i) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level;
- (j) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full; *[Amended in July 2008]*
- (k) is found for the time being to be incapable, by reason of mental incapacity, of managing and administering his/her property and affairs under Part II of the Mental Health Ordinance (Cap 136) ;
or
- (l) at a by-election, has resigned or was taken to have resigned from office as a Member within the 6 months ending on the date of the by-election and no general election was held after the relevant notice of resignation or notice of non-acceptance took effect.
[Added in June 2016]

[S 39(1), (2) and (2A) of the LCO] *[Amended in July 2008 and June 2016]*

4.6 A person is also disqualified from being elected as a Member for

a FC (other than DC (first) FC and DC (second) FC) if, since the end of the nomination period, the person has ceased to have a substantial connection with the constituency [s 39(4) of the LCO]. *[Amended in June 2012]*

PART II : NOMINATIONS ADVISORY COMMITTEES

4.7 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) (LC) 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, independent and impartial. *[Amended in October 2007]*

NAC's Service to Candidates [S 5 of the EAC (NAC) (LC) Reg]

4.8 NAC's service will be provided to candidates **only at a LegCo general election**. During a period to be specified by the EAC [s 3(4) of the EAC (NAC) (LC) Reg] – which normally ends 1 day before the commencement of the nomination – a prospective candidate may apply, by completing a specified form obtainable from the REO or from any DO, for the advice of the NAC as to whether he/she is eligible to be, or is disqualified from being, nominated as a candidate at the LegCo general election. He/She may make only 1 application in respect of the GC election and 1 application in respect of a particular FC election. While a prospective candidate may apply for advice only once in respect of a particular FC, he/she may apply for advice in respect of more than 1 FC. [S 5(6) and (9) of the EAC (NAC) (LC) Reg] *[Amended in June 2016]*

4.9 The completed application must be:

- (a) sent to the Chief Electoral Officer (“CEO”) by post or facsimile transmission so as to be received by him/her; or
- (b) served on the CEO personally,

on or before the deadline for application to be specified by the EAC.
[S 5(4) of the EAC (NAC) (LC) Reg]

4.10 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/her intended candidature. The NAC may also request the applicant to present himself/herself 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/her in writing for the purpose. [S 5(12) and (13) of the EAC (NAC) (LC) Reg]

4.11 Where an applicant does not make available any information, particulars or evidence as requested by the NAC, or fails to present himself/herself 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/herself before the NAC.

[S 5(14) of the EAC (NAC) (LC) Reg]

4.12 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 [s 5(15) of the EAC (NAC) (LC) Reg].

4.13 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/she so wishes [s 9 of the EAC (NAC) (LC) Reg]. *[Amended in July 2008]*

NAC's Service to ROs

4.14 NAC's service will be provided to ROs at both LegCo general elections and by-elections. During the period from the commencement until up to 1 day after the end of the nomination period, ROs may seek the advice of an NAC, where they consider necessary, on the eligibility for nomination of the candidates who have submitted their nominations. Such application must be in writing and made to the NAC through the CEO. The NAC will, not later than a date specified by the EAC, advise the RO concerned as to whether the candidate concerned is eligible to be nominated. [S 6 of the EAC (NAC) (LC) Reg]

4.15 The RO is required, in making a decision as to whether a particular candidate is validly nominated in respect of the constituency for which he/she seeks nomination, to have regard to any advice given by an NAC on that candidate [s 17 of the EAC (EP) (LC) Reg and s 6(5) of the EAC (NAC) (LC) Reg]. The decision on the validity of nomination, however, remains with the RO alone [s 6 of the EAC (NAC) (LC) Reg and s 92(1) and (3)(a) of the EAC (EP) (LC) Reg].

