

## **CHAPTER 5**

### **NOMINATION OF CANDIDATES**

#### **PART I : GENERAL**

5.1 This chapter outlines the eligibility for nomination as a candidate in a LegCo election, the nomination procedures, and related matters, as well as the legal provisions that candidates must comply with, including the LCO, EAC (NAC) (LC) Reg, EAC (EP) (LC) Reg, PCBP (LC & DC) Reg, LC Subscribers & Deposit Reg, and relevant guidelines issued by the EAC.

5.2 The EAC will make arrangements for the election according to the list of validly nominated candidates determined by the CERC. In accordance with s 19 of the EAC (EP) (LC) 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 a copy of the nomination form for public inspection pursuant to s 14 of the EAC (EP) (LC) Reg. By virtue of Annex II to the Basic Law and s 3B of the LCO, 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 National Security Committee.

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

##### **Eligibility**

5.3 The eligibility requirements for nomination as a candidate in a GC, FC, or ECC election are as follows:

| <b>GC Election<br/>Candidates<sup>12</sup></b>                                                                                                                | <b>FC Election<br/>Candidates<sup>13</sup></b>                                                                                                                                                                                               | <b>ECC Election<br/>Candidates<sup>14</sup></b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Be 21 years of age or over                                                                                                                                    |                                                                                                                                                                                                                                              |                                                 |
| Be both registered and eligible to be registered as an elector for a GC                                                                                       |                                                                                                                                                                                                                                              |                                                 |
| Has ordinarily resided in Hong Kong for the three years immediately preceding the date of his nomination (see para. 5.4 of this chapter)                      |                                                                                                                                                                                                                                              |                                                 |
| Not be disqualified from being elected by virtue of s 39 of the LCO (see para. 5.5 of this chapter)                                                           |                                                                                                                                                                                                                                              |                                                 |
| Be a Chinese citizen who is a permanent resident of Hong Kong with no right of abode in any country other than the People's Republic of China <sup>Note</sup> |                                                                                                                                                                                                                                              |                                                 |
|                                                                                                                                                               | <ul style="list-style-type: none"> <li>• be both registered and eligible to be registered as an elector for the relevant FC; or</li> <li>• satisfies the RO for the constituency that he has substantial connection with that FC.</li> </ul> |                                                 |

Note : This condition does not apply to candidates for the following 12 FCs: Legal FC; Accountancy FC; Engineering FC; Architectural, Surveying, Planning and Landscape FC; Real Estate and Construction FC; Tourism FC; Commercial (first) FC; Industrial (first) FC; Finance FC; Financial Services FC; Import and Export FC; and Insurance FC.

<sup>12</sup> S 37(1) of the LCO

<sup>13</sup> Ss 37(2) and (3) of the LCO

<sup>14</sup> S 37(3A) of the LCO

### **“Ordinarily Residing in Hong Kong”**

5.4 For “ordinarily residing in Hong Kong” one needs to take into account a host of factors and the specific situation of each case, and determine according to the relevant judgments of the Court, and the conclusion cannot be generalised. According to a court case<sup>15</sup>, if a person remains in that place legally, voluntarily, and for a settlement purpose (such as for education, employment, or residence), regardless of the duration, the person will be regarded as ordinarily residing in a place. The case also indicated that a person may ordinarily reside in two places at the same time. If a Hong Kong permanent resident has left Hong Kong to reside elsewhere, has not maintained connections with Hong Kong, does not intend to reside in Hong Kong again, or no longer has a sole or principal residence in Hong Kong, he no longer satisfies the eligibility requirements for nomination as a candidate under s 37 of the LCO. A prospective candidate who is doubtful about his eligibility for nomination should consult his independent legal adviser. In a LegCo general election, a prospective candidate may also seek the advice of the NACs within a specified period (see paras. 5.16 to 5.23 of this chapter).

