

## CHAPTER 4

### NOMINATION OF CANDIDATES/NOMINEES

#### PART I : GENERAL

4.1 On 11 March 2021, the NPC passed the “Decision of the NPC on Improving the Electoral System of the HKSAR”. Pursuant to the Decision, the HKSAR shall establish a CERC which is responsible for assessing and validating the eligibility of candidates for the EC members, the CE, and the LegCo members; and the HKSAR shall improve the system and mechanisms related to qualification review, to ensure that the qualifications of candidates are in conformity with the Basic Law, the Law of the People’s Republic of China on Safeguarding National Security in the HKSAR, the NPCSC’s interpretation of Article 104 of the Basic Law, the NPCSC’s decision on the qualification of HKSAR LegCo members, and provisions of relevant local laws of the HKSAR. *[Added in July 2021]*

4.2 As stipulated in Annex I to the Basic Law, the CERC is responsible for reviewing and deciding the validity of nomination of candidates for EC members. The CERC may request the ROs to provide advice to the CERC regarding the nominations of candidates. It may also make decision pursuant to the opinion of the Committee on National Security. The Committee on National Security shall, on the basis of the review by the National Security Department of the Hong Kong Police Force, makes findings as to whether a candidate for EC member meets the legal requirements and conditions for “upholding the Basic Law and pledging allegiance to the HKSAR”, and issue an opinion to the CERC in respect of candidates who fail to meet such legal requirements and conditions. As stipulated in Annex I to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the

eligibility of a candidate pursuant to the opinion of the Committee on National Security. However, if the CERC's decision to disqualify a person from being a candidate/nominee is based on his/her failure to meet other statutory eligibility requirements (e.g. age, Hong Kong permanent resident status or criminal records), the person being disqualified may lodge an appeal to question the election result in accordance with the law. *[Added in July 2021]*

4.3 Legislative provisions governing the eligibility for being nominated as a candidate/nominee at the election of the EC subsectors, the disqualification from being nominated as a candidate/nominee or from being elected as a member of the EC, and the requirements to be complied with by nominated candidates/nominees are set out respectively in ss 8 and 17 of the Schedule to the CEEO, ss 9, 9A, 18 and 18A of the Schedule to the CEEO, and ss 7A and 17A of the Schedule to the CEEO (see Parts II, III and V of this chapter). *[Amended in September 2006 and July 2021]*

4.4 As stipulated in ss 7A and 17A of the Schedule to the CEEO, the nomination of a candidate/nominee is invalid unless a declaration is made in the nomination form to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR<sup>23</sup>. In accordance with s 101 of the EAC (EP) (EC) Reg, a person who makes a false statement in the nomination form commits a criminal offence, and shall be subject to criminal liability upon conviction. *[Added in July 2021]*

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<sup>23</sup> Upholding the Basic Law means to uphold all the provisions of the Basic Law, including:  
 Article 1: The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.  
 Article 12: 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.  
 Article 159(4): No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.  
 Please see s 3AA of the Interpretation and General Clauses Ordinance (Cap 1) for details of upholding the Basic Law and bearing allegiance to the HKSAR.

4.5 Under the subsisting law, the validity of a candidate/nominee's nomination is solely determined by the CERC. The EAC is neither empowered nor involved in the making of such decision and will not provide any advice. The EAC will only make practical arrangements for the election according to the validly nominated candidates determined by the CERC. In accordance with s 16 of the EAC (EP) (EC) Reg, if the CERC decides that a nomination is invalid, the CERC must endorse on the nomination form the decision and the reason(s) for it, and the RO will make available the nomination form for public inspection pursuant to s 10 of the EAC (EP) (EC) Reg. *[Added in July 2021]*

4.6 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. If a candidate chooses to state his/her political affiliation in the nomination form or the Introduction to Candidates, he/she should make sure that the information shown in those documents is not contradictory to other information provided (for example, if the candidate indicates membership of a political party in the nomination form, he/she must not indicate himself/herself as a non-affiliated candidate on the Introduction to Candidates). *[Added in July 2021]*

4.7 It is worth noting that it is imperative for any candidate claiming to be "independent" or "non-affiliated" (or other similar descriptions) to have factual basis for the claim. There were, for that matter, legal proceedings involving disputes over the political affiliation of candidates. In an election petition handled by the High Court in respect of the 2019 District Council ("DC") Ordinary Election (HCAL 3665/2019), the judge stated in the judgment that:

"A statement that a candidate in an election is '獨立' (independent) may mean different things depending on the context. It may mean, amongst others, that the candidate: (1) is not affiliated with any political party; or (2) is not running on a political party's ticket in the

election; or (3) is not supported by any political party in the election; or (4) is not affiliated with any body or organisation, or political body or organisation, irrespective of whether it is strictly a political party or purports to be one; or (5) is not affiliated with any ‘prescribed body’ (訂明團體) as that term is defined in s 2(1) of the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation, Cap 541M, i.e. a ‘prescribed political body’ (訂明政治性團體) or a ‘prescribed non-political body’ (訂明非政治性團體).”