PART III : WHEN AND HOW TO NOMINATE

When to Nominate

4.16 Nominations may be made during the **nomination period** specified in the Notice of Election published in the Gazette [ss 4, 5 and 7 of the EAC (EP) (LC) Reg]. An election timetable will be provided to each candidate by the RO for the relevant constituency. The ROs shall receive nominations during the ordinary business hours on each working day (i.e. any day other than a general holiday) in the nomination period from 9 am to 5 pm on Monday to Friday, and from 9 am to 12 noon on a Saturday. **Candidates are well advised to submit their nominations in good time before the end of the nomination period to allow time for any errors in their nomination forms to be corrected.** *[Amended in October 2007 and June 2016]*

How to Nominate

4.17 Nomination forms specified by the EAC are available from any DO or from the REO, or can be downloaded from the website of the REO (<http://www.reo.gov.hk>). *[Amended in October 2007]*

4.18 The nomination form comprises:

(a) **The Nomination**

- (i) In respect of a **GC** election, the nomination is a list containing either the names of 2 or more proposed candidates contesting the election of the particular GC as a group with their names ranked in the order of priority of the group, or the name of a single proposed candidate. The nomination must be subscribed by **100 registered**

electors (other than the candidates) of that particular GC assenting to the nomination and the number of persons that may subscribe a nomination shall not be more than 200 [s 7(1)(a) and (aa) of the LC Subscribers & Deposit Reg]. An elector may subscribe only 1 nomination as regards a particular GC election [s 7(1)(b) of the LC Subscribers & Deposit Reg]. Under s 38(4A) of the LCO, after a nomination has been submitted to an RO, the order in which the names of proposed candidates appear in the list cannot be altered, no other name of any proposed candidate can be added to the list, and names already on the list cannot be deleted. [See, however, para. 4.36 below in the case of withdrawal.]

- (ii) In respect of a candidate of a traditional **FC**, it must be subscribed by **10 registered electors** (other than the candidate) and the number of persons that may subscribe a nomination shall not be more than 20 [s 7(2)(a) and (aa) of the LC Subscribers & Deposit Reg]. An elector may subscribe any number of nomination forms up to the number of seats in any FC [s 7(2)(b) of the LC Subscribers & Deposit Reg]. Thus, an elector of the Labour FC may subscribe up to 3 nominations as there are 3 vacancies to fill in that FC. For other traditional FCs, with 1 seat each, an elector may only subscribe 1 nomination. *[Amended in June 2012]*

In any of the above cases about traditional FCs, **the subscribing elector must be registered for the GC or the FC concerned**, as the case may be. In other words, **an elector** in respect of a GC and a traditional FC is entitled to **subscribe only 1 nomination regarding his/her own**

GC, and any number of nominations up to the number of vacancies regarding his/her traditional FC. Where the number of persons subscribing a nomination has exceeded the required number (i.e. 100 for a GC election and 10 for a FC election), any surplus over the required number of qualified subscribers will be regarded as not having subscribed the nomination concerned [s 7(2C) of the LC Subscribers & Deposit Reg]. In this case, the elector may subscribe another nomination instead. If the nomination subscribed by an elector has been held to be invalid, or the candidate or all the nominees on a nomination list has/have withdrawn his/her/their nomination, the elector may subscribe another one instead before the end of the relevant nomination period, and his/her signature shall not be inoperative on that other nomination form. Under this scenario, if he/she subscribes more than 1 nomination form in contravention of the regulations, his/her signature shall be operative only on the first one delivered [s 7(3)(c) of the LC Subscribers & Deposit Reg]. *[Amended in June 2012]*

- (iii) In respect of an election for **the DC (second) FC**, the nomination is a list containing either the names of 2 or more proposed candidates contesting the election of the same FC as a group with their names ranked in the order of priority of the group, or the name of a single proposed candidate. The nomination must be subscribed by **15 registered electors** (other than the candidate(s)) **of the DC (first) FC** [s 7(1A) of the LC Subscribers & Deposit Reg]. In accordance with s 7(3A) and (3B) of the LC Subscribers & Deposit Reg, if an elector of the DC (first) FC subscribes the nomination paper of any persons seeking

nomination in respect of the DC (first) FC and the DC (second) FC and both the nomination papers of the DC (first) FC and the DC (second) FC have been delivered, his/her signature shall be operative only on the first nomination paper delivered. In other words, an elector of the DC (first) FC shall **subscribe 1 nomination only for either** a candidate of the DC (first) FC election **or** a candidate list of the DC (second) FC election. *[Added in June 2012]*

IMPORTANT :

A candidate who submits a nomination form on the last few days of the nomination period is advised to include more than the required number of subscribers for his/her 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 use his/her best endeavour to ensure that the electors subscribing his/her nomination form are eligible and have not subscribed another nomination previously. Each elector subscribing a nomination shall sign the nomination form **personally**. *[Amended in October 2007 and June 2016]*