### **Disqualification**

5.5 A person is disqualified from being nominated as a candidate at a LegCo election, and from being elected as a LegCo member, if he:

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<sup>15</sup> *Lau San Ching v. Liu Apollonia* (1995) 5 HKPLR 23 citing *R v. Barnet London Borough Council, ex parte Shah* [1983] 2 AC 309

- (a) is a judicial officer or a prescribed public officer<sup>16</sup>;
- (b) is an officer of the LegCo or a member of staff of The LegCo Commission;
- (c) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or any substitute sentence or received a free pardon<sup>17</sup>;
- (d) has been convicted of any offence endangering national security;
- (e) on the date of nomination or of the election, is serving a sentence of imprisonment;
- (f) has been or is convicted of the following offences within five years before the date of the election:

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<sup>16</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 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.

<sup>17</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 s 39(1)(b) of the LCO (i.e., para. 5.5(c) of this chapter) to be unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. Future LegCo elections will be conducted in accordance with the prevailing legislation. Any person who wishes to be nominated as a candidate for a LegCo election and is doubtful about his eligibility for nomination may seek independent legal advice and, where appropriate, apply to the NAC appointed by the EAC for advice in a LegCo general election.

- (i) any offence in Hong Kong or in any other place, and the sentence for which is imprisonment (suspended or not) for a term exceeding three months without the option of a fine;
  - (ii) having engaged in corrupt conduct or illegal conduct in contravention of the ECICO;
  - (iii) an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”); or
  - (iv) any offence prescribed by regulations in force under the EACO;
- (g) is ineligible or disqualified because of the operation of the LCO or any other law;
- (h) is a representative or a salaried functionary of the government of a place outside Hong Kong;
- (i) is a member of any national, regional, or municipal legislature, assembly, or council of any place outside Hong Kong, other than a people’s congress or people’s consultative body of the People’s Republic of China, whether established at the national level or local level;
- (j) is an undischarged bankrupt or, within the previous five 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;
- (k) within the five years before the date of election, 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>18</sup>, 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 bearing allegiance to the HKSAR of the People's Republic of China;
- (l) is found to be incapable, by reason of mental incapacity, of managing and administering his property and affairs under the Mental Health Ordinance; or
- (m) at a by-election, has resigned or was taken to have resigned from office as a LegCo member within the six months ending on the date of the by-election and no general election was held after the relevant notice of resignation or notice of non-acceptance took effect.

[S 39 of the LCO]

5.6 In respect of FC elections, a person is disqualified from being elected as a LegCo member for an FC if, since the end of the nomination period, the person has ceased to have a substantial connection with the constituency. [S 39(4) of the LCO]

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<sup>18</sup> Specified oath means an oath taken under the law that the oath-taker will uphold the Basic Law and bear allegiance to the HKSAR of the People's Republic of China.

## **PART III : NOMINATION PERIOD AND NOMINATION FORM**

### **Nomination Period**

5.7 The nomination period will be published in the Gazette. The ROs shall receive nominations 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 each working day in the nomination period. Candidates must submit their nomination forms **in person** to the RO for the relevant constituencies during the nomination period. Late submissions will not be accepted. In exceptional circumstances, such as a candidate's incapacity due to illness, the CEO may authorise other manners of submission of the nomination form to the RO. **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.** Prospective candidates should read carefully and comply with the "Notes on Submission of Nomination Form for Candidates" and the "Action Checklist for Candidates" which are uploaded to the dedicated election website ([www.elections.gov.hk](http://www.elections.gov.hk)). [Ss 4, 5, 6A, 10(12), 11(14), and 12A(13) of the EAC (EP) (LC) Reg]

### **Nomination Form**

5.8 Nomination forms are available free of charge at any District Office ("DO"), the RO's office, or the REO and may also be downloaded from the REO website ([www.reo.gov.hk](http://www.reo.gov.hk)).

#### **(a) Nomination**

5.9 In accordance with s 7 of the LC Subscribers & Deposit Reg, the nomination thresholds for candidates in GC, FC, and ECC elections are as follows:

|                     | <b>Nomination Threshold</b>                                                                                                                                                    |                                                                                                         |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
|                     | <b>Number of Subscribers<br/>from EC</b>                                                                                                                                       | <b>Number of Subscribers<br/>from the Contested<br/>Constituency/GC</b>                                 |
| <b>GC Election</b>  | Nominated by no less than 10 but no more than 20 EC members, including no less than 2 but not more than 4 members from each of the 5 sectors of the EC <sup>Note 1</sup> ; and | Nominated by no less than 100 but no more than 200 electors of that the respective GC <sup>Note 2</sup> |
| <b>FC Election</b>  |                                                                                                                                                                                | Nominated by no less than 10 but no more than 20 electors of the respective FC <sup>Note 3</sup>        |
| <b>ECC Election</b> |                                                                                                                                                                                |                                                                                                         |

Note 1: An EC member, in his capacity as an EC member, is entitled to subscribe only one nomination form for each of an ECC election, an FC election, and a GC election.