If candidates would like to use the word “independent” for electioneering publicity purpose, it is their responsibility to ensure unambiguous factual substantiation for such claim to prevent misunderstanding. To avoid doubt or dispute, candidates may consider a more prudent approach by illustrating the meaning and background for claiming to be “independent” in their introductions or publicity materials. *[Added in July 2021]*

4.8 In the judgment on the election petition case (HCAL 3665/2019) mentioned in para. 4.7 above, the judge also pointed out that:

“The expression ‘political party’ does not have a generally defined legal meaning. (1) There is no definition of that expression in the Interpretation and General Clauses Ordinance, Cap 1. (2) The expression ‘political party’ (政黨) is given a circular definition in s 31 of the Chief Executive Election Ordinance, Cap 569, to mean (a) a political body or organisation (whether operating in Hong Kong or elsewhere) which purports to be a political party; or (b) a body or organisation the principal function or main object of which is to promote or prepare a candidate for election as a member of the Legislative Council or any District Council. (3) The expression ‘political body’ (政治性團體) is defined in both the Societies Ordinance, Cap 151,

and the Electoral Affairs Commission Ordinance, Cap 541, to mean (i) a political party or an organisation that purports to be a political party, or (ii) an organisation whose principal function or main object is to promote or prepare a candidate for an election. (4) The expression ‘prescribed political body’ (訂明政治性團體) is defined in the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation, Cap 541M, to mean a body or organisation operating in Hong Kong (a) that is a political party; (b) that purports to be a political party; or (c) the principal function or main object of which is to promote or prepare a candidate for election as a member. The above definitions are, however, for the purposes of those specific Ordinances only.”

Although these definitions are given only for the purposes of those specific ordinances, they could serve as reference for candidates in assessing the actual circumstances they are under. If candidates have any doubts about the political affiliation information to be provided for the nomination form and the Introduction to Candidates, they should seek independent legal advice before drawing up and providing the information. *[Added in July 2021]*

4.9 A candidate who makes a false statement about his/her political affiliation in an election-related document (e.g. nomination form, the Introduction to Candidates) commits an offence, and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months upon conviction [s 101 of the EAC (EP) (EC) Reg]. *[Added in July 2021]*

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

### **Eligibility**

4.10 To be eligible for nomination as a candidate/nominee at the EC subsector election, a person must:

- (a) reach 18 years of age or over;
- (b) be both registered and eligible to be registered as an elector for a GC; and
- (c) (i) (for a person who is nominated as a candidate) be both registered 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; or  
  
(ii) (for a person who is selected as a nominee) has a substantial connection with the EC subsector.

[Ss 8(1) and 17(1) of the Schedule to the CEEO]

### **Disqualification**

4.11 A person is disqualified from being nominated as a candidate/nominee at a subsector election and 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>24</sup>;
- (d) on the date of nomination or the polling day, is serving a sentence of imprisonment;
- (e) is or has been convicted within 5 years immediately before the date of nomination (for nominees) or the polling day (for candidates):
  - (i) of having engaged in corrupt conduct or illegal conduct in contravention of the ECICO;
  - (ii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201) (“POBO”); or
  - (iii) of any offence prescribed by the EAC Regulations;

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<sup>24</sup> On 21 June 2012, the Court of First Instance handed down a written judgment on *Wong Hin Wai & another v. Secretary for Justice* (HCAL 51 & 54/2012), declaring that similar provisions under section 39(1)(b) of the LCO (similar to relevant provisions in para. 4.11(c) above or ss 9(1)(a) and 18(1)(c) of the Schedule to the CEEO) are unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. The future EC subsector elections will be organised in accordance with the prevailing legislation. Any person who wishes to be nominated as a candidate/nominee for an EC subsector election and is doubtful about his/her eligibility for nomination may seek independent legal advice and, where appropriate, apply to the NAC appointed by the EAC for advice in the EC subsector ordinary election.

- (f) 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);
- (g) is a member of the armed forces of the People's Republic of China or any other country or territory; or
- (h) has vacated an office or has been disqualified from entering on an office under the law for declining or neglecting to take a specified oath<sup>25</sup> within the 5 years before the date of nomination, or has been declared or decided in accordance with any law:
  - (i) to be in breach of a specified oath; or
  - (ii) to have failed to fulfil the legal requirements and conditions on upholding the Basic Law and pledging allegiance to the HKSAR of the People's Republic of China.

[Ss 9 and 18 of the Schedule to the CEEO] *[Amended in September 2006, October 2011, September 2016 and July 2021]*

4.12 Any person who is not a specified entity of the HYK subsector, the Hong Kong and Kowloon District Committees subsector, or the New Territories District Committees subsector is disqualified from being nominated as a candidate for the subsector concerned at the respective subsector election, or from being elected as an EC member representing the subsector concerned [s 18A of the Schedule to the CEEO]. *[Added in September 2006 and amended in October 2011]*

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<sup>25</sup> Specified oath means an oath taken under the law that the oath-taker will uphold the Basic Law and pledge allegiance to the HKSAR of the People's Republic of China.