No unlawful means shall be used to procure an elector to subscribe or not to subscribe a nomination. Intimidation is an offence under s 24 of the Crimes Ordinance (Cap 200), liable to a fine and to imprisonment for 2 years on summary conviction or imprisonment for 5 years on conviction upon indictment. Bribery is also a corrupt conduct liable to a fine or to imprisonment. *[Added in October 2007 and amended in June 2012]*

Candidates are also required to observe Principle 4 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap 486) (“PD (P) O”) in safeguarding the personal data of subscribers held for the nomination form. They should take all practicable steps to ensure that the aforesaid personal data are protected against unauthorised or accidental access, processing, erasure, loss or use.
[Added in June 2012 and amended in June 2016]

(b) The Candidate’s Consent to Nomination and Declarations

This must be completed and signed by the candidate and attested by a witness. The candidate must sign and make the following **declarations** and promissory oath:

- (i) a declaration to the effect that the candidate will uphold the Basic Law and pledge allegiance to the HKSAR;
- (ii) a declaration as to the candidate’s nationality and as to whether or not he/she has a right of abode in a country other than the People’s Republic of China;
- (iii) a promissory oath given by the candidate to the effect that, if elected, he/she will not do anything during his/her term of office that results in his/her disqualification, including mainly those set out in para. 4.5 above, plus becoming a member of any armed forces;
- (iv) a declaration to the effect that the candidate, or each candidate in the case of a list for the GC/DC (second) FC, is eligible to be nominated as a candidate for the constituency concerned; is not disqualified from being so nominated; and consents to being so nominated. In the case of a list for the GC/DC (second) FC, each candidate

must also declare his/her consent to the order of priority in which the names of candidates appear on the nomination list; and *[Amended in June 2012]*

- (v) a declaration to the effect that the candidate, or each candidate in the case of a list for the GC/DC (second) FC has ordinarily resided in Hong Kong for the 3 years immediately preceding the date of his/her nomination. *[Amended in June 2012]*

[Ss 37 and 40 of the LCO and ss 10(4) and (5) and 11(4) and (5) of the EAC (EP) (LC) Reg]

IMPORTANT :

No person shall be nominated in an election as a candidate for more than 1 constituency [s 41 of the LCO]. When a person submits his/her nomination form, he/she must have withdrawn all his/her other prior nominations, if any. He/She is required to make a declaration (contained in the specified form) that either he/she has not been nominated before for any other constituency in the election, or if he/she has been so, he/she has withdrawn all those prior nominations. Where a candidate stands nominated [see para. 4.26 below], any subsequent nominations of his/hers will be rejected as invalid.

In the nomination form, a candidate may choose to state his/her occupation and/or political affiliation for public information if he/she so prefers. If the candidate mentions the name of any organisation when stating his/her political affiliation, he/she must seek the consent of the organisation concerned beforehand. Candidates should make sure that their nomination forms are properly completed before submission. *[Amended in October 2007, June*

2012 and June 2016]

4.19 Each nomination form must be submitted to the RO for the constituency 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.

4.20 The completed nomination form must be delivered with the RO for the constituency concerned by the candidate, and in case of a list of candidates by one of the candidates, **in person** during ordinary business hours (i.e. 9 am to 5 pm from Monday to Friday, and from 9 am to 12 noon on a Saturday) on a working day (i.e. any other day other than a general holiday) in the nomination period. In the case of nominations for traditional FC elections, the CEO may, in exceptional circumstances, e.g. the nominee's temporary absence from Hong Kong or incapacity due to illness, authorise other form of delivery of the nomination form to the RO [s 11(14) of the EAC (EP) (LC) Reg]. *[Amended in June 2012 and June 2016]*

4.21 The RO will also make available copies of the nomination forms for public inspection free of charge at his/her office during ordinary business hours until the relevant notice of the election result is published [s 14 of the EAC (EP) (LC) Reg]. Should the RO decide that a nomination is invalid (see Part V below), he/she is required to endorse on the nomination form his/her decision and the reasons for it [s 19(1) of the EAC (EP) (LC) Reg]. *[Added in June 2016]*