Note 2: A GC elector, in his capacity as a GC elector, is entitled to subscribe only one nomination form for his own GC.

Note 3: An FC elector, in his capacity as an FC elector, is entitled to subscribe only one nomination form for his own FC (or up to three nomination forms in the case of the Labour FC).

5.10 Generally speaking, each **EC member** can subscribe up to five<sup>19</sup> nomination forms in different capacities, as illustrated below:

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<sup>19</sup> An EC member who is also the AR of a corporate elector may sign one more nomination form in his capacity as that corporate elector's AR.

| <b>Constituency</b> | <b>Subscription<br/>as an EC<br/>member<br/>(a)</b> | <b>Subscription<br/>as a GC/<br/>an FC<br/>elector<br/>(b)</b> | <b>Maximum number<br/>of nomination forms that<br/>an EC member may<br/>subscribe in<br/>different capacities<br/>(a) + (b)</b> |
|---------------------|-----------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>GC</b>           | for any GC:<br>one                                  | for his GC:<br>one                                             | two <sup>20</sup>                                                                                                               |
| <b>FC</b>           | for any FC:<br>one                                  | for his FC:<br>one<br>(Labour FC:<br>three)                    | two <sup>21</sup><br>(EC member cum<br>Labour FC elector:<br>four)                                                              |
| <b>ECC</b>          | one                                                 | --                                                             | one                                                                                                                             |

5.11 Under the law, where the number of persons subscribing a nomination has exceeded the required number of qualified subscribers to effect the nomination of the candidate, the surplus subscribers over the required number will be regarded as not having subscribed the nomination concerned, and may subscribe another nomination form instead. In addition, if the nomination subscribed by an elector or EC member has been held to be invalid, or the candidate has withdrawn his nomination, the elector or EC member may subscribe another nomination instead before the end of the nomination period. On the other hand, if he subscribes more nomination forms than the number he is entitled to subscribe as an elector or EC member in contravention of the regulations, his signature shall be operative only on the first one delivered. [S 7(4) of the LC Subscribers & Deposit Reg]

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<sup>20</sup> An EC member can exclusively nominate one candidate only for his own GC by using both his capacities as an EC member and a GC elector to subscribe that single candidate's nomination form.

<sup>21</sup> An EC member can exclusively nominate one candidate only by using both his capacities as an EC member and an FC elector to subscribe that single candidate's nomination form.

**NOTE :**

- (a) 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 nomination, so as to avoid the risk of invalidation of the nomination should any of the subscribers be subsequently found not qualified as subscribers.
- (b) A candidate should ensure that the electors and EC members subscribing his nomination form are eligible to do so and that the electors have not previously subscribed another GC or FC nomination in their capacity as GC or FC electors (except for the Labour FC) and the EC members have not previously subscribed in their capacity as EC members the nomination form of another candidate who runs for an election of the same type of constituency.
- (c) Each elector and EC member subscribing a nomination shall sign the nomination form **personally**. A candidate must not sign as a subscriber in his own nomination form.
- (d) No unlawful means shall be used to procure an elector or EC member 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 two years, or on conviction upon indictment to imprisonment for five years. Engaging in bribery, which is a corrupt conduct, is also liable to a fine and to imprisonment.
- (e) S 41 of the LCO provides that no person shall be nominated in an election as a candidate for more than one constituency. When a person submits his nomination form, he must first withdraw all his other prior nomination(s), if any.

- (f) 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 to the nomination forms held by them. 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.