4.13 In addition, a person is disqualified from being a nominee for certain subsectors:

- (a) the accountancy subsector if the person is not a Hong Kong Accounting Advisor appointed by the Ministry of Finance of the People's Republic of China;
- (b) the Chinese medicine subsector if the person is not a Hong Kong member of the Council of the World Federation of Chinese Medicine Societies;
- (c) the legal subsector if the person is not a Hong Kong member of the Council of the China Law Society; and
- (d) the technology and innovation subsector if the person is not a Hong Kong academician of the Chinese Academy of Sciences or the Chinese Academy of Engineering.

[S 9A of the Schedule to the CEEO] *[Added in July 2021]*

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

#### **When and How to Nominate (EC members to be returned by election)**

4.14 Any person who intends to stand as a candidate may submit a nomination form during the **nomination period** specified in the notice published in the Gazette [s 4 of the EAC (EP) (EC) Reg]. The nomination period for an EC subsector election must not be less than 7 days, and must end not less than 12 days before the date on which the relevant subsector election is to be held [s 5 of the EAC (EP) (EC) Reg]. An election timetable in the form of an “Action

Checklist for Candidates” (see **Appendix 1**) will be provided to each candidate by the RO for the relevant subsector. The ROs shall receive nominations during the ordinary business hours (i.e. from 9 am to 5 pm from 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 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 and July 2021]*

4.15 Nomination forms specified by the EAC are available from any District Office (“DO”) or the REO, and may also be downloaded from the website of the REO (<https://www.reo.gov.hk>). *[Amended in September 2016]*

4.16 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). Nomination must be made by ARs in the case of corporate voters. For each EC subsector, each voter may only subscribe **nominations up to the number of members required to be elected for that subsector** [s 8(1) and (2) of the EC Subscribers & Deposit Reg]. Once the number of the nomination forms subscribed by a certain voter and delivered to the RO has reached the above mentioned statutory limit (i.e. the number of members to be elected for a particular EC subsector), that voter’s signature on any other nomination forms will be inoperative [s 8(3) of the EC Subscribers & Deposit Reg].

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 any of the subscribers be subsequently found not to be qualified as subscribers. A candidate should ensure that the voters subscribing his/her nomination form are eligible to do so and that the voters have not subscribed more nomination forms than the number of members required to be elected for that EC subsector. Each voter subscribing a nomination shall sign the nomination form **personally**. A candidate should not sign as a subscriber in his/her nomination form. *[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). Offenders are liable on summary conviction to a fine and to imprisonment for 2 years, or on conviction upon indictment to imprisonment for 5 years. Engaging in bribery, which is a corrupt conduct, is also liable to a fine and to imprisonment. *[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 accidental or unauthorised access, processing, erasure, loss or use.  
*[Added in September 2016 and amended in July 2021]*

(b) Consent and Declarations on Nomination Form

According to the Schedule to the CEEO and the EAC (EP) (EC) Reg, a candidate must duly complete the nomination form and the declaration, which shall be attested by a witness<sup>26</sup>. The candidate must make a declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR; and that he/she 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. Failure to make the declaration will render him/her not validly nominated as a candidate. [Ss 17 and 17A of the Schedule to the CEEO and s 8(4) and (4A) of the EAC (EP) (EC) Reg]

A person who, in an election related document (including the nomination form and the declarations), makes a statement which he/she knows to be false in a material particular or recklessly

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<sup>26</sup> A witness can be any person aged 18 years or above and in possession of an identity document. According to s 32(3) of the Schedule to the CEEO, identity document means:

- (a) an identity card issued to a person under the Registration of Persons Ordinance (Cap 177);
- (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.

makes a statement which is incorrect in a material particular, or omits a material particular from 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 [s 101 of the EAC (EP) (EC) Reg]. *[Added in July 2021]*

**IMPORTANT :**

At an EC subsector ordinary election, a person is not eligible to be nominated as a candidate for that ordinary election if he/she is a specified person, a designated person or a nominee of a designated body [s 17(2) of the Schedule to the CEEO]. Besides, according to the requirements of by-election, a person is not eligible to be nominated as a candidate for that subsector by-election if he/she is a member of the EC, or a nominee of a designated body and the period during which the nomination under that section is to be made and the nomination period for the by-election coincide or partly coincide [s 17(3) of the Schedule to the CEEO]. 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 in the nomination 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, any subsequent nominations for him/her will be rejected as invalid. *[Amended in July 2021]*

4.17 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 a candidate mentions the name of any organisation when stating his/her political affiliation, the consent of the organisation concerned must be sought beforehand. Candidates should make sure that their nomination forms are properly completed before submission. Information (such as occupation and political affiliation) provided by a candidate in the grid paper for the Introduction to Candidates 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 in the Introduction to Candidates) and should be true. *[Amended in September 2016 and July 2021]*

4.18 Candidates should heed the guidelines in paras 4.6 to 4.8 above when drawing up and providing the relevant information, and pay extra attention to ensure that there is factual basis. *[Added in July 2021]*

4.19 Each nomination form must be submitted to the RO for the subsector concerned together with the payment of a required sum of election deposit (see Part V of this chapter for details). The RO may refuse to accept any nomination form bearing material alteration to its content.