False Declarations

4.22 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 (Cap 200) and shall be liable to a fine and to imprisonment for 2 years. Under s 103 of the EAC

(EP) (LC) Reg, a person who knowingly makes a false statement in a material particular or recklessly makes an incorrect statement in a material particular or omits a material particular in an election-related document commits an offence and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months, which is a prescribed offence with the same disqualifying effect as conviction of a corrupt or illegal conduct under the ECICO (as described in paras. 16.66 and 17.33 of the Guidelines). *[Amended in October 2007 and June 2016]*

PART IV : ELECTION DEPOSIT

Payment of Election Deposit

4.23 Each nomination form must be presented with the payment of an election deposit, in cash, cashier order or by cheque, in such amount as prescribed by regulation [ss 40(3) and 82(2)(b) of the LCO]. The following election deposits are prescribed by s 2 of the LC Subscribers & Deposit Reg:

- | | | |
|-----|---------------------------------------------------------|----------|
| (a) | for all the candidates on a GC list | \$50,000 |
| (b) | for a candidate of a traditional FC | \$25,000 |
| (c) | for all the candidates on a list for the DC (second) FC | \$25,000 |

[Amended in June 2012]

4.24 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 end of the nomination period. Candidates must note that, in the case of dishonoured cheque, the RO may not be able to advise the candidate(s) concerned in good time to rectify the situation before the end of the nomination period. Therefore, 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.

[Amended in June 2012]

Return of Election Deposit

4.25 The deposit will be returned to the candidate (or in the case of a list of candidates, the person who has lodged the deposit on behalf of the list) if:

- (a) he/she is not validly nominated (and in the case of a list of candidates, if all the candidates on the list are not validly nominated);
- (b) his/her nomination is withdrawn (and in the case of a list of candidates, if all the candidates on the list have withdrawn their nomination);
- (c) after his/her nomination is confirmed valid for the election, he/she has died or is disqualified from being nominated before the date specified for holding the election (and in the case of a list

of candidates, if all the candidates on the list have died or are disqualified from being nominated); *[Amended in June 2016]*

- (d) in the case of a list of candidates, the list is rejected by the RO after he/she has struck out from the list all the names of candidates for any one, or any combination, of the reasons stated in items (a), (b) or (c) above;
- (e) the election is terminated;
- (f) he/she is elected (and in the case of a list of candidates, if the first ranked candidate on the list is elected);
- (g) in the case of a GC or DC (second) FC or one of the ordinary FCs, he/she or the list of candidates secures in his/her/their favour not less than 3% of the total number of ballot papers containing valid votes received in that constituency; or
- (h) in the case of one of the 4 SFCs, he/she secures in his/her favour not less than 3% of the total number of ballot papers containing valid first preference votes received in that constituency.

The deposit will be forfeited if none of the above conditions is satisfied. [For details, see ss 3 and 4 of the LC Subscribers & Deposit Reg.] *[Amended in June 2016]*

PART V : VALIDITY OF NOMINATIONS

[Ss 16, 17, 18 and 21 of the EAC (EP) (LC) Reg]

4.26 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 within 14 days after the end of the nomination period [s 42A of the LCO and s 21(1) of the EAC (EP) (LC) Reg].

4.27 Where the RO has doubts as to whether or not a particular candidate is eligible to be nominated, he/she may apply to an NAC for advice [see para. 4.14 above]. *[Amended in June 2016]*

4.28 Where a nomination appears to the RO to be invalid because of some errors which 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/her nomination form as practicable. However, no substitution for any subscriber or re-submission of a nomination form will be accepted after the end of the nomination period.

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

4.30 The RO may require such additional information from a candidate as he/she considers necessary to satisfy himself/herself as to the validity of the nomination.