**(b) Candidate’s Consent to Nomination and Declaration of Eligibility**

5.12 According to the subsisting electoral legislation, a candidate must duly complete the nomination form and the declarations, which shall be attested by a witness<sup>22</sup>. The candidate must sign and make the following **declarations** and promissory oath:

- (a) a declaration to the effect that the candidate will uphold the Basic Law and pledge allegiance to the HKSAR;
- (b) a declaration as to the candidate’s nationality and as to whether or not he has a right of abode in a country other than the People’s Republic of China;
- (c) a promissory oath given by the candidate to the effect that, if elected, he will not do anything during his term of office that results in his disqualification as set out in s 40(1)(b)(iii) of the LCO;
- (d) a declaration to the effect that the candidate is eligible to be nominated as a candidate for the GC/FC concerned, or the ECC; and is not disqualified from being so nominated; and consents to being so nominated; and

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<sup>22</sup> A witness can be any person aged 18 years or above and in possession of an identity document.

- (e) a declaration to the effect that the candidate has ordinarily resided in Hong Kong for the three years immediately preceding the date of his nomination.

Otherwise, he is not validly nominated as a candidate. [Ss 37(1)(d) and 40(1)(b) of the LCO and ss 10(4) and (5), 11(4) and (5), and 12A(4) and (5) of the EAC (EP) (LC) Reg]

5.13 In the nomination form, a candidate may choose to disclose his occupation and/or political affiliation. If a candidate mentions the name of any organisation when disclosing his political affiliation, he must seek the consent of the organisation concerned beforehand. If a candidate provides information on occupation and/or political affiliation in the input form for the Introduction to Candidates or in the specified form for requesting to print particulars relating to the candidate on ballot papers, the relevant information should be true and should not be inconsistent with that in the nomination form, in particular, when a candidate claims to be an “independent candidate” or “non-affiliated candidate” (or other similar descriptions), he must ensure that the claim has a factual basis. Candidates may refer to the court’s opinion on an election petition case concerning the political affiliation of candidates (HCAL 3665/2019). Candidates are advised to seek independent legal advice if they are in doubt about the political affiliation information to be provided in their nomination form and Introduction to Candidates.

5.14 Until the relevant notice of the election result is published, members of the public could inspect copies of the nomination forms free of charge during ordinary business hours at the address specified by the RO. [S 14 of the EAC (EP) (LC) Reg]

### **Criminal Liability of Making False Declarations**

5.15 The RO may refuse to accept any nomination form bearing material alteration to its content. According to electoral legislation, a person who, in an election-related document, makes a statement which he 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, commits an offence. Moreover, making a false statement in any statutory document is in breach of s 36 of the Crimes Ordinance. A violation against the above electoral legislation provisions is a prescribed offence, i.e. a person will be regarded as having convicted of a corrupt or illegal conduct under the ECICO, and will therefore be disqualified from being nominated as a candidate or elected as a LegCo member (see Chapters 18 and 19 of the Guidelines). [S 103 of the EAC (EP) (LC) Reg]

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

5.16 The EAC may appoint NACs to tender advice, upon request, to prospective candidates and ROs on whether a candidate is eligible for nomination. In line with the established practice, each NAC is in the charge of a barrister or solicitor of not less than ten 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. [Ss 2 and 3 of the EAC (NAC) (LC) Reg]

5.17 Any advice given by a NAC or a refusal on its part to give any such advice does not preclude a person from seeking nomination as a candidate or proceeding with a nomination. [S 9 of the EAC (NAC) (LC) Reg]

5.18 NACs are not empowered to advise on matters under s 40 of the LCO (including the declarations by candidates 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 the eligibility of a prospective candidate for nomination

does not indicate the validity of his nomination. The validity of the nomination is ultimately decided by the CERC. [S 1(2) of the EAC (NAC) (LC) Reg]

