

CHAPTER 3

NOMINATION OF CANDIDATES

PART I : ELIGIBILITY AND DISQUALIFICATION FOR NOMINATION

3.1 The legal provisions governing the eligibility for and disqualification from the nomination of candidates for the RR election are contained in the RREO. The procedure for nomination of candidates for the RR election is provided in the EP (RRE) Reg made by the EAC.

Eligibility

3.2 To be eligible for nomination as a candidate at an election for an EV or a MT, a person must:

- (a) be 21 years of age or over;
- (b) be a Hong Kong permanent resident;
- (c) be registered, and eligible to be registered, as an elector for the EV or the MT;
- (d) be a resident of the EV or the MT, and has been such a resident of the Village or the MT for the 6 years immediately preceding the nomination;
- (e) not be disqualified from voting at the election by virtue of s 14 of the RREO (see para. 2.27 above); and

- (f) not be disqualified from being nominated as a candidate at the election, or from being elected as a ReR for the Village or a KFR for the MT by virtue of s 23 of the RREO or any other law (see para. 3.8 below).

[S 22(1) and (2A) of the RREO]

3.3 To be eligible for nomination as a candidate at an election for an IV or a CIV, a person must:

- (a) be an indigenous inhabitant of the IV/CIV;
- (b) be 21 years of age or over;
- (c) be a Hong Kong permanent resident;
- (d) ordinarily reside in Hong Kong (for the definition of “ordinarily residing in Hong Kong”, please refer to paras. 3.5 to 3.7 below);
- (e) be registered, and eligible to be registered, as an elector for the IV/CIV;
- (f) not be disqualified from voting at the election by virtue of s 14 of the RREO (see para. 2.27 above); and
- (g) not be disqualified from being nominated as a candidate at the election, or from being elected as an IIR for the Village by virtue of s 23 of the RREO or any other law (see para. 3.8 below).

[S 22(2) of the RREO]

3.4 As mentioned in para. 2.38 above, for an indigenous inhabitant who has registered as an elector for his/her IV or a CIV, if he/she wishes to apply

for change of his/her registration from the Village he/she originates to the IV/CIV of his/her spouse, he/she will neither be eligible to stand for the election in his/her spouse's IV/CIV nor eligible to stand for the election in the IV/CIV he/she originates.

“Ordinarily Residing in Hong Kong”

3.5 The definition of “ordinarily residing in Hong Kong” is not set out in the subsisting electoral law. In assessing whether a person “ordinarily resides 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. The conclusion cannot be generalised and one cannot say someone does not “ordinarily reside in Hong Kong” simply because he/she has a place of residence abroad. According to a court precedent⁸, a person is considered ordinarily residing in a place if he/she remains in that place legally, voluntarily and for a settlement purpose (such as for education, employment or residence), regardless of the duration, and even if he/she is temporarily absent from that place for some reasons. The Court also pointed out that a person may ordinarily reside in two places at the same time.

3.6 Generally speaking, for a Hong Kong permanent resident who used to reside in Hong Kong all along, if he/she has now set up for personal reasons another residence elsewhere but still returns to live in Hong Kong from time to time (such as for handling personal matters, social gatherings or family reunion), then he/she can still be regarded as maintaining a reasonable connection with Hong Kong. A condition which must be considered in parallel is that in accordance with the electoral law, the person must provide, for the purpose of registration as an elector, a residential address which is his/her only or principal residence in Hong Kong (i.e. not a correspondence address but a residential address where he/she habitually resides when he/she is in Hong Kong). Under such circumstances, whether the person still satisfies the statutory requirement

⁸ *Lau San Ching v. Liu Apollonia* (1995) 5 HKPLR 23 citing *R.v. Barnet London Borough Council, ex parte Shah* [1983] 2 AC 309

of “ordinarily residing in Hong Kong” must be determined according to the actual circumstances of individual case.

3.7 To sum up, the individual circumstances of the person must be considered when determining whether that person is “ordinarily residing in Hong Kong”, and it is not a matter capable of summary determination. In case of doubt, a prospective candidate should consult his/her independent legal adviser.

