

CHAPTER 3

NOMINATION OF CANDIDATES

PART I : QUALIFICATIONS AND DISQUALIFICATION FOR NOMINATION

3.1 The law governing the qualification and disqualification for the nomination of candidates for a CE election is contained in the CEEO. The procedure for nomination of candidates for the CE election is provided in the EP (CEE) Reg made by the EAC.

Qualifications

3.2 To qualify for nomination as a candidate at the election, a person must:

- (a) be a permanent resident of the HKSAR;
- (b) be a Chinese citizen as defined by s 2 of the Hong Kong Special Administrative Region Passports Ordinance (Cap 539);
- (c) have no right of abode in any foreign country; and
- (d) have reached 40 years of age, and have ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

[S 13 of the CEEO]

3.3 A person is considered to **have ordinarily resided in Hong Kong** when he has habitually and normally lived in Hong Kong lawfully for a settled purpose, apart from temporary and occasional absences such as holidays and absence abroad for business or studying purposes. Each case has to be examined upon its own facts. Matters like the length of the person's absence, the reason for his absence, the location of the home of him, his spouse, children and parents and his maintenance of connections with Hong Kong are all relevant factors. In case of doubt, prospective candidates are advised to consult their legal adviser.

Disqualification

3.4 A person will be disqualified from being nominated, if he:

- (a) is the incumbent CE and holds the office for the second consecutive term;
- (b) is a judicial officer, or a prescribed public officer³;
- (c) has been adjudged bankrupt;
- (d) holds a passport or similar travel document other than a passport or Certificate of Identity issued by the HKSAR or an entry permit

³ A prescribed public officer means any of the following-

- (i) the Chairman of the Public Service Commission;
- (ii) the Commissioner and Deputy Commissioner of the ICAC and the holder of any other office under the ICAC Ordinance (Cap 204);
- (iii) the Ombudsman and the holder of any appointment under s 6 of The Ombudsman Ordinance (Cap 397);
- (iv) a member of the EAC;
- (v) the Chief Executive of the Hong Kong Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (vi) the Privacy Commissioner for Personal Data and any person employed or engaged by him under the Personal Data (Privacy) Ordinance (Cap 486);
- (vii) 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);
- (viii) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

issued by an authority in any part of the People's Republic of China;

- (e) has been convicted of treason or sentenced to death;
- (f) has been convicted, within 5 years before the commencement of the nomination period, of any offence in Hong Kong or in any other place, the sentence for which is imprisonment (suspended or not) for not less than 3 months, or convicted of having engaged in corrupt or illegal conduct in contravention of the ECICO, or convicted of an offence against Part II of the POBO or any offence prescribed by the regulations made by the EAC; or
- (g) has been found, for the time being, to be incapable, because of mental incapacity, of managing or administering his property and affairs.

[S 14 of the CEEO]

PART II : WHEN AND HOW TO NOMINATE

When to Nominate

3.5 Nomination may be made during the **nomination period** specified in the notice published in the Gazette [s 3 of the EP (CEE) Reg]. The nomination period for a CE election shall not be less than 14 days, and shall terminate at least 21 days before the polling date [s 15 of the CEEO]. The EAC shall appoint a judge of the Court of Final Appeal, a Justice of Appeal or a judge of the Court of First Instance to be the RO of a CE election [s 41 of the CEEO]. An election timetable will be provided to each candidate

by the RO. The ordinary business hours on each working day (ie any day other than a general holiday or Saturday) in the nomination period for the RO to accept nominations are from 9 am to 5 pm, and on a Saturday, from 9 am to 12 noon. **Candidates are encouraged to submit their nominations well before the expiration of the nomination period to allow time for any errors in their nomination forms to be corrected.**

How to Nominate

3.6 Nomination forms specified by the EAC are available from the REO.

3.7 The nomination form comprises:

- (a) The Nomination. This must be subscribed to by not less than **100 members of the EC**. An EC member may nominate only one candidate, and the nomination shall not be withdrawn or revoked.

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 nomination, to avoid the risk of invalidation of the nomination should 1 or more of the subscribers be subsequently found not to be qualified as subscribers. A candidate should make his best endeavour to ensure that the EC members subscribing his nomination form are eligible and have not subscribed another nomination previously. EC Members subscribing a nomination should sign the nomination form **personally**.

Please see **Appendix C** on legal provisions against pressuring electors not to nominate a particular candidate.

- (b) The Candidate's Consent to Nomination and Declarations. This must be completed and signed by the candidate. There are the following declarations which must be made before a justice, notary, commissioner or other authorised person:
- (i) a declaration to the effect that the candidate stands for the election in an individual capacity and that he will uphold the Basic Law and pledge allegiance to the HKSAR; and
 - (ii) a declaration as to the candidate's nationality and whether he has a right of abode in any foreign country.