4.31 A nomination will not be valid unless it contains all the information and signatures required to be shown on the nomination form or other information required by the RO and the candidate has made the declarations and oath referred to in para. 4.18(b) above. *[Amended in June 2012]*

4.32 The RO may decide that a nomination is invalid only where:

- (a) the number or qualifications of the subscribers fall short of the requirements under s 7 of the LC Subscribers & Deposit Reg;
- (b) the nomination form, including the nomination and declarations and oath, has not been completed or signed as required by s 40 of the LCO and ss 10 and 11 of the EAC (EP) (LC) Reg;
- (c) he/she is satisfied that the candidate or all the candidates on a list of candidates is/are not eligible 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/her or by that candidate [see paras. 4.15 and 4.27 above]; *[Amended in June 2012]*
- (d) the candidate or all the candidates on a list of candidates has/have been nominated for another constituency in the same election and the RO is not satisfied that he/she/they has/have withdrawn that candidature; *[Amended in July 2008 and June 2012]*
- (e) the cheque for the payment of the election deposit of the candidate is dishonoured and has not been made good before the end of the nomination period;
- (f) he/she is satisfied that the candidate has passed away; or
- (g) the nomination form is not duly lodged within the nomination period [see paras. 4.16 and 4.20 above].

[Amended in July 2008, June 2012 and June 2016]

4.33 If, having decided that a candidate is validly nominated for election for a GC or the DC (second) FC but before the polling day, proof is given to the satisfaction of the RO that the candidate has died, he/she must publicly declare that the candidate has died and further declare which candidate is or candidates are validly nominated for that constituency. The RO does not have to make any such declaration if the candidate who has died is uncontested in the election for the relevant constituency and the RO has publicly declared that the candidate was duly elected. [S 42B(1), (2) and (3) of the LCO and s 22A of the EAC (EP) (LC) Reg] *[Amended in June 2012]*

4.34 If, having decided that a candidate is validly nominated for election for a GC or the DC (second) FC 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/She must then publicly declare his/her varied decision and which candidate is or candidates are validly nominated for that constituency. The RO does not have to vary his/her decision if the candidate who has been disqualified is uncontested for the relevant constituency and the RO has publicly declared that the candidate was duly elected [s 42B(4), (5) and (6) of the LCO and s 22B of the EAC (EP) (LC) Reg]. *[Amended in June 2012]*

4.35 If, after the end of the nomination period for an election for a traditional FC but before the polling day, proof is given to the satisfaction of the RO that the candidate who is validly nominated has died or is disqualified from being nominated as a candidate for the constituency, he/she must publicly declare that the proceedings for the election for that FC are terminated [s 42C of the LCO]. *[Amended in June 2012]*

PART VI : WITHDRAWAL OF CANDIDATURE

4.36 A candidate may withdraw his/her candidature only before the end of the nomination period. He/She should complete and sign a specified form entitled “Withdrawal of Candidature” and lodge it with the RO concerned [s 42 of the LCO and s 20 of the EAC (EP) (LC) Reg]. Where a candidate in a nomination list for a GC election or the DC (second) FC election has effectively withdrawn his/her candidature, the RO must strike out his/her name from the list and adjust the order of priority in which the names of other candidates appear on the list accordingly [s 38(6) of the LCO]. If, after the RO has determined that a nominee is validly nominated, but before the end of the nomination period, the RO becomes aware that the nominee has died or is disqualified from being nominated, the RO must strike out his/her name from the list and adjust the order of priority in which the names of other candidates appear on the list accordingly [s 38(6A) of the LCO]. After striking out a name from a list of candidates, the RO must not add the name of any other person to the list [s 38(12) of the LCO]. If no name remains on the list of candidates, the RO must reject the list [s 38(13) of the LCO]. *[Amended in June 2012]*

IMPORTANT :

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

PART VII : NOTICE OF VALID NOMINATIONS

4.37 The RO for the constituency concerned will publish a notice in

the Gazette within 14 days after the end of the nomination period, stating the name and the principal residential address of each of all the validly nominated candidates for the constituency, together with the number or the letter of the alphabet allocated by the drawing of lots to each candidate/list of candidates (please refer to para. 4.58) and, in the case of a FC, preceded by the code or the abbreviation assigned to the relevant FC as the case may be [s 21 of the EAC (EP) (LC) Reg]. These numbers or letters of the alphabet pertaining to candidates and lists of candidates will also be shown on the ballot paper. Each validly nominated candidate will be separately informed of the validity of all nominations of the same constituency. *[Amended in June 2012 and June 2016]*

PART VIII : PARTICULARS RELATING TO CANDIDATES ON BALLOT PAPERS

4.38 Under the PCBP (LC & DC) Reg, candidates may, **during the nomination period**, request the EAC to print specified particulars relating to candidates on ballot papers for use in LegCo elections. These particulars include registered names and emblems of prescribed bodies⁶, registered emblems of prescribed persons⁷, words indicating that a candidate is an independent candidate or a non-affiliated candidate, and personal photographs of candidates. *[Amended in October 2007]*

⁶ A prescribed body means a prescribed political body or a prescribed non-political body.