4.20 The completed nomination form must be submitted to the RO for the subsector concerned by the candidate **in person** during ordinary business hours (i.e. from 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. In exceptional circumstances (e.g. the candidate's temporary absence from Hong Kong or incapacity due to illness), the CEO may authorise other manner of submission of the nomination form to the RO. [S 8(13) of the EAC (EP) (EC) Reg] *[Amended in September 2016]*

4.21 The RO will also make available copies of the nomination forms for public inspection free of charge at the specified address during ordinary

business hours until the relevant notice of the election result is published [s 10 of the EAC (EP) (EC) Reg]. If the CERC decides that a nomination is invalid (see Part VII below), the CERC must endorse on the nomination form the decision and the reasons for it [s 16(1) of the EAC (EP) (EC) Reg]. *[Added in September 2016 and amended in July 2021]*

### **When and How to Nominate (EC members to be nominated by a designated body)**

4.22 All members of the religious subsector and the representatives of associations of Hong Kong residents in the Mainland subsector, and some of the members of the technology and innovation subsector, accountancy subsector, legal subsector, sports, performing arts, culture and publication subsector and Chinese medicine subsector shall be nominated by the designated bodies in their subsectors. The respective designated bodies and the number of members assigned for each body are shown at **Appendix 3**. *[Added in July 2021]*

4.23 A designated body may nominate a number of persons selected by it as EC members of the subsector concerned during the **nomination period** specified in the notice published in the Gazette [s 3 of the EAC (EP) (EC) Reg]. The nomination period for election of the EC subsectors is to be determined by the CEO. Nominations shall reach the RO during ordinary business hours (i.e. from 9 am to 5 pm from Monday to Friday, and from 9 am to 12 noon on Saturday) on each working day (i.e. any day other than a general holiday) in the nomination period. A designated body must nominate all its nominees on **one** designated nomination form for submission to the RO at the specified address [s 7(3) and (7) of the EAC (EP) (EC) Reg]. **Designated bodies are 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.** *[Added in July 2021]*

4.24 The designated nomination forms of the EAC can be obtained by designated bodies from the RO for the respective subsector or from the REO. Alternatively, it can be downloaded from the website of the REO (<https://www.reo.gov.hk>). *[Added in July 2021]*

4.25 The designated nomination form comprises:

(a) The Nomination

The nomination form must be signed by each nominee. It must also be signed on behalf of the designated body by a person authorised by the designated body for that purpose [s 7(4) of the EAC (EP) (EC) Reg]. *[Added in July 2021]*

If the number of persons to be nominated by a designated body exceeds the assigned number for the body or the number of vacancies to be filled, the designated body shall indicate which of the nominees are to be given preference in making up the assigned number or in filling the vacancy; and then rank the excess nominees, if more than one, in order of priority. If the CERC determines that any of the nominees to be given preference is not validly nominated, the assigned number is to be made up or the vacancy is to be filled from the excess nominees (subject to their being validly nominated) in their order of priority. [S 7(4) and (5) of the Schedule to the CEEO] *[Added in July 2021]*

If the number of persons nominated by a designated body exceeds the assigned number for the body or the number of vacancies to be filled but the body has not indicated which of the nominees are to be given preference; or the number of nominees to whom preference is given is less than the assigned number for that body



or the number of vacancies to be filled, the RO must determine, by drawing lots, the order of priority in which the nominees of that body are to make up the assigned number or to fill the vacancy [s 7(6) of the Schedule to the CEEO]. *[Added in July 2021]*

The CERC shall decide whether the nomination of a nominee is valid according to the order of priority indicated by the designated body or determined by drawing lots. When the assigned number for the body or the number of vacancies to be filled is filled, the CERC shall no longer have to decide on the validity of the nomination of the remaining nominees. [S 7(6A) of the Schedule to the CEEO] *[Added in July 2021]*

(b) The Nominees' Consent to Nomination and Declaration of Eligibility

The nomination form submitted by a designated body must contain a declaration completed and signed by each nominee, and be attested by a witness<sup>27</sup>. The nominee must make the declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR; and that he/she is eligible to be nominated as a member of the respective subsector, is not disqualified from being so nominated, consents to being so nominated, and consents to the order of priority (if any) in which the nominees are ranked in the nomination form. Failure to make the declaration will render him/her not validly nominated [s 7A of

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<sup>27</sup> A witness can be any person aged 18 years or above and in possession of an identity document. According to s 32(3) of the Schedule to the CEEO, identity document means:

