

## CHAPTER 3

### NOMINATION OF CANDIDATES

#### PART I : GENERAL

3.1 Candidates nominated for the DC election must satisfy the requirements in two parts, namely (1) the eligibility to be nominated as a candidate and (2) the requirements to be complied with by nominated candidates (including making a statutory declaration). Otherwise, he/she is not a validly nominated candidate. *[Amended in September 2019]*

3.2 For the first part, the candidates must fulfil the nomination eligibility as set out in s 20 of the DCO and must not be disqualified from being nominated as a candidate or elected as an elected member under the circumstances stipulated in s 21 of the DCO (see Part II of this chapter). *[Amended in September 2019]*

3.3 The second part is mainly concerned with making a statutory declaration in the nomination form. Under the subsisting electoral laws, all candidates of the CE Election, Legislative Council (“LegCo”) Election, DC Election and Rural Representative (“RR”) Election are required to make a declaration in the nomination form to the effect that they will uphold the Basic Law and pledge allegiance to the HKSAR. Otherwise, his/her nomination is invalid. Such requirement in relation to the DC election is stipulated in s 34(1)(b) of the DCO. In accordance with s 104 of the EAC (EP) (DC) Reg, a person who makes a false statement in the nomination form commits a criminal offence. Upon conviction, apart from being liable to the criminal sanction, he/she will be disqualified from holding office as a member of the DC

in the event of being elected in accordance with s 24(1)(d)(iv) of the DCO.  
*[Added in September 2019]*

3.4 To ensure that all candidates clearly understand the provisions of the Basic Law and the legal requirements and responsibilities involved in making the declaration, the EAC has prepared a Confirmation Form for signature by the candidates since the 2016 LegCo General Election, and has adopted the arrangement in the various elections and by-elections (including the DC by-elections) held thereafter. It is not a new arrangement to introduce the Confirmation Form in the DC election. *[Added in September 2019]*

3.5 The Confirmation Form is not part of the nomination form. It is an explanatory document reflecting the requirements under the subsisting law to remind candidates of the relevant legal provisions lest they do commit a criminal offence due to lack of understanding or awareness. Candidates may sign the Confirmation Form on a voluntary basis to confirm that he/she has understood the legal requirements. Regardless of whether the candidate has signed the Confirmation Form, he/she should be bona fide in signing the declaration in the nomination form. Otherwise, his/her nomination is invalid.  
*[Added in September 2019]*

3.6 According to the judgment on an election petition in relation to the 2016 LegCo General Election (HCAL 162/2016), the Court stated that “the EAC is entitled and empowered to issue the non-mandatory Confirmation Form requesting a candidate to further the information contained therein to assist the Returning Officer’s decision on the validity of a nomination. As such, the Returning Officer is also entitled to take into account a candidate’s failure to return the Confirmation Form (which is in effect the same as the candidate’s refusal or failure to reply to a request for further information by the Returning Officer) in deciding the validity of the nomination”. Furthermore, the judgement handed down by the High Court on two judicial review cases in

relation to the Confirmation Form (HCAL 133/2016 and HCAL 134/2016) reiterated that “it is lawful for the EAC to ask a candidate to submit the Confirmation Form together with the Nomination Form **on voluntary basis but not as a mandatory requirement**, and it is lawful for the Returning Officer to take that into account in determining the substantive validity of the nomination”. *[Added in September 2019]*

3.7 Under the subsisting law, whether a candidate’s nomination is valid or not is solely determined by the RO. The EAC is neither empowered nor involved in the making of such decision and would not provide any advice on the decision made by the RO. The RO may under s 12(10) of the EAC (EP) (DC) Reg request a candidate to provide additional information that he/she considers necessary to satisfy him/her that the candidate is eligible to be nominated as a candidate or that the nomination of the candidate is valid. In accordance with s 19 of the EAC (EP) (DC) Reg, if an RO decides that a nomination is invalid, the RO must endorse on the nomination form his/her decision and the reason(s) for it, which will be made available for public inspection pursuant to s 14 of the EAC (EP) (DC) Reg. If any person is disqualified from being a candidate at an election, he/she may make an election petition to question the result of the election in accordance with s 49 of the DCO. *[Amended in September 2019]*

3.8 A candidate is not required by the law to provide information on his/her political affiliation. However, a candidate may state his/her political affiliation in the nomination form and the Introduction to Candidates. Candidates may also request to print the registered names and/or registered emblems of prescribed bodies (political/non-political) they are affiliated with on the ballot papers. If a candidate chooses to state his/her political affiliation in the nomination form, Introduction to Candidates or ballot papers, the information shown in those documents should not be mutually inconsistent (for example, if the candidate indicates membership of a political party in the

nomination form, he/she is not allowed to indicate himself/herself as a non-affiliated candidate on the ballot papers). Moreover, it is an offence for a candidate to make a false statement about his/her political affiliation in an election-related document (including nomination form or ballot papers).