### **The Nominations Advisory Committee's Service to Prospective Candidates**

5.19 The NAC provides service to prospective candidates at a **LegCo general election only**. During a period specified by the EAC (which generally ends before the commencement of the nomination period), a prospective candidate may apply, by completing a specified form, for requesting NAC to give advice on whether he is eligible to be, or is disqualified from being, nominated as a candidate at a LegCo general election. The form can be obtained from the REO or any DOs, or downloaded from the dedicated election website ([www.elections.gov.hk](http://www.elections.gov.hk)). Each prospective candidate can only make one application each in respect of all GCs as a whole, each FC, and the ECC. For the avoidance of doubt, a prospective candidate may apply for the advice of the NAC in respect of more than one FC. [Ss 3(4) and 5(6) and (9) of the EAC (NAC) (LC) Reg]

5.20 The completed application must be submitted to **the CEO within the application period specified by the EAC**.

5.21 The NAC may, before giving its advice, require the applicant to provide information, particulars and evidence relating to his intended candidature, or to attend a meeting with the NAC to assist in the consideration of his application. [Ss 5(12) and (13) of the EAC (NAC) (LC) Reg]

5.22 Where an applicant does not respond to the NAC's requests, 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 the following:

- (i) the NAC has not been provided with (in part or in full) the information, particulars, or evidence; and/or
- (ii) the applicant does not attend the meeting with the NAC.

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

5.23 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 5(15) of the EAC (NAC) (LC) Reg]

### **The Nominations Advisory Committee's Service to Returning Officers**

5.24 The NAC provides service to the ROs at both **LegCo general elections and by-elections** during a period specified by the EAC (which generally spans from the commencement of the nomination period to one day after the end of the nomination period) by offering advice on the eligibility for nomination of the candidates who have submitted their nominations. [S 6 of the EAC (NAC) (LC) Reg ]

5.25 In forming an opinion on whether a person is eligible to be, or is disqualified from being, nominated as a candidate, the RO must take into account any advice given by the NAC. That said, the validity of the nomination is ultimately decided by the CERC. [S 6(5) of the EAC (NAC) (LC) Reg and ss 16 and 17 of the EAC (EP) (LC) Reg]

## PART V : ELECTION DEPOSIT

### Lodging of Election Deposit

5.26 When submitting a nomination form, each candidate must lodge an election deposit, otherwise the nomination form will not be accepted. The election deposits, prescribed by s 2 of the LC Subscribers & Deposit Reg, are as follows:

- |                        |            |
|------------------------|------------|
| (a) each GC candidate  | HK\$50,000 |
| (b) each FC candidate  | HK\$25,000 |
| (c) each ECC candidate | HK\$25,000 |

[Ss 40(3) and 82(2)(b) of the LCO]

### NOTE :

- (i) Candidates should pay their election deposits by **cash** or **cashier order** as far as practicable and should avoid using crossed cheques, since in the event that a cheque is dishonoured and the unpaid amount is not settled before the end of the nomination period, the nomination will be ruled invalid. In addition, candidates using the Faster Payment System (“FPS”) to pay the election deposit must note that banks have defined different limits for various types of payments or transfers. If the transfer limit of the candidate’s bank account is lower than the prescribed election deposit payable, the transaction of paying election deposit will fail, and the nomination form will not be accepted.

- (ii) Candidates must retain the original receipt of the election deposit (including that paid electronically) for the purpose of applying for its return.

### **Return of Election Deposit**

5.27 The deposit will be returned to the candidate if:

- (a) he is not validly nominated;
- (b) he withdraws his candidature;
- (c) he has died or has been disqualified from being validly nominated after his nomination is confirmed valid for the election and before the specified date of the election;
- (d) the election has failed;
- (e) he is duly elected; or
- (f) the number of votes received by the candidate in his favour is not less than 3% of the total number of valid ballot papers received in the constituency.

Candidates are required to, as soon as practicable, complete a specified form for the return of the election deposit, and submit it together with the original receipt of the election deposit to the relevant RO for action. RO will forfeit the deposit in accordance with ss 3 and 4 of the LC Subscribers & Deposit Reg, if none of the above conditions is satisfied.