- (a) an identity card issued to a person under the Registration of Persons Ordinance (Cap 177);
- (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.

the Schedule to the CEEO and s 7(2) and (2A) of the EAC (EP) (EC) Reg]. *[Added in July 2021]*

A person who, in an election related document (including the nomination form and the declaration), makes a statement which he/she knows to be false in a material particular or recklessly makes a statement which is incorrect in a material particular, or omits a material particular from an election related document, commits an offence and is liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 101 of the EAC (EP) (EC) Reg]. *[Added in July 2021]*

**IMPORTANT:**

At an EC subsector ordinary election, a person is not eligible to be a nominee of a subsector at that ordinary election if he/she is a specified person, a designated person or a candidate at an election [s 8(2) of the Schedule to the CEEO]. In addition, under the requirements of supplementary nomination, a person is not eligible to be a nominee of a subsector under the supplementary nomination if he/she is a member of the EC, or a candidate at an EC subsector by-election where its nomination period coincides or partly coincides with the nomination period during which the supplementary nomination of the relevant subsector is to be made [s 8(3) of the Schedule to the CEEO]. A person who is selected as a nominee by a designated body is not eligible to be nominated by another designated body as a member of the EC if the period during which the nominations are to be made coincides or partly coincides [s 8(4) of the Schedule to the CEEO]. *[Added in July 2021]*

4.26 The RO concerned will make available copies of the nomination forms for public inspection free of charge at the specified address during ordinary business hours [s 10 of the EAC (EP) (EC) Reg] until the publication of the notice in the Gazette to declare which nominees are validly nominated as members of the EC [s 7(8) of the Schedule to the CEEO and s 19(1) of the EAC (EP) (EC) Reg]. If the CERC decides that a nomination is invalid, it must endorse on the relevant nomination form the decision and the reasons for it [s 16(1) of the EAC (EP) (EC) Reg]. *[Added in July 2021]*

### **False Declaration**

4.27 A candidate/nominee who knowingly and wilfully makes a statement which is false in a material particular in the nomination form or makes a false declaration is in breach of s 101 of the EAC (EP) (EC) Reg. The provision 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. The provision also specifies that an election-related document means a form, declaration, etc. required or used for the purposes of the EAC (EP) (EC) Reg. Besides, a person making a false statement in any statutory document is in breach of s 36 of the Crimes Ordinance and shall be liable to imprisonment for 2 years and to a fine. A violation against s 101 of the EAC (EP) (EC) Reg is a prescribed offence, with the same disqualification on conviction of a corrupt or illegal conduct under the ECICO (as described in paras. 16.52 and 17.37 of the Guidelines). *[Amended in September 2006, October 2011, September 2016 and July 2021]*

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

4.28 The EAC is empowered to appoint NACs to provide advice, upon request, to prospective candidates/prospective nominees/designated bodies and the ROs on whether a candidate/nominee is eligible for nomination [ss 2 and 3 of the EAC (NAC) (EC) Reg]. In line with the established practice, each NAC is in the charge of either a Senior Counsel or a legal practitioner of not less than 10 years' standing who, in the opinion of the EAC, is independent and impartial without any connection with any candidate or political organisation in Hong Kong. *[Amended in September 2006]*

4.29 The NACs may provide advice to prospective candidates/prospective nominees/designated bodies and the ROs on whether a prospective candidate/prospective nominee is eligible to be, or is disqualified from being, nominated as a candidate/nominee. However, any advice given by an NAC or a refusal on its part to give any such advice does not preclude a person from seeking nomination as a candidate/nominee or proceeding with a nomination. [S 10 of the EAC (NAC) (EC) Reg] *[Added in July 2021]*

4.30 Notwithstanding this, according to s 2(2)(a) and (2)(b) of the EAC (NAC) (EC) Reg, the NACs are not empowered to advise on matters provided for under ss 7A, 17A and 19 of the Schedule to the CEEO (including declaration of candidates/nominees on upholding the Basic Law and pledging allegiance to the HKSAR, and the lodging of deposit by candidates). The advice provided by the NAC on whether a prospective candidate/prospective nominee is eligible to be validly nominated as a candidate/nominee does not indicate his/her validity. The decision on the validity of the nomination is ultimately a matter for the CERC to decide. *[Added in July 2021]*

**The NAC's Service to Prospective Candidates/Prospective Nominees/  
Designated Bodies**

4.31 The NAC provides service to prospective candidates **at EC subsector ordinary elections only**. During a period specified by the EAC [s 4(4) of the EAC (NAC) (EC) Reg] (which generally ends before the commencement of the nomination period), a prospective candidate may apply, by completing a specified form obtainable from the REO or 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 a certain EC subsector ordinary election. Each prospective candidate can only make 1 application in respect of a particular EC subsector election [s 6(6) of the EAC (NAC) (EC) Reg]. For the avoidance of doubt, a prospective candidate may apply for the advice of the NAC in respect of more than 1 EC subsector [s 6(9) of the EAC (NAC) (EC) Reg]. *[Amended in September 2016 and July 2021]*