*[Added in September 2019]*

## **PART II : ELIGIBILITY AND DISQUALIFICATION FOR NOMINATION**

### **Eligibility**

3.9 To be eligible for nomination as a candidate at a DC election for a constituency, a person must:

- (a) be 21 years of age or over;
- (b) be an elector;
- (c) not be disqualified from voting at an election by virtue of s 30 of the DCO (see para. 2.11 above);
- (d) not be disqualified from being nominated as a candidate or elected as an elected member by virtue of s 21 of the DCO or any other law (see para. 3.11 below); and
- (e) have ordinarily resided in Hong Kong for the 3 years immediately preceding the date of his/her nomination.

[S 20 of the DCO] *[Amended in September 2015]*

3.10 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 occasional or temporary 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 DC ordinary election, a candidate may also seek the advice of the NAC. (See paras. 3.20 to 3.28 below) *[Amended in September 2015]*

### **Disqualification**

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

- (a) is a judicial officer, or a prescribed public officer<sup>7</sup>;
- (b) 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

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<sup>7</sup> 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.

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- (c) has been convicted of treason;
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment;
- (e) is or has been convicted, within 5 years before the polling day,
  - (i) of an offence in Hong Kong or in any other place, the sentence for which is imprisonment (suspended or not) for a term exceeding 3 months without the option of a fine;
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the ECICO;
  - (iii) of an 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;
- (f) is ineligible because of operation of the DCO or any other law;
- (g) is a representative or a salaried functionary of the government of a place outside Hong Kong;

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<sup>8</sup> 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 s 39(1)(b) of the LCO (which is similar to para. 3.11(b) or s 21(1)(b) of DCO) to be unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. The future DC elections will be organised in accordance with the prevailing electoral laws. Any person who would like to be nominated as a candidate for DC election and is doubtful about his/her eligibility for nomination may seek independent legal advice, and in a DC ordinary election may also apply to the NAC appointed by the EAC for advice where appropriate.

- (h) 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;
- (i) 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; or *[Amended in August 2008]*
- (j) is found to be incapable by reason of mental incapacity, of managing and administering his/her property and affairs under the Mental Health Ordinance (Cap 136). *[Amended in September 2012]*

[S 21 of the DCO] *[Amended in September 2015]*

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

### **When to Nominate**

3.12 Nominations may be made during the **nomination period** specified in the notice published in the Gazette [s 8 of the EAC (EP) (DC) Reg]. The nomination period for a DC election must not be less than 14 days or more than 21 days, and must end not less than 28 days and not more than 42 days before the polling date [s 9 of the EAC (EP) (DC) Reg]. An election timetable in the format of the Action Checklist for Candidates at **Appendix A** will be provided to each candidate by the RO for the relevant constituency.

The ROs shall receive nominations during the ordinary business hours (i.e. from 9 am to 5 pm on Monday to Friday, and from 9 am to 12 noon on a Saturday) on each working day (i.e. any day other than a general holiday) in the nomination period. **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 September 2007, September 2012, September 2015 and September 2019]*

### **How to Nominate**

3.13 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 (<https://www.reo.gov.hk>). *[Amended in August 2008]*

3.14 The nomination form comprises:

(a) **The Nomination**

This must be subscribed by **10 registered electors** (other than the candidate himself/herself) in respect of the relevant constituency and the number of persons that may subscribe a nomination shall not be more than 20 [s 7(1) and (1A) of the DC Subscribers & Deposit Reg]. A subscribing elector must be registered for the constituency concerned and may only subscribe 1 nomination as regards a particular election [s 7(2) of the DC Subscribers & Deposit Reg]. Where the number of persons subscribing a nomination has exceeded the required number (i.e. 10), any surplus over the required number of qualified subscribers will be regarded as not having subscribed the nomination concerned [s 7(3A) of the DC Subscribers and 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 has withdrawn his/her nomination or has died, 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 regulation, his/her signature shall be operative only on the first one delivered. [S 7(4) of the DC Subscribers & Deposit Reg] *[Amended in September 2011]*