Disqualification

3.8 A person is disqualified from being nominated as a candidate at an RR election, and from being elected as an RR for a Rural Area, if he/she:

- (a) is a judicial officer;
- (b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or any substitute sentence or received a free pardon⁹;
- (c) has been convicted of treason;
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment;
- (e) is or has been convicted, within 5 years before the date of the election,

⁹ The Court of First Instance (“CFI”) delivered written judgment on 21 June 2012 on *Wong Hin Wai & another v. Secretary for Justice* (HCAL 51 & 54/2012) and declared the similar provision under s 39(1)(b) of the Legislative Council Ordinance (Cap. 542) (“LCO”) (which is similar to the situation set out in para. 3.8(b) above) to be unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. The future RR Election will be organised in accordance with the prevailing electoral laws. Any person who would like to be nominated as a candidate for RR Election and is doubtful about his/her eligibility for nomination may seek independent legal advice where appropriate.

- (i) of any offence in Hong Kong or in any other place, the sentence for which is imprisonment (suspended or not) for a term exceeding 3 months without the option of a fine;
 - (ii) of having engaged in corrupt conduct or illegal conduct in contravention of the ECICO;
 - (iii) of any offence against Part II of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”); or
 - (iv) of any offence¹⁰ prescribed by the regulations made by the EAC;
- (f) is ineligible because of the operation of the RREO or any other law;
- (g) is a representative or a salaried functionary of the government of a place outside Hong Kong;
- (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people’s congress or people’s consultative body of the People’s Republic of China, whether established at the national level or local level;
- (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy

¹⁰ Prescribed offence refers to a person who knowingly makes a false statement in a material particular or recklessly makes an incorrect statement in a material particular or omits a material particular in an election-related document under s 90 of the EP (RRE) Reg; and, for example (but not limited to), any abuse or misuse of information relating to a person contained in any register of electors or in any extract of any register of electors under s 32 of the EAC (ROE) (RRE) Reg.

Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full;

- (j) within the 5 years before the date of election, has vacated an office or has been disqualified from holding or entering on an office under the law for declining or neglecting to take a specified oath¹¹, 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 of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law") and bearing allegiance to the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China;
- (k) 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); or
- (l) in the case of ReR or KFR, ceases to be a resident of the EV or the MT.

[S 23 of the RREO]

[Subject to the enactment of the Rural Representative Election (Amendment) Bill 2022, para. 3.8(j)(i) and (ii) above will be incorporated in the finalised guidelines.]

¹¹ 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 II : WHEN AND HOW TO NOMINATE

When to Nominate

3.9 Any person who intends to stand for election may submit a nomination form during the **nomination period** specified in the notice published in the Gazette [ss 4 and 5 of the EP (RRE) Reg]. The nomination period for an RR election shall not be less than 7 days, and shall end not less than 12 days before the polling day [s 5 of the EP (RRE) Reg]. An election timetable in the format of an “Action Checklist for Candidates” (see **Appendix 1**) will be provided to each candidate by the RO for the relevant Rural Area. The ROs will receive nominations during the ordinary business hours (i.e. from 9 am to 5 pm on Monday to Friday, and from 9 am to 12 noon on 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.**

How to Nominate

3.10 Nomination forms specified by the EAC are available from any DO or from the HAD headquarters, or can be downloaded from the website of the RR Election (www.had.gov.hk/rre).

3.11 The nomination form for candidates comprises the parts of (a) nomination and (b) candidate’s consent to nomination and declaration of eligibility:

(a) The Nomination

The nomination must be subscribed by at least 5 electors registered for the Rural Area concerned (other than the candidate himself/herself), and each elector may only subscribe **nominations not more than the vacancies to be filled for a particular Rural Area**. Once the number of nomination forms subscribed by an elector, which have been delivered to the RO, has reached the above statutory limit (i.e. the number of vacancies to be filled for a particular Rural Area), the elector's signature on any other nomination forms will be inoperative. [S 25 (1), (2) and (3) of the RREO]

If, however, the nomination subscribed by an elector has been held to be invalid, or the candidate has withdrawn his/her nomination or has died, the elector may 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 25 (4) of the RREO]

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, so as to avoid the risk of invalidation of the nomination should any of the subscribers be subsequently found not to be qualified as subscribers. A candidate should ensure that the electors subscribing his/her nomination form are eligible to do so and these electors have not subscribed more nomination forms than the vacancies of the Rural Area. Each elector subscribing a

nomination shall sign the nomination form **personally**.

No unlawful means shall be used to procure an elector to subscribe or not to subscribe a nomination. Intimidation is an offence under s 24 of the Crimes Ordinance (Cap. 200). 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.

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 unauthorised or accidental access, processing, erasure, loss or use.