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

5.28 As stipulated in Annex II to the Basic Law and the LCO, the CERC is responsible for reviewing and confirming the eligibility of candidates for LegCo members. The CERC may request the ROs to provide advice regarding the nominations of candidates. It may also make decisions pursuant to the opinion of the National Security Committee, and the National Security Committee shall, on the basis of the review by the National Security Department of HKPF, make findings as to whether a candidate meets the legal requirements and conditions on “upholding the Basic Law and pledging allegiance to the HKSAR of the People’s Republic of China”, and issue an opinion to the CERC in respect of candidates who fail to meet such legal requirements and conditions. According to Article 14 of the Hong Kong National Security Law, no institution, organisation, or individual in the Region shall interfere with the work of the National Security Committee. Information relating to the work of the National Security Committee shall not be subject to disclosure.

5.29 The CERC consists of the chairperson, at least two but not more than four official members, and at least one but not more than three 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. In addition, the CE shall report any appointment made to the Central People’s Government for record. [S 9A of the CEEQ]

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

5.30 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 within 14 days after the close of the nomination period. The notice will include the names and addresses<sup>23</sup> of all validly nominated candidates. [S 42A of the LCO and s 21 of the EAC (EP) (LC) Reg]

5.31 In determining whether a candidate is validly nominated, the CERC may request the RO to advise on whether the candidate is eligible to be nominated or disqualified from being nominated under the LCO. However, the RO is not to advise on whether a candidate has complied with s 40(1)(b)(i) of the LCO regarding the declaration on upholding the Basic Law and pledging allegiance to the HKSAR of the People's Republic of China. [Ss 16(3A) to (3C) of the EAC (EP) (LC) Reg]

5.32 If the RO discovers an error which may amount to a ground for deciding that the nomination form is invalid, and the error can be rectified in time during 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 a reasonable opportunity to rectify it. For example, if the qualification of a subscriber to a submitted nomination form is in doubt, the prospective candidate may, where possible, be allowed to find another subscriber in substitution as soon as practicable. No substitution of subscriber or re-submission of a nomination form is allowed after the close of the nomination period. A nomination may be ruled invalid if the errors on the nomination form are still not rectified. [S 18 of the EAC (EP) (LC) Reg]

5.33 To enable the CERC to be satisfied that the candidate of relevant constituency is eligible to be nominated or otherwise as to the validity of a nomination, the CERC or RO may require a candidate to furnish any supplementary information. [Ss 10(10), 11(11), 12A(10), and 16(3A) of the EAC (EP) (LC) Reg]

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<sup>23</sup> The candidate's name and address are those provided on the nomination form. For details, refer to the notes for completing the form.

5.34 A nomination will be invalid unless the nomination form contains all information and signatures required or supplementary information required by the RO and the candidate has made the declarations and oath mentioned in para. 5.12 of this chapter.

5.35 Without prejudice to ss 37, 39, and 40 of the LCO<sup>24</sup>, the CERC may determine a nomination of a candidate to be invalid only when:

- (a) the number and qualifications of subscribers on the nomination form do not meet the requirements under s 7 of the LC Subscribers & Deposit Reg;
- (b) the nomination form, including the parts on nomination, declarations, and oath thereof, has not been completed or signed as required under s 40 of the LCO and ss 10, 11, and 12A of the EAC (EP) (LC) Reg;
- (c) the CERC is satisfied that the candidate is not eligible to be, or has been disqualified from being, nominated as a candidate under the LCO;
- (d) the candidate has been nominated for another constituency in the same election, and the CERC is not satisfied that he has withdrawn that candidature;
- (e) the candidate has not lodged the appropriate election deposit (e.g. because 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
- (f) the RO is satisfied that the candidate has died.

[S 16 of the EAC (EP) (LC) Reg]

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<sup>24</sup> See paras. 5.3, 5.5, 5.6, 5.12 and 5.15.

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

5.36 A candidate may withdraw his candidature only before the close of the nomination period, and must complete and sign a specified form entitled “Notice of Withdrawal of Candidature”, which must be delivered to the RO concerned by the candidate (or his election agent) in person. Under the subsisting law, candidates are not allowed to withdraw their candidature after the close of the nomination period, and there is no such mechanism as the so-called “abandonment of election.” Even if a candidate has made public his claim about the so-called “abandonment of election,” his name will still be shown on the ballot papers for electors to vote for, and the candidate concerned must comply with the election-related legislation, including reporting all election expenses. [S 42 of the LCO and s 20 of the EAC (EP) (LC) Reg]