**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/her nomination, to avoid the risk of invalidation of the nomination should any of the subscribers be subsequently found not to be qualified as subscribers. A candidate should ensure that the electors subscribing his/her nomination form are eligible and that the electors have not subscribed another nomination previously. Each elector subscribing a nomination shall sign the nomination form **personally**. A candidate should not sign as a subscriber in his/her nomination form. *[Amended in September 2019]*

No unlawful acts 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 and to

imprisonment. *[Added in September 2007 and amended in September 2012]*

Candidates are also required to observe Data Protection 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 access, processing, erasure, loss or use accidentally or without authorisation. *[Added in September 2012 and amended in September 2015]*

(b) Consent and Declarations on Nomination Form

According to the DCO, a candidate must complete the nomination form and the declarations, and have it attested by a witness<sup>9</sup>. The candidate must declare that he/she will uphold the Basic Law and pledge allegiance to the HKSAR. Otherwise, he/she is not validly nominated as a candidate [s 34(1)(b) of the DCO]. *[Amended in September 2019]*

Any person who makes a statement which he/she knows to be false in a material particular in an election-related document, including the nomination form and the declarations, or recklessly makes a statement which is incorrect in a material particular in such document, or omits a material particular in such document,

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<sup>9</sup> A witness can be any person in possession of an identity document and aged 18 years or over. According to s 2 of the DCO, identity document means:

- (a) an identity card issued to a person under the Registration of Persons Ordinance (Cap 177); or
- (b) a document issued by the Commissioner of Registration to a person certifying that the person is exempt, under regulation 25 of the Registration of Persons Regulations (Cap 177A), from being required to register under that Ordinance; or
- (c) any other document issued to a person that is acceptable to the ERO as proof of the person’s identity.

commits an offence and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 104 of the EAC (EP) (DC) Reg]. *[Added in September 2019]*

To ensure that all candidates clearly understand the relevant provisions of the Basic Law and the legal requirements and responsibilities involved, and are bona fide on such basis in signing the relevant declarations in the nomination form, the EAC has prepared a Confirmation Form for signature by the candidate. *[Added in September 2019]*

The candidates may sign the Confirmation Form on a voluntary basis. Whether a candidate has signed the Confirmation Form will not directly affect the validity of his/her nomination. By signing the Confirmation Form, it may assist the RO in the exercise of his/her statutory power to discharge his/her duties to ensure that the nomination procedure is completed in accordance with the law. It also enables the candidate to confirm that he/she has understood the above requirements and responsibilities. Candidates are reminded to note that to uphold the Basic Law means to uphold all the provisions of the Basic Law, including Article 1<sup>10</sup>, Article 12<sup>11</sup> and Article 159(4)<sup>12</sup>. *[Added in September 2019]*

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<sup>10</sup> Article 1 of the Basic Law provides that “The Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China.”

<sup>11</sup> Article 12 of the Basic Law provides that “The Hong Kong Special Administrative Region shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government.”

<sup>12</sup> Article 159(4) of the Basic Law provides that “No amendment to this Law shall contravene the established basic policies of the People’s Republic of China regarding Hong Kong.”

**IMPORTANT :**

No person shall be nominated in an election as a candidate for more than 1 constituency. 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 in the nomination 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 [s 21 of the EAC (EP) (DC) Reg]. Where a candidate stands nominated, any subsequent nominations of his/hers will be rejected as invalid. *[Amended in September 2011]*

3.15 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. The candidate should make sure that his/her nomination form is properly completed before submission. Information (such as occupation and political affiliation) provided by the candidate in the grid paper for Introduction to Candidates or the specified form for printing of particulars relating to the candidate on a ballot paper<sup>13</sup> should not be inconsistent with the information stated in the nomination form (for example, if the candidate indicates membership of a political party in the nomination form, he/she is not allowed to indicate himself/herself as a non-affiliated candidate on the ballot papers). *[Amended in September 2015 and September 2019]*

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<sup>13</sup> The form is known as (REO/BP/7) Form, i.e. “Request by a Candidate for a Legislative Council Functional Constituency or a Sole Candidate on a Legislative Council Nomination List or by a Candidate for a District Council Constituency for Printing of Particulars Relating to the Candidate on a Ballot Paper”.