4.32 The completed application must be:

- (a) successfully sent to the CEO by post or facsimile transmission; or
- (b) served on the CEO in person,

**on or before the deadline for application specified by the EAC.** [S 6(4) of the EAC (NAC) (EC) Reg]

*[Amended in October 2011]*

4.33 The NAC may, before giving its advice, require the applicant to make available information, particulars and evidence relating to his/her intended candidature within a specified period. The NAC may also require the applicant to present himself/herself before the NAC at the specified time and location to

assist in the consideration of the application. The applicant may make representations to the NAC in person or through a person authorised by him/her in writing, at the specified time and location. [S 6(12) and (13) of the EAC (NAC) (EC) Reg]

4.34 Where an applicant does not make available the information, particulars or evidence required by the NAC, or fails to present himself/herself before the NAC as requested, the NAC may:

- (a) refuse to consider the application or to give any advice; or
- (b) give qualified advice on the application having regard to either or both of the following:
  - (i) the fact that information, particulars or evidence (any or all of them) have not been made available to the NAC;
  - (ii) the failure on the part of the applicant to present himself/herself before the NAC.

[S 6(14) of the EAC (NAC) (EC) Reg]

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

4.36 The service of the NAC on giving advice on the eligibility or disqualification of prospective nominees to be nominated by designated bodies is also available to the designated bodies and prospective nominees concerned

during the EC subsector ordinary elections [s 6(2) and (3) of the EAC (NAC) (EC) Reg].

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

4.37 The NAC provides service to the ROs **at both EC subsector ordinary elections and by-elections**. During a period specified by the EAC (which generally spans from the commencement of the nomination period to 1 day after the end of the nomination period), the ROs may, if necessary, apply for the NAC's advice on the eligibility for nomination of the following two groups of people, namely: (a) candidates who have submitted their nominations; and (b) nominees of designated bodies. The applications shall be submitted to the NAC in writing through the CEO. The NAC will, not later than a date specified by the EAC, advise the RO concerned as to whether the candidate/nominee concerned is eligible to be nominated. [S 7 of the EAC (NAC) (EC) Reg] *[Amended in September 2016]*

4.38 In forming an opinion on whether a person is eligible to be, or is disqualified from being, nominated as a candidate/nominee, the RO must take into account the advice given by the NAC on the 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 is ultimately a matter for the CERC to decide [s 13 of the EAC (EP) (EC) Reg]. *[Amended in July 2021]*

## **PART V : ELECTION DEPOSIT**

### **Lodging of Election Deposit**

4.39 When submitting a nomination form, each candidate must lodge an election deposit of \$1,000 in cash, cashier order or by cheque. The amount of

deposit is prescribed by the regulations [s 19 of the Schedule to the CEEO and s 3 of the EC Subscribers & Deposit Reg]. *[Amended in September 2016]*

4.40 A nomination form submitted to the RO will not be accepted unless it is accompanied by the payable election deposit.

**IMPORTANT :**

Candidates should pay their election deposit by cash or cashier order as far as practicable, although crossed cheque is also acceptable. In the event that a cheque is dishonoured, the nomination will be ruled invalid unless the unpaid amount of deposit is settled before the end of the nomination period. Candidates must note that, in the case of dishonoured cheques, the RO may not have sufficient time to inform the candidate(s) concerned to rectify the situation before the end of the nomination period. Therefore, to avoid the risk of their nominations being ruled as invalid due to dishonoured cheques, candidates should submit the election deposit in cash or cashier order as far as practicable. *[Amended in September 2016]*

**Return of Election Deposit**

4.41 The deposit will be returned to the candidate if:

- (a) he/she is not validly nominated;
- (b) he/she withdraws his/her candidature;



- (c) he/she dies or is disqualified from being nominated after his/her nomination is confirmed valid for the election and before the specified date of the election;
- (d) he/she is elected; or
- (e) the number of votes received by the candidate in his/her favour is either not less than 2.5% of the total number of valid ballot papers received in the EC subsector election or not less than 5 such ballot papers, whichever is the greater.

The deposit will be forfeited if none of the above conditions is satisfied. (For details, please see ss 4 and 5 of the EC Subscribers & Deposit Reg) Candidates are required to complete and submit a specified form for return of election deposit together with the original receipt of the election deposit to relevant RO for action. *[Amended in September 2016 and July 2021]*

## **PART VI : CANDIDATE ELIGIBILITY REVIEW COMMITTEE**

4.42 As stipulated in the Annex I to the Basic Law and the CEEO, the CERC is responsible for reviewing and deciding the validity of nomination of candidates for EC members. The CERC may request the ROs to provide advice to the CERC regarding the nominations of candidates. It may also make decision pursuant to the opinion of the Committee on National Security. The Committee on National Security shall, on the basis of the review by the National Security Department of the Hong Kong Police Force, makes findings as to whether a candidate/nominee meets the legal requirements and conditions for “upholding the Basic Law and pledging allegiance to the HKSAR”, and issue an opinion to the CERC in respect of candidates/nominees who fail to meet such legal requirements and conditions. As stipulated in Annex I to the Basic Law and the

electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee on National Security. However, if the CERC's decision to disqualify a person from being a candidate/nominee is based on his/her failure to meet other statutory eligibility requirements (e.g. age, Hong Kong permanent resident status or criminal records), the person being disqualified may lodge an appeal to question the election result in accordance with the law. [S 9B of the CEEO] *[Added in July 2021]*