### **NOTE :**

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

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

5.37 In the case of a contested election, the RO will draw lots to determine the order of candidates’ names on the ballot papers and the list number of the designated spots allocated for displaying EAs. After the end of the nomination period, the RO will inform the relevant candidates of the date, time and place of the lots drawing session and the Candidates’ Briefing. [S 49 of the EAC (EP) (LC) Reg]

5.38 The CERC's notice of valid nominations will include the number allocated to each candidate by the drawing of lots, which will be shown on the ballot papers. In the case of an uncontested election, the RO must publish a notice in the Gazette to declare the candidates as being duly elected as LegCo members for that constituency. The RO must also send a notice to each validly nominated candidate for the constituency concerned as to whether a person is validly nominated as a candidate. [Ss 19, 21, and 22 of the EAC (EP) (LC) Reg]

5.39 The EAC will conduct a briefing for all validly nominated candidates on important matters related to the election.

## **PART X : PARTICULARS RELATING TO CANDIDATES ON BALLOT PAPERS**

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

5.40 Under the PCBP (LC & DC) Reg, candidates for LegCo GCs or FCs may, **during the nomination period**, request the EAC to print on the ballot papers<sup>25</sup> his personal photo and one of the following particulars:

- (a) the registered names (or abbreviation of the registered names) and/or registered emblems relating to not more than three prescribed bodies<sup>26</sup>;
  - (b) the registered emblem of a prescribed person<sup>27</sup> relating to the candidate;
- or

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<sup>25</sup> The basic form of the ballot paper is prescribed in Schedule 3 to the EAC (EP) (LC) Reg.

<sup>26</sup> A prescribed body means a prescribed political body or a prescribed non-political body.

<sup>27</sup> A prescribed person means a person that is registered in a 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.

- (c) the registered names (or abbreviation of the registered names) and/or registered emblems relating to not more than two prescribed bodies, and the registered emblem of a prescribed person relating to the candidate.

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

Candidates can also choose to print the words “Independent Candidate” or “Non-affiliated Candidate” on ballot papers, provided they ensure there is a factual basis for the claim, and they are aware of the guidelines in para. 5.13 of this chapter.

5.41 A candidate to make the request above should complete and sign the specified form. Where a request relates to any prescribed body, the request must be accompanied by a written consent given by the relevant body during the nomination period. Where a request includes a candidate’s personal photo, the request must be accompanied by two photos with the candidate’s name and the name of the relevant GC or FC shown on the back of the photos. [S 3(4) of the PCBP (LC & DC) Reg]

### **Application by Prescribed Body for Registration of its Name and Emblem**

5.42 A prescribed body (hereafter referred to as applicant) intending to support a candidate in a LegCo GC or FC election may, according to the time frame for application set out in para. 5.45, 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]

5.43 The applicant must:

- (a) complete and sign the specified form for making application;
- (b) indicate whether the applicant is a prescribed political or non-political body;
- (c) indicate that the applicant intends to consent to have the subject of his application printed on a ballot paper; and
- (d) submit together with a copy of the certificate or document bearing the body's name issued to the body by an authority or regulatory organisation that regulates the body.

[S 8(2) of the PCBP (LC & DC) Reg]

### **Application by Prescribed Person for Registration of Emblem**

5.44 A prescribed person (hereafter referred to as applicant) may apply to the EAC for the registration of an emblem. The applicant must:

- (a) complete and sign a specified form for making application; and
- (b) indicate that he is a prescribed person.

[Ss 9(1) and (2) of the PCBP (LC & DC) Reg]

### **Timing of Application**

5.45 Applications submitted on or before the statutory cut-off date (i.e. 15 June of a year) will be processed within that year's annual registration cycle (i.e. from 1 January to 31 December of that year). A register containing the particulars in respect of the names and emblems of prescribed bodies and 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. [S 2 of the PCBP (LC & DC) Reg]

### **Processing of Application**

5.46 If an application is made by a prescribed body or a prescribed person on or before the cut-off date for that annual registration cycle, the EAC must, as far as practicable, process the application within that annual registration cycle. If an application is made after the cut-off date, the EAC will process the application in the next following annual registration cycle. [S 11 of the PCBP (LC& DC) Reg]

