

## CHAPTER 4

### NOMINATION OF CANDIDATES

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

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

#### **Eligibility**

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

- (a) 18 years of age or over;
- (b) both registered and eligible to be registered as an elector for a GC;  
and
- (c) both registered as a voter and eligible to be registered as a voter for the relevant EC subsector or satisfy the RO for the relevant EC subsector that he/she has a substantial connection with the EC subsector.

[S 17 of the Schedule to the CEEO]

## **Disqualification**

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

- (a) has ceased to have a substantial connection with the subsector concerned;
- (b) has ceased to be registered or eligible to be registered as an elector for a GC;
- (c) has in Hong Kong, or in any other place, been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or any substitute sentence or received a free pardon<sup>4</sup>;
- (d) on the date of nomination or of the subsector election, is serving a sentence of imprisonment;
- (e) is or has been convicted within 3 years before the polling day:
  - (i) of having engaged in corrupt or illegal conduct in contravention of the ECICO;
  - (ii) of any offence against Part II of the Prevention of Bribery Ordinance (Cap 201) (“POBO”); or

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<sup>4</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 the similar provision under 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 EC Subsector Election will be organised in accordance with the prevailing electoral laws. Any person who would like to be nominated as a candidate for EC Subsector Election and is doubtful about his/her eligibility for nomination may seek independent legal advice, and in an EC Subsector ordinary election, may also apply to the NAC appointed by the EAC for advice where appropriate.

- (iii) of any offence prescribed by the regulations made by the EAC;
- (f) 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
- (g) is a member of the armed forces of the People's Republic of China or any other country or territory.

[S 18 of the Schedule to the CEEO] *[Amended in September 2006, October 2011 and September 2016]*

4.4 If a person is not an elected member of the Hong Kong and Kowloon DCs and New Territories DCs, a Hong Kong member of the National Committee of the CPPCC or the Chairman, a Vice-Chairman or a Councillor of the Full Council of the HYK, he/she is disqualified from being nominated as a candidate for the respective subsector at a subsector election, or from being elected as an EC member representing the respective subsector [s 18A of the Schedule to the CEEO]. *[Added in September 2006 and amended in October 2011]*

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

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

is unconnected to any candidate or political organisation in Hong Kong, independent and impartial. *[Amended in September 2006]*

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

4.6 NAC's service will be provided to candidates **only at an EC subsector ordinary election**. During a period to be specified by the EAC [s 4(4) of the EAC (NAC) (EC) 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 EC subsector ordinary election. Each prospective candidate may make only 1 application in respect of a particular EC subsector election. While a prospective candidate may apply for advice only once in respect of a particular EC subsector, he/she may apply for advice in respect of more than 1 EC subsector. [S 6(6) and (9) of the EAC (NAC) (EC) Reg] *[Amended in September 2016]*

4.7 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 6(4) of the EAC (NAC) (EC) Reg]

*[Amended in October 2011]*

4.8 An NAC may, before giving its advice, request the applicant to make available to it within a specified period any information, particulars and evidence relating to his/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 6(12) and (13) of the EAC (NAC) (EC) Reg]

4.9 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 6(14) of the EAC (NAC) (EC) Reg]

4.10 The NAC's advice to an applicant, including a decision to refuse to consider an application or to give advice, will be in writing and will be sent to the applicant not later than a date to be specified by the EAC [s 6(15) of the EAC (NAC) (EC) Reg].

4.11 The NAC's service is also available to designated bodies in the religious subsector nomination process, regarding the eligibility or disqualification of persons proposed to be nominated by such designated bodies, and the proposed nominees themselves. [S 6(2) and (3) of the EAC (NAC) (EC) Reg].

4.12 Any advice given by an NAC or a refusal to give any such advice does not preclude a person from seeking nomination as a candidate in an election or proceeding with a nomination, if he/she so wishes [s 10 of the EAC (NAC) (EC) Reg].

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

4.13 NAC's service will be provided to ROs **at both EC subsector ordinary elections and by-elections** during the period specified by 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 (a) the candidates who have submitted their nominations; and (b) for the religious subsector, the nominees proposed by designated bodies. 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 7 of the EAC (NAC) (EC) Reg]. *[Amended in September 2016]*

4.14 The RO is required, in making a decision as to (a) whether a particular candidate is validly nominated in respect of the subsector for which the candidate seeks nomination, or (b) whether a particular nominee is validly nominated in respect of the religious subsector for which a designated body proposes the nomination, to have regard to any advice given by an NAC on that candidate/nominee [s 14 of the EAC (EP) (EC) Reg and s 7(5) of the EAC (NAC)

(EC) Reg]. The decision on the validity of nomination, however, remains with the RO alone [s 89(2)(a) of the EAC (EP) (EC) Reg].

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

#### **When to Nominate**

4.15 Nominations may be made during the **nomination period** specified in the Notice of Election published in the Gazette [ss 4 and 5 of the EAC (EP) (EC) Reg]. An election timetable will be provided to each candidate by the RO for the relevant subsector. The RO 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 September 2016]*

#### **How to Nominate**

4.16 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 September 2016]*

4.17 The nomination form comprises:

(a) **The Nomination**

It must be subscribed by not less than **5 voters registered for the EC subsector concerned** (other than the candidate himself/herself), and each voter may only subscribe **as many**

**nominations** regarding a particular EC subsector **as there are vacancies** to be filled [s 8(1), (2) and (3) of the EC Subscribers & Deposit Reg]. Once the number of nomination papers subscribed by a voter, which have been delivered to the RO, has reached the above statutory limit (i.e. the number of vacancies to be filled of a particular EC subsector), the voter's signature on any other nomination papers will be inoperative.