4.43 The CERC consists of the chairperson, at least 2 but not more than 4 official members and at least 1 but not more than 3 non-official members. Each member of the CERC is appointed by the CE by notice published in the Gazette. Only a principal official appointed pursuant to a nomination under Article 48(5) of the Basic Law is eligible for appointment as the chairperson or an official member. Only a person who is not a public officer is eligible for appointment as a non-official member. [S 9A of the CEEO] *[Added in July 2021]*

## **PART VII : VALIDITY OF NOMINATIONS**

4.44 Whether a nomination is valid or not is determined by the CERC. The CERC must make a decision on the validity of a nomination as soon as practicable after receipt of a nomination form, and publish a notice stating which persons are validly nominated as candidates at the relevant subsector election and which persons are validly nominated as EC members within 14 days after the close of the nomination period [ss 7(8) and 22 of the Schedule to the CEEO and ss 18(1) and 19(1) of the EAC (EP) (EC) Reg]. *[Amended in September 2016 and July 2021]*

4.45 In the case of doubt as to whether a particular candidate/nominee is eligible to be nominated, the RO may apply for advice from the NAC (see para. 4.37 above).

4.46 If the RO detects on a nomination form an error which may amount to a ground for deciding that the nomination form is invalid, and the error can be rectified before the close of the nomination period, the RO may, before forming an opinion as to whether the nomination form is valid, as far as practicable, give the candidate/nominee/designated body a reasonable opportunity to rectify it [s 15 of the EAC (EP) (EC) Reg]. For example, if the qualification of any subscriber on the candidate's nomination form is in doubt, the prospective candidate may be allowed to make another substitution for his/her nomination form as soon as practicable after the submission. However, no substitution of subscriber or re-submission of a nomination form is allowed after the close of the nomination period. *[Amended in July 2021]*

4.47 A nomination may be ruled invalid if the errors on the nomination form are not rectified before the close of the nomination period.

4.48 The RO may require a candidate/nominee/designated body to furnish any other information that the RO considers appropriate for him/her to advise the CERC on any of the specified matters [ss 7(6) and 8(10) of the EAC (EP) (EC) Reg]. *[Amended in July 2021]*

4.49 A nomination form will be invalid unless it contains all information and signatures required on the form or other information required by the RO and the candidate has made the declaration referred to in paras. 4.16(b) and 4.25(b) above. *[Amended in October 2011]*

4.50 Without prejudice to ss 17, 17A, 18 and 18A of the Schedule to the CEEO<sup>28</sup>, the CERC may determine a nomination of a candidate to be invalid only when:

- (a) the number or qualifications of subscribers does not meet the requirements under s 8 of the EC Subscribers & Deposit Reg;
- (b) the nomination form, including the parts on nomination and declaration thereof, has not been completed or signed as required under the EAC (EP) (EC) Reg;
- (c) the CERC is satisfied that the candidate is not eligible to be, or is disqualified from being, nominated as a candidate under the Schedule to the CEEO;
- (d) the cheque for the payment of the candidate's election deposit is dishonoured and the unpaid amount has not been settled before the close of the nomination period; or
- (e) the RO is satisfied that the candidate has died.

[S 13(3) of the EAC (EP) (EC) Reg] *[Amended in September 2016 and July 2021]*

4.51 Without prejudice to ss 7A, 8, 9 and 9A of the Schedule to the CEEO, the CERC may determine a nomination of a nominee to be invalid if and only when:

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<sup>28</sup> Please refer to paras. 4.10, 4.11, 4.16(b), 4.25(b) and 4.27.

- (a) the nomination form or the nomination of a nominee on the form has not been completed or signed as required under s 7 of the EAC (EP) (EC) Reg;
- (b) the CERC is satisfied that the nominee is not eligible to be, or is disqualified from being, nominated as an EC member under the Schedule to the CEEO; or
- (c) the CERC is satisfied that the nominee has died.

In determining whether a candidate/nominee is validly nominated for a subsector, the CERC may require the RO to advise the committee as to any of the specified matters. The CERC may also require the candidate/nominee/designated body to furnish any other information that the committee considers appropriate for enabling the CERC to be satisfied as to the validity of the nomination/nomination form.