⁷ A prescribed person means a person that is registered in a final register of electors for GCs as compiled and published in accordance with the LCO and that is not disqualified from being so registered or from voting at an election.

Request to Print Particulars Relating to Candidates on Ballot Papers

Request by candidate for traditional FC or a sole candidate on nomination list in GC and DC (second) FC

4.39 A candidate for a traditional FC or a sole candidate on a nomination list in GC/DC (second) FC may request the EAC to print on a ballot paper his/her personal photograph and a choice of the following particulars -

- (a) the registered names and/or registered emblems relating to not more than 3 prescribed bodies (see paras. 4.40 and 4.44);
- (b) the registered emblem relating to the candidate; or
- (c) the registered names and/or registered emblems relating to not more than 2 prescribed bodies and the registered emblem relating to the candidate (see para. 4.40).

[S 3(2) and (3) of the PCBP (LC & DC) Reg]

In any case, the candidate can also choose the words “Independent Candidate” or “Non-affiliated Candidate” for printing on a ballot paper. *[Amended in October 2007, June 2012 and June 2016]*

4.40 A request must be made in the specified form and signed by the requestor. Where the subject of the request relates to 1 or more prescribed bodies, it must be accompanied by a written consent given, during the nomination period, by the body or each of the bodies in relation to the request. Where the subject of the request includes a photograph, it must be accompanied by the photograph with the name of the candidate shown on the back of the photograph. [S 3(4) of the PCBP (LC & DC) Reg] *[Amended in October 2007]*

Request by candidate on nomination list in GC/DC (second) FC with more than 1 candidate

4.41 A candidate on a nomination list with more than 1 candidate may request the EAC to print on a ballot paper a personal photograph of any 1 or more of the candidates on the list, and a choice of the following particulars –

- (a) the registered names and/or registered emblems relating to not more than 3 prescribed bodies (see para. 4.42);
- (b) the registered emblems relating to not more than 3 candidates on the nomination list concerned;
- (c) the registered names and/or registered emblems relating to 1 prescribed body and the registered emblem relating to not more than 2 candidates on the nomination list concerned; or
- (d) the registered names and/or registered emblems relating to 2 prescribed bodies and the registered emblem relating to one of the candidates on the nomination list concerned.

[S 4(2), (3) and (4) of the PCBP (LC & DC) Reg]

In any case, the candidate(s) can also choose the words “Independent Candidate” or “Non-affiliated Candidate” against the names of the corresponding candidates for printing on a ballot paper. *[Amended in October 2007 and June 2016]*

4.42 A request must be made in the specified form and signed by the requestor and all other candidates on the nomination list concerned. Where the subject of the request relates to 1 or more prescribed bodies, it must be

accompanied by a written consent given, during the nomination period, by the body or each of the bodies in relation to the request. Where the subject of the request includes one or more photographs, it must be accompanied by the photograph or photographs with the name of the candidate concerned shown on the back of each photograph. [S 4(5) of the PCBP (LC & DC) Reg] *[Amended in October 2007]*

Application for Registration of Name and Emblem

4.43 The particulars already registered with the EAC under the former Particulars Relating to Candidates on Ballot Paper (Legislative Council) Regulation are deemed to have been registered with the EAC in relation to both LegCo and DC elections. All subsequent registrations will be applicable to both LegCo and DC elections. *[Added in October 2007]*

Application by prescribed body for the registration of its name and emblem

4.44 Subject to the time frame for application as detailed in para. 4.48, a prescribed body intending to support a candidate in a LegCo election may at any time apply to the EAC for the registration of all or any of the following particulars:

- (a) the Chinese name of the body;
- (b) an abbreviation of the Chinese name of the body;
- (c) the English name of the body;
- (d) an abbreviation of the English name of the body;
- (e) an emblem of the body.