[S 16 of the CEEO] *[Amended in January 2007]*

3.8 Candidates should ensure that their nomination forms are properly completed before submission. The completed nomination form must be lodged with the RO by the candidate **in person** during ordinary business hours within the nomination period (see para. 3.5). The RO may, in exceptional circumstances, eg the candidate's temporary absence from Hong Kong or incapacity due to illness, authorise any other form of delivery of the nomination form [s 4(1)(e) of the EP (CEE) Reg]. *[Amended in January 2007]*

False Declarations

3.9 A candidate who knowingly and wilfully makes a statement which is false in a material particular in the declaration in the nomination form shall be guilty of an offence punishable by a fine and imprisonment for up to 2 years under the Crimes Ordinance (Cap 200). Under the EP (CEE) Reg, a person who knowingly makes a false statement in an election document commits an offence punishable by a fine and imprisonment for 6 months, with the disqualifying effect as described in paras. 16.38 and 17.31 of these Guidelines [s 84 of the EP (CEE) Reg]. *[Amended in January 2007]*

PART III : VALIDITY OF NOMINATIONS

3.10 The RO will make a decision as to the validity of a nomination as soon as practicable after receipt of the nomination form [s 17 of the CEEEO].

3.11 Where a nomination appears to the RO to be invalid because of some errors which can be corrected **within** the nomination period, the RO will, if practicable, give the candidate a reasonable opportunity of correcting the errors before making a decision that the nomination is invalid [s 5 of the EP (CEE) Reg]. For example, if the eligibility of any subscriber is in doubt, a prospective candidate may be allowed to make a substitution as soon after the submission of his nomination form as practicable. However, no substitution for any subscriber or re-submission of a nomination form will be accepted after the close of the nomination period.

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

3.13 The RO may require such additional information from a candidate as he considers necessary to satisfy himself as to the validity of the nomination.

3.14 A nomination will not be valid unless it contains all the information and signatures required to be shown on the nomination form or by the RO and the candidate has made the declarations referred to in para. 3.7(b).

PART IV : PUBLICATION OF NOMINATIONS

3.15 The RO shall, as soon as practicable after determining that a person is validly nominated as a candidate or is not so nominated, send a

written notice of the determination to the person and to each validly nominated candidate [s 7(1) of the EP (CEE) Reg]. Within 7 days after the close of nominations, the RO will declare by notice in the Gazette the names of the validly nominated candidates and, for each of these candidates, the names of the EC members nominating him. The RO will also make available copies of the nomination forms for public inspection free of charge at his office during ordinary business hours [s 18 of the CEEO and s 8 of the EP (CEE) Reg].

3.16 The RO can decide that a nomination is invalid only where:

- (a) the number of qualified subscribers are less than 100 as required by s 16 of the CEEO;
- (b) the nomination form, including the nomination and declarations, has not been completed or signed as required by s 16 of the CEEO and s 4(1) of the EP (CEE) Reg;
- (c) he is satisfied that the candidate is not qualified to be, or is disqualified from being, nominated as a candidate;
- (d) he is satisfied that the candidate is dead; or
- (e) the nomination form is not duly lodged within the nomination period.

3.17 If at any time after the close of nominations but before the declaration of the result of the election, proof is given to the satisfaction of the RO that any candidate has died or is disqualified from being elected, the RO must publicly declare that the proceedings for the election are terminated [s 22(1AA) and 22(1) of the CEEO].

PART V : WITHDRAWAL OF CANDIDATURE

3.18 A candidate may withdraw his nomination only before the close of nominations. He should complete and sign a specified form titled “Withdrawal of Candidature” and lodge it with the RO [s 19 of the CEEO and s 9 of the EP (CEE) Reg].

3.19 All parties concerned should note that it is an offence under ss 7 and 8 of the ECICO for a person to bribe, or use or threaten to use force or duress against, a candidate to withdraw his candidature, and for a candidate to solicit or accept a bribe to withdraw his candidature.

PART VI : PUBLICITY

3.20 In a contested election, after the close of nominations, the RO will inform each validly nominated candidate the time and date on which he will draw lots to allocate a number to each of such candidates to be shown on the ballot paper, and they may attend if they so wish. Thereafter, the REO will publish the **Introduction to Candidates**. The number of each candidate on the ballot paper allocated to him by the drawing of lots will also be shown on the Introduction to Candidates, which will be mailed to electors near the polling day. The Introduction to Candidates will be published even if there is only one validly nominated candidate at an uncontested election, although no candidate number will be allocated to the candidate. Copies of the Introduction to Candidates will be made available in the Correctional Services Department (“CSD”) and other law enforcement agencies for persons imprisoned or held in custody. *[Amended in January 2007 and January 2010]*

3.21 Candidates are free to make use of the Introduction to Candidates to promote themselves. Any candidate who so wishes should submit the following to the RO before the close of nominations:

- (a) an introductory message in a specified form provided by the RO;
and
- (b) 3 identical copies of his photograph with his name on the back, which must be of passport size, in colour and taken within the last 6 months.

[Amended in January 2010]

3.22 The contents, nature and presentation of the candidate's message in the Introduction to Candidates are exclusively the idea and work of the candidate himself. They will not be subject to alteration or edition by the REO unless they are considered to be indecent, defamatory or in any other way unlawful. Candidates are reminded that some electors may only be able to read English. *[Amended in January 2010]*