If, however, the nomination subscribed by a voter has been held to be invalid, or the candidate has withdrawn his/her nomination or has died, the voter may make another nomination instead before the end of the relevant nomination period, and his/her signature shall be operative on the latter nomination form [s 8(4) of the EC Subscribers & Deposit Reg]. *[Amended in September 2006 and September 2016]*

**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 voters subscribing his/her nomination form are eligible and that the voters have not subscribed more nomination forms than the vacancies of the EC subsector. Each voter subscribing a nomination shall sign the nomination form **personally**. *[Amended in October 2006 and September 2016]*



No unlawful means shall be used to procure a voter 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 imprisonment or a fine. *[Amended in September 2006 and September 2016]*

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 unauthorised or accidental access, processing, erasure, loss or use. *[Added in September 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 a declaration to the effect that the candidate is eligible to be nominated as a candidate for the particular subsector, is not disqualified from being so nominated, and consents to being so nominated.

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

**IMPORTANT :**

No person shall be nominated for more than 1 EC subsector in the EC subsector election [s 20 of the Schedule to the CEEO]. 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 subsector 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. 4.25 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 September 2016]*

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

4.19 The completed nomination form must be delivered with the RO for the subsector 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 other 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 form of delivery of the nomination form to the RO [s 8(13) of the EAC (EP) (EC) Reg]. *[Amended in September 2016]*

4.20 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 10 of the EAC

(EP) (EC) 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 16 of the EAC (EP) (EC) Reg]. *[Added in September 2016]*

### **False Declarations**

4.21 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 101 of the EAC (EP) (EC) 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. 16.46 and 17.31 of the Guidelines). *[Amended in September 2006, October 2011 and September 2016]*

## **PART IV : ELECTION DEPOSIT**

### **Payment of Election Deposit**

4.22 Each nomination form must be presented with the payment of an election deposit of \$1,000, in cash, cashier order or by cheque, as prescribed by regulation [s 19 of the Schedule to the CEEO and s 3 of the EC Subscribers & Deposit Reg]. *[Amended in September 2016]*

4.23 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 2016]*

**Return of Election Deposit**

- 4.24 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;
  - (d) he/she is elected; or
  - (e) he/she secures in his/her favour not less than 2.5% of the total number of ballot papers containing valid votes received in the EC subsector election or 5 such ballot papers, whichever is the greater.

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

[For details, see ss 4 and 5 of the EC Subscribers & Deposit Reg.] *[Amended in September 2016]*

## **PART V : VALIDITY OF NOMINATIONS**

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

4.25 The RO will make a decision as to the validity of a nomination as soon as practicable after receipt of the nomination form and will publish a notice stating which persons are validly nominated as candidates within 14 days after the end of the nomination period [s 22 of the Schedule to the CEEEO and s 18(1) of the EAC (EP) (EC) Reg]. *[Amended in September 2016]*

4.26 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. 4.13 above].

4.27 Where a nomination appears to the RO to be invalid because of some errors that can be corrected within the nomination period, the RO will, if practicable, give the candidate a reasonable opportunity of correcting the errors before making a decision that the nomination is invalid. For example, if the entitlement of any subscriber is in doubt, a prospective candidate may be allowed to make a substitution as soon after the submission of his/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.

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

4.29 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.

4.30 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 declaration referred to in para. 4.17(b) above. *[Amended in October 2011]*

4.31 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 8 of the EC Subscribers & Deposit Reg;
- (b) the nomination form, including the nomination and declaration, has not been completed or signed as required by s 8 of the EAC (EP) (EC) Reg;
- (c) he/she is satisfied that the candidate is 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. 4.14 and 4.26 above];
- (d) the candidate has been nominated in another subsector 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;

- (f) he/she is satisfied that the candidate has died; or
- (g) the nomination form is not duly delivered within the nomination period [see paras. 4.15 and 4.19 above].

*[Amended in September 2016]*

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

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

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

4.34 An EC subsector election candidate may withdraw his/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 21 of the Schedule to the CEEO].

### **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 2016]*

## **PART VII : NOTICE OF VALID NOMINATIONS**

4.35 The RO concerned will publish a notice in the Gazette within 14 days after the end of the nomination period, stating the name and address of each of all the validly nominated candidates for the subsector, together with the number (which will be shown on the ballot paper) allocated by the drawing of lots to each candidate [s 18 of the EAC (EP) (EC) Reg]. Each validly nominated candidate will be separately informed of the validity of all nominations of the same subsector. *[Amended in September 2006 and September 2016]*



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

4.36 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 after 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. 8.29). *[Amended in January 2010 and September 2016]*

4.37 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 voters 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 voters imprisoned or held in custody. *[Amended in January 2010 and September 2016]*

4.38 Candidates are free to make use of the Introduction to Candidates to promote their election platforms. 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 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 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 the election platform. *[Amended in January 2010, October 2011 and September 2016]*

4.39 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 indecent, defamatory, unlawful or contain information not relating to the promotion of the candidature of the candidate concerned. *[Amended in January 2010 and October 2011]*

4.40 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 does not provide the typed text of the Introduction to Candidates, the website will only show his/her name and the number allocated with the remark that the candidate has not provided a text version of his/her 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 September 2016]*