[Ss 12(5), (6) and 13(3A) of the EAC (EP) (EC) Reg] *[Added in July 2021]*

4.52 If, after the CERC has made a decision 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, the RO shall publicly declare that the candidate has died and further declare which candidate or candidates is/are validly nominated for the relevant subsector election. The RO does not have to make any such declaration if the candidate who has died is uncontested for the relevant subsector election and the RO has publicly declared that the candidate was duly elected. [S 23(1), (2) and (3) of the Schedule to the CEEO and s 20 of the EAC (EP) (EC) Reg] *[Amended in July 2021]*

4.53 If, after the CERC has made a decision that a candidate is validly nominated, but before the polling day, proof is given to the satisfaction of the

CERC that the candidate is disqualified from being nominated as a candidate, the CERC must vary the decision to the effect that the candidate is not validly nominated. The CERC must also publicly declare that the decision has been varied and further declare which candidate or candidates is/are validly nominated for the relevant subsector election. The CERC does not have to vary the decision if the candidate who has been disqualified is uncontested in the relevant subsector election and the RO has publicly declared that the candidate was duly elected. [S 23(4), (5) and (6) of the Schedule to the CEEO and s 21 of the EAC (EP) (EC) Reg] *[Amended in July 2021]*

## **PART VIII : WITHDRAWAL OF CANDIDATURE**

4.54 A candidate may withdraw his/her candidature only before the close of the nomination period. He/She is required to complete and sign a specified form entitled “Notice of Withdrawal of Candidature”, which must be delivered to the RO concerned by the candidate in person or the candidate’s election agent in person [s 21 of the Schedule to the CEEO and s 17 of the EAC (EP) (EC) Reg]. Under the existing law, candidates are not allowed to withdraw their candidature after the close of the nomination period and there is no such mechanism as so-called “abandonment of election”. Even if a candidate has made public his/her claim about the so-called “abandonment of election”, his/her name will still be shown on the ballot papers for voters/ARs to vote for if they so wish. All candidates must comply with the election-related legislation, including reporting all election expenses. *[Amended in July 2021]*

### **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 IX : NOTICE OF VALID NOMINATIONS**

4.55 For subsectors for which EC members are to be nominated, the CERC must, within 14 days after the close of the nomination period, publish a notice in the Gazette declaring the nominee or nominees who is or are validly nominated as an EC member or EC members [s 19(1) of the EAC (EP) (EC) Reg]. The RO concerned will send the decision as to whether a nominee is validly nominated to the nominee concerned, the designated body that nominated that nominee and the other nominees who are nominated by that designated body [s 16(3) of the EAC (EP) (EC) Reg]. *[Added in July 2021]*

4.56 For subsectors for which EC members are to be returned by election, the CERC must publish a notice in the Gazette within 14 days after the close of the nomination period, stating the name and address<sup>29</sup> of each of all the validly nominated candidates for the subsector. In the case of a contested election, the number (which will be shown on the ballot papers) allocated to each candidate by the drawing of lots will also be stated in a notice in the Gazette [s 18 of the EAC (EP) (EC) Reg]. In the case of an uncontested election, the RO must also publish a notice in the Gazette to declare the candidates as being duly elected as EC members for that subsector [s 19(2) of the EAC (EP) (EC) Reg]. The RO must also send a notice of the CERC's decision as to whether a person is validly nominated as a candidate to each validly nominated candidate for the subsector concerned [s 16(4) of the EAC (EP) (EC) Reg]. *[Amended in September 2006, September 2016 and July 2021]*

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<sup>29</sup> The address is the address provided by the candidates in the nomination form. For details, please refer to the notes on completion of the nomination form.

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

4.57 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 all validly nominated candidates of the date and time of the lots drawing session and the Candidates' Briefing. In the case of a contested election, the RO will draw lots to determine for each of the validly nominated candidates the candidate number to be shown on the ballot paper and the designated spots allocated to each of them to display EAs (please refer to para. 8.37). *[Amended in January 2010 and September 2016]*

4.58 The REO will publish an **Introduction to Candidates**. The candidate number of each candidate allocated by the drawing of lots and to be shown on the ballot paper will also be shown on the Introduction to Candidates, which will be mailed to the voters/ARs together with the poll cards before the polling day. Copies of the Introduction to Candidates will be made available in the CSD and other law enforcement agencies for voters/ARs imprisoned or held in custody. *[Amended in January 2010 and September 2016]*

4.59 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 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 his/her name and candidate number, with the sentence “Relevant information has not been provided by the candidate” printed in the space provided for his/her electoral message. *[Amended in January 2010, October 2011 and September 2016]*

4.60 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 obscene, immoral, indecent, offensive, defamatory, unlawful or containing information irrelevant to the promotion of the candidature of the candidate concerned. *[Amended in January 2010, October 2011 and July 2021]*

4.61 To assist persons with visual impairment in reading 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 will prepare a text version of the Introduction to Candidates for uploading onto the dedicated website of the EC subsector ordinary elections or the REO’s website in the case of a by-election. If a 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 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 voters/ARs and, in the course of their electioneering campaign, make their utmost efforts to ensure that persons with

different needs can have fair access to the electoral messages. *[Added in September 2016 and amended in July 2021]*