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 The eligibility requirements for nomination as a candidate in an RR election are as follows:

EV/MT Election Candidates[21]	IV/CIV Election Candidates[22]
Be 21 years of age or over	
Be a Hong Kong permanent resident	
Be a resident of the Village/MT, and has been such a resident of the Village/MT for the six years immediately preceding the nomination;	Be an indigenous inhabitant of the Village

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

EV/MT Election Candidates[21]	IV/CIV Election Candidates[22]
	Ordinarily reside in Hong Kong (see para. 3.4 of this chapter)
Be both registered and eligible to be registered as an elector for the Rural Area	
Not be disqualified from voting at the election by virtue of s 14 of the RREO (see para. 2.20 of Chapter 2)	
Not be disqualified from being nominated as a candidate at the election, or from being elected as an RR for the Rural Area by virtue of s 23 of the RREO or any other law (see para. 3.5 of this chapter)	

3.3 As mentioned in para. 2.24 of Chapter 2, for an indigenous inhabitant who has registered as an elector for his IV/CIV, if he wishes to apply for change of his registration from the Village he originates from to the IV/CIV of his spouse, he will neither be eligible to stand for election in his spouse's IV/CIV nor eligible to stand for election in the IV/CIV he originates from.

"Ordinarily Residing in Hong Kong"

3.4 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[23], 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 indicates that a person may ordinarily reside in two places at the same time. If a Hong Kong permanent resident has left Hong Kong to

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

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 for IV/CIV elections under s 22(2) of the RREO. A prospective candidate who is doubtful about his eligibility for nomination should consult his independent legal adviser.

Disqualification for Nomination

3.5 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:

(a) is a judicial officer;

(b) 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[24];

(c) has been convicted of any offence endangering national security;

(d) on the date of nomination, or on the date of the election, is serving a sentence of imprisonment;

(e) is or has been convicted of the following offences within five years before the date of the election:

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[24] On 21 June 2012, the Court of First Instance ("CFI") 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 Legislative Council Ordinance (Cap. 542) ("LCO") (similar to the situation described in para. 3.5(b) of this chapter) to be unconstitutional. On 12 July 2012, the Government announced its decision not to appeal against the judgment. Future RR elections will be conducted in accordance with the prevailing legislation. Any person who wishes to be nominated as a candidate for an RR election and is doubtful about his eligibility for nomination may seek independent legal advice.

(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 the EAC Regulations[25];

(f) is ineligible or disqualified 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 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;

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[25] The EAC Regulations means regulations made under s 7 of the EACO.

(j) within the five 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 oath[26], 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;

(k) is found to be incapable, by reason of mental incapacity, of managing and administering his property and affairs under the Mental Health Ordinance; 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]

PART II : NOMINATION PERIOD AND NOMINATION FORM

Nomination Period

3.6 The nomination period will be published in the Gazette. The ROs shall receive nomination forms 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) within the nomination period (except public holidays). Candidates must submit their

[26] Specified oath means an oath taken under the law that the oath-taker will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law") and bear allegiance to the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China.

nomination forms **in person** to the RO for the relevant Rural Areas during the nomination period. Late submissions will not be accepted. In exceptional circumstances, such as a candidate's incapacity due to illness, the RO may authorise other manners of submission of the nomination form to the RO. **Candidates are advised to submit their nomination forms in good time before the end of the nomination period to allow time for any errors in their nomination forms to be corrected.** Candidates should read carefully and comply with the "Points to Note for Submission of Nomination Forms for Candidates" and the "Action Checklist for Candidates" which are uploaded to the RR Election website (www.had.gov.hk/rre). [Ss 4, 5 and 7(1)(f) of the EP (RRE) Reg]

Nomination Form

3.7 Nomination forms are available free of charge at the DOs in the New Territories or the HAD headquarters and may also be downloaded from the RR Election website (www.had.gov.hk/rre).

3.8 The nomination form comprises:

(a) Nomination

The nomination must be subscribed by at least **five electors registered for the Rural Area concerned** (other than the candidate himself), and each elector may only subscribe **nominations not more than the vacancies to be filled for** a particular Rural Area. If he subscribes more nomination forms than the number he is entitled to subscribe in contravention of the regulations, his signature shall be operative only on the first one delivered.

If, however, the nomination subscribed by an elector has been held to be invalid, or the candidate has withdrawn his nomination or has died, the elector may subscribe another nomination form instead before the end of the nomination period, and his signature will be deemed operative on the latter nomination form. [S 25(1), (2), (3) and (4) of the RREO]

NOTE:

(i) 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.

(ii) A candidate should ensure that the electors subscribing his nomination form are eligible to do so and that the electors have not subscribed more nomination forms than the vacancies of the Rural Area concerned.

(iii) Each elector subscribing a nomination shall sign the nomination form **personally**.

(iv) 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.

(v) S 22(4) of the RREO provides that no person shall be nominated as a candidate at an election for more than one Rural Area. When a person submits his nomination form, he must first withdraw all his other prior nomination(s), if any.

(vi) Candidates are also required to observe Data Protection Principle 4 of Schedule 1 to the Personal Data (Privacy) Ordinance in safeguarding the personal data of subscribers to the nomination forms held by them. They shall 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

A candidate must duly complete the nomination form, ensuring it is signed by the subscribers, and the candidate shall sign a declaration, which shall be attested by a witness[27]. The candidate must declare that he will uphold the Basic Law and pledge allegiance to the HKSAR. [S 24 of the RREO]

3.9 Until the relevant notice of the election results is published, members of the public could inspect copies of the nomination forms free of charge during ordinary business hours at the RO's office. [S 13 of the EP (RRE) Reg]

Criminal Liability of Making False Declarations

3.10 The RO may refuse to accept any nomination form bearing material alteration to its content. A person who, in an election-related document, makes

[27] A witness can be any person aged 18 years or above and in possession of an identity document.