[S 8(1) of the PCBP (LC & DC) Reg]

4.45 An application must be made in the specified form and signed by the applicant. It should indicate that the applicant is a prescribed political body or a prescribed non-political body and that the applicant intends to consent to the subject of application being printed on a ballot paper as particulars relating to 1 or more persons as candidates. The application must also be accompanied by a copy of the certificate or document issued to the body by an authority or regulatory organisation that regulates the body under the laws of Hong Kong and showing the name of the body. [S 8(2) of the PCBP (LC & DC) Reg] *[Amended in October 2007]*

Application by prescribed person for the registration of his/her emblem

4.46 A prescribed person intending to run in a LegCo election may in accordance with the registration cycle apply to the EAC for the registration of an emblem of the person [s 9(1) of the PCBP (LC & DC) Reg]. *[Amended in June 2016]*

4.47 An application must be made in the specified form and signed by the applicant [s 9(2) of the PCBP (LC & DC) Reg]. *[Amended in October 2007]*

Timing of Application

4.48 Applications for registration may be submitted to the EAC for processing and approval. A register containing the particulars in respect of the registered names and emblems of prescribed bodies and registered emblems of prescribed persons, which have been approved by the EAC and published in the Gazette, is maintained by the CEO for public inspection. The register is updated annually to reflect any approved additions/deletions and only the approved particulars may be used by candidates in an election. The relevant cut-off date for the receipt of applications for processing and inclusion in the

register in each year is as follows:

- (a) 15 June in a year in which a DC ordinary election is to be held;
and
- (b) 15 April in any other years.

[S 2 of the PCBP (LC & DC) Reg] *[Amended in October 2007, July 2008, June 2012 and June 2016]*

Processing of Application

4.49 The EAC will process any application made by a prescribed body or a prescribed person:

- (a) if the application is made on or before the relevant cut-off date in a year, as soon as practicable after that date, and in any event within that annual registration cycle; or
- (b) if the application is made after the relevant cut-off date in a year, as soon as practicable after the relevant cut-off date of the next following annual registration cycle, and in any event within the next following annual registration cycle.

[S 11 of the PCBP (LC & DC) Reg] *[Amended in October 2007, July 2008 and June 2012]*

4.50 If the EAC is of the opinion that it may refuse to grant an application made by a prescribed body or a prescribed person, it must give the applicant a notice in writing. The applicant may, within 14 days after the notice is given, vary the application or make representations in writing to the EAC on why it should not refuse to grant the application [ss 12 and 13(1) and

(2) of the PCBP (LC & DC) Reg]. *[Amended in October 2007]*

4.51 If the EAC, having considered an application made by a prescribed body or a prescribed person, is of the opinion that it may grant the application, it will publish a notice in respect of the application in the Gazette:

- (a) specifying the name of the applicant and the subject of the application;
- (b) stating that the EAC may grant the application; and
- (c) inviting any person who objects to the granting of the application to make objection to the EAC in accordance with s 15 of the PCBP (LC & DC) Reg.

[S 14 of the PCBP (LC & DC) Reg] *[Amended in October 2007]*

4.52 Under s 15 of the PCBP (LC & DC) Reg, any person may, within 14 days after the publication of a notice in respect of an application in the Gazette, by notice in writing given to the EAC, object to the granting of the application. *[Amended in October 2007]*

4.53 In the event of an objection, the EAC will conduct a hearing. Under normal circumstances, a hearing will be held in public. However, a hearing may be held in private if it is in the interest of justice to do so. The EAC will make a decision on whether the application should be granted after hearing the representations and examining the relevant materials. [S 17 of the PCBP (LC & DC) Reg]

4.54 The EAC will, as soon as practicable after a decision is made to grant an application made by a prescribed body or a prescribed person, publish a notice in respect of the application in the Gazette specifying the name of the

applicant and the subject of the application. If a decision is made to refuse an application, the EAC will notify the applicant in writing of the EAC's decision with reasons for its refusal [s 19 of the PCBP (LC & DC) Reg]. *[Amended in October 2007]*

Registration and De-registration of Name, Emblem, etc.