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

3.17 The completed nomination form must be submitted to the RO for the constituency concerned by the candidate **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 day other than a general holiday) in the nomination period. The CEO may, in exceptional circumstances, e.g. the nominee's temporary absence from Hong Kong or incapacity due to illness, authorise any other manner of delivery of the nomination form to the RO. [S 12(12) and (13) of the EAC (EP) (DC) Reg] *[Amended in September 2015 and September 2019]*

3.18 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) (DC) Reg]. Should the RO decide that a nomination is invalid (see Part VI 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) (DC) Reg]. *[Amended in September 2019]*

### **False Declarations**

3.19 A candidate who knowingly and wilfully makes a statement which is false in a material particular in the nomination form or makes a false declaration shall violate s 104 of the EAC (EP) (DC) Reg. The regulation stipulates that a person who makes a statement which he/she knows to be false in a material particular in an election-related document, or recklessly makes a statement which is incorrect in a material particular in such document, or omits

a material particular in such document, commits an offence and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. It also stipulates that an election-related document means a form, declaration, etc. required or used for the purposes of the Regulation. Besides, the person making such a false statement in any document required under any enactment shall also be in breach of s 36 of the Crime Ordinance and be liable to imprisonment for 2 years and to a fine. A violation against s 104 of the EAC (EP) (DC) Reg is a prescribed offence. In accordance with s 24 of the DCO, if a person commits a prescribed offence, he/she is disqualified from holding the office of a member of the DC upon conviction regardless of the term of imprisonment, with the same disqualification on conviction of a corrupt or illegal conduct under the ECICO (as described in paras. 15.63 and 16.35 of the Guidelines). In other words, even if a candidate who makes a false declaration in the nomination form is elected, he/she will be disqualified from holding office as a member of the DC in accordance with s 24(1)(d)(iv) of the DCO. *[Amended in September 2007, September 2015 and September 2019]*

#### **PART IV : NOMINATIONS ADVISORY COMMITTEES**

3.20 The EAC has the power to appoint NACs to provide advice, on request, to prospective candidates and ROs on the candidates' eligibility for nomination [ss 2 and 3 of the EAC (NAC) (DC) 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 September 2007]*

3.21 The NACs may provide advice to prospective candidates and ROs on whether a prospective candidate is eligible to be, or is disqualified from being, nominated as a candidate. However, 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. *[Added in September 2019]*

3.22 According to s 1(2) of the EAC (NAC) (DC) Reg, the NACs are not empowered to advise on any matter relating to any requirements under s 34 of the DCO (including the candidate's declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR). The advice provided by the NAC on a prospective candidate's eligibility to be nominated as a candidate does not indicate whether his/her nomination is valid or not. The decision on the validity of the nomination remains finally with the RO. *[Added in September 2019]*

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

3.23 NAC's service will be provided to prospective candidates **only at a DC ordinary election**. During a period to be specified by the EAC [s 3(4) of the EAC (NAC) (DC) 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 DC ordinary election. He/She may make only 1 application in respect of the election [s 5(4) of the EAC (NAC) (DC) Reg]. *[Amended in September 2015 and September 2019]*

3.24 The completed application must be:

- (a) sent to the 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(2) of the EAC (NAC) (DC) Reg] *[Amended in September 2011]*

3.25 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(7) and (8) of the EAC (NAC) (DC) Reg]

3.26 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(9) of the EAC (NAC) (DC) Reg]



3.27 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(10) of the EAC (NAC) (DC) Reg].

3.28 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) (DC) Reg].

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

3.29 NAC's service will be provided to ROs at both DC ordinary elections and by-elections during the period specified by the EAC, normally from the commencement until up to 1 day after the end of the nomination period. During the 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. According to s 1(2) of the EAC (NAC) (DC) Reg, the Regulation does not empower or require the NAC to advise on any matter relating to any requirements under s 34 of the DCO (see para. 3.22). 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) (DC) Reg] *[Amended in September 2019]*

3.30 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) (DC) Reg and s 6(4) of the EAC (NAC) (DC) Reg]. The decision on the validity of nomination, however, remains with the RO alone [ss 16, 90(1) and (2)(a) of EAC (EP) (DC) Reg].