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 knowingly 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, and a violation against the requirements of the above electoral legislation is a prescribed offence, meaning that a person will be regarded as having been convicted of corrupt or illegal conduct under the ECICO, and will therefore be disqualified from being nominated as a candidate or elected as an RR (see Chapter 16). [S 90 of the EP (RRE) Reg]

PART III : VALIDITY OF NOMINATIONS

3.11 Whether the nomination is valid or not is decided by the RO. The RO 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 for the Rural Area concerned. The notice will include the names and addresses[28] of all validly nominated candidates. Should the RO decide that a nomination is invalid, he must endorse on the nomination form his decision and the reasons for it. [S 27 of the RREO, and ss 10, 11 and 15 of the EP (RRE) Reg]

3.12 If the RO discovers an error which may amount to a ground for deciding that the nomination is invalid, and the error can be rectified within the nomination period, the RO may, before forming an opinion as to whether the nomination 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

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[28] For an election of ReR or KFR, the name and address are the relevant particulars of the candidate's name and principal residential address, as provided in the candidate's nomination form; for an election of IIR, they are the candidate's name and address, as provided in the candidate's nomination form. For details, please refer to the notes on completion of the nomination form.

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 9 of the EP (RRE) Reg]

3.13 To enable the RO to be satisfied that the candidate is eligible to be nominated or the nomination is valid, the RO may require the candidate to furnish any supplementary information. [S 7(3) of the EP (RRE) Reg]

3.14 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 mentioned in para. 3.8(b) of this chapter.

3.15 Without prejudice to ss 22, 23, 24 and 25 of the RREO, the RO 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 25 of the RREO;

(b) the nomination form has not been completed or signed as required under the EP (RRE) Reg;

(c) he is satisfied that the candidate is not eligible to be, or has been 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 has withdrawn that candidature;

(e) he is satisfied that the candidate has died; or

(f) the nomination form is not duly delivered within the nomination period (see para. 3.6 of this chapter).

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

PART IV : WITHDRAWAL OF CANDIDATURE

3.16 A candidate may withdraw his candidature only before the close of the nomination period. He shall complete and sign the "Notice of Withdrawal of Candidature" and deliver the notice to the RO concerned in person or through the election agent. 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 "abandonment of election". Even if a candidate has made public his claim about the "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 26 of the RREO and s 14 of the EP (RRE) Reg]

NOTE:

It is an offence for a person to offer advantage corruptly, or to use or threaten to use force or duress, or by a deception, to induce a candidate to withdraw his candidature, or for a candidate to solicit or accept an advantage to withdraw his candidature. [Ss 7, 8 and 9 of the ECICO]

PART V : NOTICE OF VALID NOMINATIONS

3.17 The RO must send a notice to each validly nominated candidate for the Rural Area concerned as to whether a person is validly nominated as a candidate. After the end of the nomination period, in the case of a contested election, the RO will draw lots to determine the candidate number or the order of appearance of the candidates' names to be shown on the ballot paper and the designated spots allocated for displaying EAs. The RO will inform the relevant candidates of the date, time and place of the lots drawing session and the Candidates' Briefing. [Ss 12 and 42 of the EP (RRE) Reg]

3.18 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 address[29] of each validly nominated candidate for the Rural Area concerned, together with the number which is allocated by the drawing of lots and will be shown on the ballot paper. 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 an ReR, an IIR or a KFR for that Rural Area, as the case may be. [Ss 15, and 16 of the EP (RRE) Reg]

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

PART VI : INTRODUCTION TO CANDIDATES

3.20 The HAD will publish an **Introduction to Candidates** and the candidate number allocated to each candidate by the drawing of lots, which is to be shown on the ballot papers, will also be printed on the Introduction to

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[29] See footnote 28.

Candidates. The Introduction to Candidates will be sent to electors (including those imprisoned or held in custody by the Correctional Services Department ("CSD") or other law enforcement agencies) together with polling notices before the polling day. The Introduction to Candidates will also be uploaded to the RR Election website (www.had.gov.hk/rre) for electors' reference.

3.21 Candidates who wish to make use of the Introduction to Candidates for electioneering promotion must submit the following information 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 six months; and

(b) two additional copies of his photograph identical to the one affixed to the grid paper with his name, and the names of the Rural Committee and Rural Area concerned written on the back.

(c) Candidates may also submit the electronic grid papers via the HAD's RR Elections e-Submission Platform.

If a candidate does not submit the grid paper, the Introduction to Candidates will only show his name and assigned candidate number, with the statement "Relevant information has not been provided by the candidate" printed in the space provided for the electoral message.

3.22 Candidates should understand the different needs of electors (including those electors with visual impairment) and therefore, in the course of their electioneering activities, should make sure that electors can have reasonable access to the electoral messages. The EAC encourages candidates to submit an electronic version of the grid paper for the Introduction to Candidates 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 RR Election website, and the text version will only show the candidate's name, personal particulars (if relevant information has been provided in the grid paper by the candidate), and the allocated number, 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.

3.23 The content, nature and presentation of an 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 HAD unless the content is considered unlawful, obscene, immoral, indecent, offensive, defamatory or containing information irrelevant to the promotion of the candidate's standing for election.