

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

Particulars Relating to Candidates on Ballot Papers (Legislative Council)(Amendment) Regulation 2007

INTRODUCTION

On 20 March 2007, the Electoral Affairs Commission (“EAC”) made the Particulars Relating to Candidates on Ballot Papers (Legislative Council) (Amendment) Regulation 2007 (“the Amendment Regulation”). The purpose of the Amendment Regulation (attached at **Annex**) is to extend to District Council (“DC”) elections the arrangement, adopted in Legislative Council (“LegCo”) elections since 2004, of allowing candidates to have the following particulars printed on ballot papers –

- (a) the names, the abbreviations of the names and the emblems of prescribed bodies¹;
- (b) the personal emblems and the photographs of candidates; and
- (c) the words “Independent Candidate” or “Non-affiliated Candidate”.

This brief informs Members of the main provisions of the Amendment Regulation.

BACKGROUND

2. To facilitate identification of candidates by electors, the EAC made the Particulars Relating to Candidates on Ballot Papers (Legislative Council)

¹ A “prescribed body” means-

- (a) a prescribed political body, i.e. a body or organization operating in Hong Kong that is a political party, purports to be a political party, or the principal function or main object of which is to promote or prepare a candidate for election as a LegCo or DC member; or
- (b) a prescribed non-political body, i.e. a body or organization operating in Hong Kong other than a prescribed political body as described in (a) above.

Regulation (Cap. 541M) (“the existing Regulation”) in December 2003 to provide for –

- (a) the registration of the names, the abbreviations of the names and the emblems of prescribed bodies, and the emblems of prescribed persons²; and
- (b) the printing of specified particulars (which may include the names or abbreviations of the names of prescribed bodies, the emblems of prescribed bodies and prescribed persons, words indicating that a candidate is an independent candidate or a non-affiliated candidate, and the photographs of candidates) on ballot papers for use in an election to elect LegCo Members.

3. The arrangement was first implemented in the 2004 LegCo election. It was well received by political parties, candidates and electors alike.

4. To facilitate identification of DC election candidates by electors, the EAC considers it desirable to extend the arrangement outlined in paragraph 2 above to DC elections, starting with the 2007 DC ordinary election. Allowing DC election candidates to have various specified particulars referred to in paragraph 2(b) above printed on ballot papers would help electors recognize candidates and help them decide whom to vote for on the polling day. The arrangement will also facilitate candidates and any organizations which support them in their electioneering activities. In the long run, the arrangement would facilitate the development of political parties in Hong Kong.

5. The features of the proposed scheme for DC elections, such as the printing of registered particulars on ballot papers, the registration procedures, etc, will be the same as those of the current scheme for LegCo elections as stipulated in the existing Regulation. By expanding the scope of the existing Regulation to cover DC elections as well, candidates may, after the commencement of the Amendment Regulation, request for the names, abbreviations of names and emblems already registered with EAC under the existing Regulation to be printed on ballot papers for both LegCo and DC

² A “prescribed person” means a person that is registered in a final register of electors for geographical constituencies as compiled and published in accordance with the Legislative Council Ordinance (Cap. 542) and is not disqualified from being so registered or from voting at an election.

elections. Furthermore, to allow sufficient time for the processing of the new applications for registration for the purpose of the 2007 DC election, a one-off transitional provision will be added to the existing Regulation to provide for an extended registration period in 2007. Any application for registration made between 16 April 2007 (i.e. the day immediately following the normal cut-off date of the annual registration cycle) and 18 June 2007 (i.e. one month after the Amendment Regulation is expected to take effect on 18 May 2007 upon completion of the negative vetting procedure) will be processed within the 2007 registration cycle, so that the relevant registration procedures will be completed in time for the 2007 DC election.

AMENDMENT REGULATION

6. The main provisions of the Amendment Regulation (attached at **Annex**) are explained below.

Title to the Regulation

(section 2 of the Amendment Regulation)

7. The title to the Regulation is amended as “Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation” to reflect that the arrangement covers both LegCo and DC elections.

Interpretation

(section 3 of the Amendment Regulation)

8. The existing Regulation only caters for Legislative Council elections. In order to give effect to the extension of the arrangement to DC elections and to differentiate between a LegCo election and a DC election, certain existing definitions are expanded or amended as appropriate.

Requests by candidates to print specified particulars on ballot papers *(section 4(2) of the Amendment Regulation)*

9. Section 4(2) of the Amendment Regulation amends section 3(1) of the existing Regulation to the effect that the existing requirements applicable to the request made by a candidate for LegCo functional constituency, or a sole candidate on a LegCo geographical constituency nomination list, will also apply to the request made by a DC election candidate.