## **PART V : ELECTION DEPOSIT**

### **Payment of Election Deposit**

3.31 Each nomination form must be presented with the payment of an election deposit of \$3,000, in cash, cashier order or by cheque, as prescribed by regulation made by the CE in Council [ss 34(2) and 81(2)(b) of the DCO and s 2 of the DC Subscribers & Deposit Reg].

3.32 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 September 2012]*

### **Return of Election Deposit**

3.33 The deposit will be returned to the candidate if:

- (a) he/she is not validly nominated;

- (b) his/her nomination is withdrawn;
- (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; *[Amended in September 2015]*
- (d) the election is terminated;
- (e) he/she is elected; or
- (f) he/she secures in his/her favour not less than 5% of the total number of ballot papers containing valid votes received.

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

(For details, see ss 3, 4 and 5 of the DC Subscribers & Deposit Reg)

## **PART VI : VALIDITY OF NOMINATIONS**

3.34 Whether the nomination is valid or not is decided by the RO. 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 36(1) of the DCO and s 22 of the EAC (EP) (DC) Reg].

3.35 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. 3.29 above). *[Amended in September 2015]*

3.36 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 [s 18 of the EAC (EP) (DC) Reg]. 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.

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

3.38 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 [s 12(10) of the EAC (EP) (DC) Reg].

3.39 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 referred to in para. 3.14(b) above. *[Amended in September 2011]*

3.40 Without prejudice to ss 20, 21 and 34 of the DCO<sup>14</sup>, 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 DC Subscribers & Deposit Reg;
- (b) the nomination form, including the nomination and declarations, has not been completed or signed as required by s 12 of the EAC

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<sup>14</sup> Please see paras. 3.9, 3.11, 3.14(b) and 3.19 for reference.

(EP) (DC) Reg;

- (c) he/she is satisfied that the candidate is not eligible to be, or is disqualified from being, nominated as a candidate under the DCO;
- (d) the candidate has been nominated for another constituency in the same election and the RO is not satisfied that he/she 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 end of the nomination period; or
- (f) he/she is satisfied that the candidate has died.

[S 16 of the EAC (EP) (DC) Reg] *[Amended in September 2015 and September 2019]*

3.41 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 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 declarations 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 36(2) and (3) of the DCO and s 24 of the EAC (EP) (DC) Reg].

3.42 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/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 in the election for the relevant constituency and the RO has publicly declared that the candidate was duly elected [s 36(4) and (5) of the DCO and s 25 of the EAC (EP) (DC) Reg].

3.43 A candidate will be elected ipso facto if he/she is the only one validly nominated for a particular constituency at the end of the nomination period. In the circumstances, the RO should publicly declare the candidate to be returned in the election for that constituency [s 23 of the EAC (EP) (DC) Reg].

## **PART VII : WITHDRAWAL OF CANDIDATURE**

3.44 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 “Notice of Withdrawal of Candidature”. The completed form should be delivered to the RO concerned by the candidate in person or the candidate’s election agent in person [s 35 of the DCO and s 20 of the EAC (EP) (DC) Reg]. Under the subsisting law, candidates are not allowed to withdraw their candidature after the end of the nomination period and there is no such mechanism of so-called “abandonment of election”. Even if a candidate has publicly announced about his/her so-called “abandonment of election”, his/her name will still be shown on the ballot papers and electors may vote for that candidate if they so wish. All candidates must comply with the election-related legislation, including reporting all election expenses.  
*[Amended in September 2019]*

**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. *[Amended in September 2015]*

**PART VIII : NOTICE OF VALID NOMINATIONS**

3.45 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 (which will be shown on the ballot paper) allocated by the drawing of lots to each candidate [s 22(1) and (4) of the EAC (EP) (DC) Reg]. Each validly nominated candidate will be separately informed of the validity of all nominations of the same constituency. *[Amended in September 2012]*

**PART IX : PARTICULARS RELATING TO CANDIDATES ON  
BALLOT PAPERS**

3.46 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 the DC elections. These particulars include registered names and emblems of prescribed bodies<sup>15</sup>, registered

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<sup>15</sup> A prescribed body means a prescribed political body or a prescribed non-political body.

emblems of prescribed persons<sup>16</sup>, words indicating that a candidate is an independent candidate or a non-affiliated candidate, and personal photographs of candidates. *[Added in September 2007]*

**Request to Print Particulars Relating to Candidates on Ballot Papers**

3.47 A candidate may request the EAC to print on ballot papers 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. 3.48 and 3.50 below);
- (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. 3.48 below).