4.55 A register of the relevant particulars in respect of the registered names and emblems of prescribed bodies and the registered emblems of prescribed persons is established and maintained by the CEO who makes the register available for inspection, free of charge, by members of the public during ordinary business hours at the REO [s 20 of the PCBP (LC & DC) Reg]. *[Amended in October 2007]*

4.56 The EAC may de-register the name, the abbreviation of the name and the emblem that is registered in relation to a prescribed body on the grounds that:

- (a) no request is made to print the subject of registration on ballot papers:
 - (i) in 2 consecutive LegCo general elections;
 - (ii) in 2 consecutive DC ordinary elections, one of which is held between such LegCo general elections; and
 - (iii) in any LegCo or DC by-election held between such LegCo general elections or DC ordinary elections;

or

- (b) the body ceases to exist.

[S 21(1) of the PCBP (LC & DC) Reg] *[Amended in October 2007]*

4.57 The EAC may also de-register the emblem that is registered in relation to a prescribed person on the grounds that:

- (a) no request is made to print the subject of registration on ballot papers:
 - (i) in 2 consecutive LegCo general elections;
 - (ii) in 2 consecutive DC ordinary elections, one of which is held between such LegCo general elections; and
 - (iii) in any LegCo or DC by-election held between such LegCo general elections or DC ordinary elections;

or

- (b) the person has died.

[S 21(2) of the PCBP (LC & DC) Reg] *[Amended in October 2007]*

PART IX : CANDIDATES' BRIEFING AND INTRODUCTION TO CANDIDATES

4.58 The EAC will conduct a briefing for all validly nominated candidates/lists of candidates on important matters related to the election. After the end of the nomination period, the RO will inform each validly nominated candidate/list of candidates of the date and time of the Candidates' Briefing. The RO will conduct a lots drawing session immediately after the briefing to allocate to each candidate/list of candidates a number or a letter of

the alphabet to be shown on the ballot paper; and a set of designated spots for displaying EAs (please refer to para. 8.31). *[Amended in June 2016]*

4.59 The REO will publish an **Introduction to Candidates**. The number or the letter of the alphabet of each candidate/list of candidates on the ballot paper allocated to him/her or the list by the drawing of lots will also be shown on the Introduction to Candidates, which will be mailed to the electors together with the poll cards before the polling day. Copies of the Introduction to Candidates will be made available in the Correctional Services Department (“CSD”) and other law enforcement agencies for electors imprisoned or held in custody. *[Amended in July 2008, January 2010 and June 2016]*

4.60 Candidates are free to make use of the Introduction to Candidates to promote their election platforms. Any candidate/list of candidates who so wishes should submit the following to the relevant RO **before the end of the nomination period**:

- (a) a duly completed grid paper affixing a colour photograph of the candidate which must be in a specified size and should be taken within the last 6 months; and
- (b) 2 additional copies of his/her photograph identical to the one affixed to the grid paper with his/her name label affixed on the back.

If a candidate/list of candidates does not submit the grid paper, the Introduction to Candidates will only show the name(s) and the number or letter allocated in respect of him/her/them, and “Relevant information has not been provided by the candidate/list of candidates” will be printed in the space provided for the election platform. *[Amended in October 2007, July 2008 and June 2016]*

4.61 The contents, nature and presentation of the candidates’ messages

in the Introduction to Candidates are exclusively the idea and work of the candidate(s) himself/herself/themselves. They will not be subject to alteration or editing by the REO unless they are considered to be indecent, defamatory, unlawful or contain information not relating to the direct promotion of the candidature of the candidate(s) concerned. *[Amended in July 2008 and June 2012]*

4.62 To assist persons with visual impairment to read the contents of the election platform in the Introduction to Candidates, the REO has put in place a mechanism for candidates to provide separately the typed texts of their messages therein. With these typed texts, the REO would prepare a text version of the Introduction to Candidates for uploading onto the dedicated website for the election. This text version would enable persons with visual impairment to read the contents of the document with the aid of a computer. If the candidate/list of candidates does not provide the typed text of the Introduction to Candidates, the website will only show his/her/their name(s) and the number/letter allocated with the remark that the candidate/list of candidates has not provided a text version of his/her/their election platform. The EAC appeals to all candidates to support this initiative and make use of this text version to communicate their electoral messages to persons with visual impairment. As a general principle, candidates should be sensitive to the needs of persons with disabilities and, in the course of their electioneering campaign, make their utmost efforts to ensure that persons with disabilities, irrespective of their different forms of disability, can have fair access to their electoral messages. *[Added in June 2016]*