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

According to the RREO, a candidate must duly complete the nomination form and declarations, which shall be attested by a witness¹². The candidate must declare that he/she will uphold the Basic Law and pledge allegiance to the HKSAR. [S 24 of the RREO]

Any person who makes a statement which he/she knows to be false in a material particular in an election related document (including

¹² A witness can be any person aged 18 years or above and in possession of an identity document. According to s 2(1) of the RREO, identity document means an identity card or any other document issued to a person that is acceptable to the ERO as proof of the person’s identity.

the nomination form and declarations), or recklessly makes a statement which is incorrect in a material particular in an election related document, or omits a material particular in an election related document, commits an offence and shall be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months. [S 90 of the EP (RRE) Reg]

IMPORTANT :

No person shall be nominated as a candidate at an election for more than 1 Rural Area [s 22(4) of the RREO]. 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 Rural Area in the election, or if he/she has been so, he/she has withdrawn all those prior nominations. Where a candidate stands nominated (see para. 3.15 below), any subsequent nominations of his/hers will be rejected as invalid [s 10(3)(d) of the EP (RRE) Reg].

Candidates should make sure that their nomination forms are properly completed before submission.

3.12 The completed nomination form must be delivered to the RO for the Rural Area 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 (see para. 3.9). In exceptional circumstances (e.g. the candidate is temporarily absent from Hong Kong, suffers incapacity due to illness or is undergoing mandatory quarantine, etc.) which preclude the candidate from delivering the nomination form in person, the RO may authorise any other

manner of delivery of the nomination form to him/her. [S 7(1)(f) of the EP (RRE) Reg] The RO may refuse to accept any nomination form where there is a material alteration of its content.

3.13 The RO will also make available copies of the nomination forms for public inspection free of charge at his/her office during ordinary business hours until the relevant notice of the election result is published [s 13 of the EP (RRE) Reg]. Should the RO decide that a nomination is invalid (see Part III below), he/she is required to endorse on the nomination form his/her decision and the reasons for it. [S 11 of the EP (RRE) Reg]

False Declarations

3.14 A candidate who knowingly and wilfully makes a statement which is false in a material particular in the nomination form or makes a false declaration is in breach of the requirements of s 90 of the EP (RRE) Reg. The aforesaid 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. That provision also specifies that an election related document means a form, declaration, etc. required or used for the purposes of the EP (RRE) Reg. Besides, a person making a false statement in statutory document is in breach of s 36 of the Crimes Ordinance and shall be liable to imprisonment for 2 years and a fine. A violation against s 90 of the EP (RRE) Reg is a prescribed offence, with the same disqualification on conviction of a corrupt or illegal conduct under the ECICO (as described in paras. 15.52 and 16.38 of the Guidelines). If elected, he/she will also be disqualified from holding office as an RR in accordance with s 9(1)(d)(iv) of the RREO.

PART III : VALIDITY OF NOMINATIONS

3.15 Whether the nomination is valid or not is decided by the RO. The RO will make a decision as to the validity of a nomination as soon as practicable after receipt of the nomination form and will publish a notice stating which persons are validly nominated as candidates within 14 days after the end of the nomination period for an election for the Rural Area. [S 27 of the RREO and ss 10 and 15 of the EP (RRE) Reg]

3.16 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 if the error can be rectified before the close of the nomination period, the RO may, before making a decision that the nomination form is invalid, give the candidate a reasonable opportunity to rectify it as far as practicable [s 9 of the EP (RRE) Reg]. 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 as a substitute as soon as practicable. However, no substitution of subscriber or re-submission of a nomination form is allowed after the end of the nomination period.

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

3.18 The RO may require a candidate to furnish such additional information as he/she considers necessary to satisfy himself/herself as to the validity of the nomination. [S 7(3) of the EP (RRE) Reg]

3.19 A nomination will be invalid unless the nomination form contains all information and signatures required or other information required by the RO and the candidate has made the declarations referred to in para. 3.11(b) above.

3.20 Without prejudice to ss 22, 23, 24 and 25 of the RREO¹³, the RO may decide that a nomination is invalid only when:

- (a) the number or qualifications of the subscribers fall short of the requirements under s 25 of the RREO;
- (b) the nomination form, including the nomination and declarations, has not been completed or signed as required under s 7 of the EP (RRE) Reg;
- (c) he/she is satisfied that the candidate is not eligible to be, or is disqualified from being, nominated as a candidate under the RREO;
- (d) the candidate has been nominated for another Rural Area in the same election and the RO is not satisfied that he/she has withdrawn that candidature;
- (e) he/she is satisfied that the candidate has died; or
- (f) the nomination form is not duly delivered within the nomination period (see paras. 3.9 and 3.12 above).