De-registration

(section 7 of the Amendment Regulation)

10. Under section 21(1)(a) and 21(2)(a) of the existing Regulation, the registered particulars of a prescribed body or a prescribed person may be de-registered by the EAC if no request is made to print the subject of registration on ballot papers in two consecutive LegCo general elections and in any LegCo by-election held between such general elections. Section 7 of the Amendment Regulation amends section 21(1)(a) and 21(2)(a) of the existing Regulation to modify the de-registration system to cater for the extension of the arrangement to DC elections. The amended section 21(1)(a) and 21(2)(a) of the Regulation provides that the EAC may de-register a subject of registration if no request is made to print it on ballot papers -

- (a) in two consecutive LegCo general elections;
- (b) in two consecutive DC ordinary elections, one of which is held between such LegCo general elections; and
- (c) in any LegCo or DC by-election held between such LegCo general elections or DC ordinary elections.

Transitional provision

(section 10 of the Amendment Regulation)

11. Under the existing Regulation, the normal cut-off date of an annual registration cycle for applications made by prescribed bodies and prescribed persons falls on 15 April each year. An application made on or before the cut-off date (i.e. 15 April) of an annual registration cycle (which coincides with a calendar year) will be processed by the EAC within that annual registration cycle. An application made after the cut-off date will only be considered by the EAC in the next following annual registration cycle. To allow sufficient time for the registration of specified particulars for the purpose of the 2007 DC election, section 10 of the Amendment Regulation introduces a transitional provision to the Regulation to provide for a one-off extension of the registration period in 2007. Any application or objection made between 16 April 2007 (i.e. the day immediately following the normal cut-off date of the annual registration cycle) and 18 June 2007 (the cut-off date of the extended registration period in 2007) will be processed within the

2007 registration cycle, so that the relevant registration procedures will be completed in time for the 2007 DC election.

Consequential amendments

(sections 11 and 12 of the Amendment Regulation)

12. Section 11 and 12 of the Amendment Regulation make consequential amendments to sections 2 and 49 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) respectively to reflect the change in the title of the Regulation.

PUBLIC CONSULTATION

13. We consulted the LegCo Panel on Constitutional Affairs on the proposal on 18 December 2006. The proposal was generally supported by the LegCo Members.

IMPLICATIONS OF THE AMENDMENT REGULATION

14. To implement the proposal, the Registration and Electoral Office (“REO”) will incur additional staff cost of about \$0.1 million in 2007 to handle the one-off “extended” registration period. Further, it is estimated that for each future ordinary DC election, REO will incur additional printing cost of about \$1.4 million for the ballot papers which will be slightly larger in size and in colour. The additional costs can be absorbed from within existing resources of the REO.

15. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental, productivity or sustainability implications. The Amendment Regulation will not affect the current binding effect of the relevant legislation.

LEGISLATIVE TIMETABLE

16. The Amendment Regulation will be published in the Gazette on 23 March 2007 and tabled in the Council on 28 March 2007.

PUBLICITY

17. A press release will be issued to announce the publication of the

Amendment Regulation in the Gazette. A spokesman will be available for answering media and public enquiries.

ENQUIRIES

18. Any enquiries on this brief can be addressed to Mr Eddie Ng, Deputy Chief Electoral Officer at 2827 7047.

Registration and Electoral Office
March 2007

Annex

PARTICULARS RELATING TO CANDIDATES ON BALLOT PAPERS (LEGISLATIVE COUNCIL) (AMENDMENT) REGULATION 2007

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**PARTICULARS RELATING TO CANDIDATES ON
BALLOT PAPERS (LEGISLATIVE COUNCIL)
(AMENDMENT) REGULATION 2007**

(Made by the Electoral Affairs Commission under section 7 of the
Electoral Affairs Commission Ordinance (Cap. 541))

1. Commencement

(1) Except as provided by subsection (2), this Regulation shall come into operation on 18 May 2007.

(2) Sections 4, 5 and 6 shall come into operation on 1 September 2007.

2. Title amended

The title to the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (Cap. 541 sub. leg. M) is amended by adding “**AND DISTRICT COUNCILS**” after “**LEGISLATIVE COUNCIL**”.

3. Interpretation

(1) Section 2(1) is amended by repealing the definition of “by-election” and substituting –

““by-election” (補選) –

- (a) in relation to an LC election, means a by-election as defined in section 3(1) of the Legislative Council Ordinance (Cap. 542);
or
- (b) in relation to a DC election, means a by-election as defined in section 2 of the District Councils Ordinance (Cap. 547);”.

(2) Section 2(1) is amended, in the English text, in the definition of “candidate”, by repealing “Member” and substituting “member”.

(3) Section 2(1) is amended, in the definition of “election”, by repealing “a general election or a by-election” and substituting “an LC election or a DC election”.

(4) Section 2(1) is amended by repealing the definition of “functional constituency” and substituting –

““LC functional constituency” (立法會功能界別) means a functional constituency as defined in section 3(1) of the Legislative Council Ordinance (Cap. 542);”.

(5) Section 2(1) is amended by repealing the definition of “Member” and substituting –

““LC member” (立法會議員) means a Member as defined in section 3(1) of the Legislative Council Ordinance (Cap. 542);”.