[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 ballot papers. *[Amended in September 2015]*

3.48 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

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<sup>16</sup> A prescribed person means a person that is registered in an FR 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.



by two photographs with the name of the candidate shown on the back of the photograph. [S 3(4) of PCBP (LC & DC) Reg] *[Added in September 2007]*

### **Application for Registration of Name and Emblem**

3.49 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 September 2007 and amended in August 2008]*

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

3.50 Subject to the time frame for application as detailed in para. 3.54, a prescribed body intending to support a candidate in a DC 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]

3.51 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 PCBP (LC & DC) Reg] *[Added in September 2007]*

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

3.52 A prescribed person intending to run in a DC 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 September 2015]*

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

#### Timing of Application

3.54 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] *[Added in September 2007, amended in August 2008, September 2011, September 2012 and September 2015]*

### **Processing of Application**

3.55 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 cut-off 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] *[Added in September 2007, amended in August 2008 and September 2011]*

3.56 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] *[Added in September 2007]*

3.57 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] *[Added in September 2007]*

3.58 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. *[Added in September 2007]*

3.59 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] *[Added in September 2007]*

3.60 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] *[Added in September 2007]*

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

3.61 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]. *[Added in September 2007]*

3.62 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]

3.63 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] *[Added in September 2007]*

## **PART X : CANDIDATES' BRIEFING AND INTRODUCTION TO CANDIDATES**

3.64 The EAC will conduct a briefing for all validly nominated candidates on important matters related to the election. After the end of the

nomination period, the RO will inform each validly nominated candidate of the date and time of the Candidates' Briefing. The RO will conduct a lots drawing session immediately before the briefing to allocate to each candidate a candidate number to be shown on the ballot paper; and a set of designated spots for displaying EAs (please refer to para. 7.33). *[Amended in August 2008, January 2010, September 2015 and September 2019]*

3.65 The REO will publish an **Introduction to Candidates**. The number of each candidate on the ballot paper allocated to him/her 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 August 2008, January 2010 and September 2015]*

3.66 Candidates are free to make use of the Introduction to Candidates to promote their elections. Any candidate who so wishes should submit the following to the relevant RO **before the end of the nomination period**:

- (a) a duly completed grid paper affixed with 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 does not submit the grid paper, the Introduction to Candidates will only show the name and the candidate number in respect of him/her, and "Relevant information has not been provided by the candidate" will be printed

in the space provided for his/her electoral message. *[Amended in September 2007, August 2008, September 2015 and September 2019]*

3.67 The contents, nature and presentation of a candidate's message in the Introduction to Candidates are exclusively the idea and work of the candidate himself/herself. They will not be subject to alteration or editing by the REO unless they are considered to be obscene, immoral, indecent, offensive, defamatory, unlawful, or contain information not relating to the promotion of the candidature of the candidate concerned. *[Amended in August 2008, September 2011 and September 2019]*

3.68 To assist persons with visual impairment to read the contents of the Introduction to Candidates, candidates may provide the REO with typed texts of their messages to enable persons with visual impairment to read the contents of the document with the aid of computer software. The typed texts can be submitted after the end of the nomination period and by the deadline specified by the REO. With these typed texts, the REO would prepare a text version of the Introduction to Candidates for uploading onto the dedicated website of an ordinary election or the REO's website in the case of a by-election. If the candidate does not provide the typed text for preparing the text version of the Introduction to Candidates, the website will only show his/her name and the candidate number allocated with the remark that the candidate has not provided a text version of his/her electoral message. The EAC appeals to all candidates to support this initiative and make use of this text version to convey their electoral messages to persons with visual impairment. As a general principle, candidates should be sensitive to the needs of electors and, in the course of their electioneering campaign, make their utmost efforts to ensure that persons with different needs can have fair access to their electoral messages. *[Added in September 2012, amended in September 2015 and September 2019]*