[S 10(3) of the EP (RRE) Reg]

3.21 If, having decided that a candidate is validly nominated for an election for a Rural Area, but before the polling day, proof is given to the satisfaction of the RO that the candidate has died, the RO must publicly declare that the candidate has died and further declare which candidate(s) is/are validly

¹³ Please see paras. 3.2, 3.3, 3.8, 3.11 and 3.14 for reference.

nominated for that Rural Area. The RO does not have to make any such declarations if the candidate who has died is uncontested in the election for the relevant Rural Area and the RO has publicly declared that the candidate was duly elected. [S 28(1), (2) and (3) of the RREO and s 17 of the EP (RRE) Reg]

3.22 If, having decided that a candidate is validly nominated for an election for a Rural Area, but before the polling day, proof is given to the satisfaction of the RO that the candidate is disqualified from being nominated as a candidate, the RO must vary the decision to the effect that the candidate is not validly nominated. The RO must also publicly declare that his/her decision has been varied and further declare which candidate(s) is/ are validly nominated for that Rural Area. The RO does not have to vary his/her decision if the candidate who has been disqualified is uncontested in the election for the relevant Rural Area and the RO has publicly declared that the candidate was duly elected. [S 28(4), (5) and (6) of the RREO and s 18 of the EP (RRE) Reg]

PART IV : WITHDRAWAL OF CANDIDATURE

3.23 A candidate may withdraw his/her candidature only before the end of the nomination period. He/She is required to complete and sign a specified form entitled “Withdrawal of Candidature” which shall be delivered by the candidate in person or his/her election agent in person to the RO concerned. [S 26 of the RREO and s 14 of the EP (RRE) Reg] Under the subsisting law, candidates are not allowed to withdraw their candidature after the end of the nomination period and there is no such mechanism as the 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 electors to vote for if they so wish. All candidates must comply with the election-related legislation, including that on reporting all election expenses.

IMPORTANT :

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

PART V : NOTICE OF VALID NOMINATIONS

3.24 The RO concerned shall publish a notice in the Gazette within 14 days after the close of the nomination period, stating the name and the address¹⁴ of each validly nominated candidate for the Rural Area concerned, together with the number (which will be shown on the ballot paper) allocated by the drawing of lots to each candidate [s 15 of the EP (RRE) Reg]. Each validly nominated candidate will be separately informed of the validity of all nominations of the same Rural Area. 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 a ReR, IIR or a KFR for that Rural Area, as the case may be [s 16 of the EP (RRE) Reg].

PART VI : CANDIDATES' BRIEFING AND INTRODUCTION TO CANDIDATES

3.25 The EAC will conduct a briefing, as and when necessary, for all validly nominated candidates on important matters related to the election. After the end of the nomination period, the RO will inform each validly

¹⁴ For an election of ReR or KFR, the address is the relevant particulars of the candidate's principal residential address contained in the candidate's nomination form; for an election of IIR, the address is the candidate's address contained in the candidate's nomination form. For details, please refer to the notes on completion of the nomination form.

nominated candidate the lots drawing session and the date and time of 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 or the order of appearance to be shown on the ballot paper and the designated spots allocated to each of them to display EAs (please refer to para. 7.31).

3.26 The HAD 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 papers will also be shown on the Introduction to Candidates, which will be mailed to the electors together with the polling notice(s) before the polling day. Copies of the Introduction to Candidates will be made available in the Correctional Services Department ("CSD") and other law enforcement agencies for electors imprisoned or held in custody.

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

- (a) a duly completed grid paper affixed with a colour photograph of the candidate which must be in a specified size and should be taken within the last 6 months; and
- (b) 2 additional copies of his/her photograph identical to the one affixed to the grid paper with his/her name, name of Rural Committee and rural area concerned written 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.

3.28 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 HAD unless they are considered obscene, immoral, indecent, offensive, defamatory, unlawful or containing information irrelevant to the promotion of the candidature of the candidate concerned.

3.29 To assist persons with visual impairment in reading the contents of the Introduction to Candidates, candidates may provide the HAD 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 HAD. With these typed texts, the HAD will prepare a text version of the Introduction to Candidates for uploading onto its website of the RR 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 electors and, in the course of their electioneering campaign, make their utmost efforts to ensure that persons with different needs can have fair access to the electoral messages.