5.47 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 from the issuance of the notice (inclusive of the issue date), vary the application or make representations in writing to the EAC on why the EAC should not refuse to grant the application. [Ss 12 and 13(1) and (2) of the PCBP (LC & DC) Reg]

5.48 If the EAC is of the opinion that it may grant the application, it must 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]

5.49 Any person may, within 14 days after the publication of a notice in respect of an application in the Gazette (inclusive of the gazette date), by notice in writing given to the EAC, object to the granting of the application. In the event of an objection, the EAC will conduct a hearing, which must be held in public. If the EAC or the EAC member who conducts the hearing, on its or his own motion or on the application of the applicant or the objector, determines that the hearing or any part of the hearing must not be held in public, the hearing or the part thereof, as the case may be, may be held in private. The EAC will decide whether the application should be granted after hearing representations from all parties and examining the relevant information. [Ss 15 and 17 of the PCBP (LC & DC) Reg]

5.50 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]

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

5.51 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 EAC. The CEO must make the register available at the REO for inspection, free of charge, by members of the public during ordinary business hours. [S 20 of the PCBP (LC & DC) Reg]

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

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

or

- (b) the prescribed person has died or the body no longer exists.

[Ss 21(1) and (2) of the PCBP (LC & DC) Reg]

## **PART XI : INTRODUCTION TO CANDIDATES**

5.53 The REO will publish an **Introduction to Candidates**. The candidate number or letter of the alphabet allocated to each candidate by the drawing of lots, which are to be shown on the ballot papers, will also be printed on the Introduction to Candidates. The Introduction to Candidates will be sent to electors/ARs (“electors”) (including those imprisoned or held in custody by the Correctional Services Department (“CSD”) or other law enforcement agencies) together with

poll cards before the polling day. The Introduction to Candidates will also be uploaded to the dedicated election website for electors' reference.

5.54 Candidates who wish to make use of the Introduction to Candidates to promote their elections must submit the required information to the relevant RO or CEO **before the end of the nomination period** in one of the following manners:

| <b>Hard Copy Submission</b> <sup>Note</sup>                                                                                                                                                                                                                                                                                   | <b>Electronic Submission</b> <sup>Note</sup>                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>A duly completed input form affixed with a colour photo of the candidate taken within the last six months in specified size; and</li> <li>Two copies of photos identical to the one affixed to the input form, with the candidate's name label affixed on the back of each.</li> </ul> | <ul style="list-style-type: none"> <li>Uploaded a digital photo of the candidate to the specified section of the electronic input form. The digital photo must comply with the file format specified in the electronic form (including image type, file size, and dimensions); otherwise it will not be accepted; and</li> <li>The electronic input form must be uploaded to REO's designated electronic form submission platform.</li> </ul> |

Note: If a candidate does not submit the input form, the Introduction to Candidates will only show his name and candidate number or letter of the alphabet allocated, with the statement "Relevant information has not been provided by the candidate" printed in the space provided for the electoral message.

5.55 Candidates should understand the different needs of electors (including those electors with visual impairments) and, in the course of their electioneering campaign, make their utmost efforts to ensure that electors can have fair access to

the electoral messages. The EAC encourages candidates to submit an electronic version of the input form, including the text version part, by the specified deadline to enable the production of a text version of the Introduction to Candidates which is readable by computers or smartphones for visually impaired electors. If a candidate does not provide the electronic version of text information, only an image-based version of the Introduction to Candidates will be available on the dedicated election website, and the text version will only show the candidate's name, personal particulars (if relevant information is provided in the input form), and the allocated number/letter of the alphabet, with a remark that the candidate has not provided a text version of his electoral message. The EAC appeals to all candidates to make use of the text version to convey their electoral messages to persons with visual impairment.

5.56 The contents, nature, and presentation of a candidate's electoral message in the Introduction to Candidates are exclusively the idea and work of the candidate himself. They will not be subject to alteration or editing by the REO unless the content is considered unlawful, obscene, immoral, indecent, offensive, defamatory or containing information irrelevant to the promotion of the candidature of the candidate concerned.