(6) Section 2(1) is amended by repealing the definition of “nomination list” and substituting –

““LC nomination list” (立法會提名名單) means a nomination list as defined in section 3(1) of the Legislative Council Ordinance (Cap. 542);”.

(7) Section 2(1) is amended, in the English text, in the definition of “prescribed political body”, in paragraph (c), by repealing “Member” and substituting “member”.

(8) Section 2(1) is amended by repealing the definition of “relevant nomination period” and substituting –

““relevant nomination period” (有關提名期) –

(a) in relation to a candidate in an LC election –

(i) in the case of an LC geographical constituency, means the period specified under section 4(2)(b) or

8(7)(a) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D) for nominations for the constituency;
or

(ii) in the case of an LC functional constituency, means the period specified under section 5(2)(b) or 8(7)(a) of that Regulation for nominations for the constituency;
or

(b) in relation to a candidate for a DC constituency in a DC election, means the period specified under section 8(2)(b) or 10(5)(a) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F) for nominations for the constituency;”.

(9) Section 2(1) is amended by adding –

““DC constituency” (區議會選區) means a constituency as defined in section 2 of the District Councils Ordinance (Cap. 547);

“DC elected member” (區議會民選議員) means an elected member as defined in section 2 of the District Councils Ordinance (Cap. 547);

“DC election” (區議會選舉) means an ordinary election or a by-election held for the purpose of electing DC elected members;

“LC election” (立法會選舉) means a general election or a by-election held for the purpose of electing LC members;

“LC geographical constituency” (立法會地方選區) means a geographical constituency as defined in section 3(1) of the Legislative Council Ordinance (Cap. 542);

“member” (議員) means an LC member or a DC elected member;”.

4. Request by candidate for functional constituency or sole candidate on nomination list

(1) The heading of section 3 is amended by repealing “**functional constituency or sole candidate on nomination list**” and substituting “**LC functional constituency or sole candidate on LC nomination list or by candidate for DC constituency**”.

(2) Section 3(1) is repealed and the following substituted –

“(1) This section applies –

(a) in relation to an LC election –

(i) to a candidate for an LC functional constituency; or

(ii) to a candidate who is the sole candidate on an LC nomination list; or

(b) in relation to a DC election, to a candidate for a DC constituency.”.

5. Request by candidate on nomination list with more than one candidate

(1) The heading of section 4 is amended by adding “**LC**” before “**nomination list**”.

(2) Section 4(1) is amended by repealing “on a” and substituting “on an LC”.

6. Consent of prescribed body in relation to request

Section 5(1)(c)(ii) is amended by adding “LC” before “nomination list”.

7. Commission may de-register name and emblem

Section 21(1)(a) and (2)(a) is amended by repealing everything after “ballot” and substituting –

“papers –

- (i) in 2 consecutive general elections;
- (ii) in 2 consecutive ordinary elections, one of which is held between such general elections; and
- (iii) in any by-election (whether in relation to an LC election or a DC election) held between such general elections or ordinary elections; or”.

8. Signature of document

Section 32(2) is amended by adding “LC” before “nomination list”.

9. Decision of Commission final

Section 34 is amended by adding “and section 49 of the District Councils Ordinance (Cap. 547)” after “(Cap. 542)”.

10. Section added

The following is added –

“36. Transitional provision

(1) If an application is made under section 8(1), 9(1), 24(1) or 25(1) at any time during the period that begins on 16 April 2007 and ends on 18 June 2007, the relevant cut-off date of the annual registration cycle ending on 31 December 2007 is, notwithstanding the definition of “relevant cut-off date” in section 2(1), deemed to be 18 June 2007.

(2) If an objection is made under section 22(1) at any time during the period that begins on 16 April 2007 and ends on 18 June 2007, the relevant cut-off date of the annual registration cycle ending on 31 December 2007 is, notwithstanding the definition of “relevant cut-off date” in section 2(1), deemed to be 18 June 2007.”.

Consequential amendments

Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation

11. Interpretation

(1) Section 2(1) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D) is amended, in the definition of “emblem”, by adding “and District Councils” after “Legislative Council”.

(2) Section 2(1) is amended, in the definition of “prescribed body”, by adding “and District Councils” after “Legislative Council”.

(3) Section 2(1) is amended, in the definition of “prescribed person”, by adding “and District Councils” after “Legislative Council”.

(4) Section 2(1) is amended, in the definition of “registered”, by adding “and District Councils” after “Legislative Council”.

12. Form of ballot papers and order of appearance of lists or names of candidates on ballot papers

(1) Section 49(4) is amended by adding “and District Councils” after “Legislative Council”.

(2) Section 49(13)(*aa*) is amended by adding “and District Councils” after “Legislative Council”.

Made this 20th day of March 2007.

The Hon. Mr. Justice PANG Kin-kee
Chairman,
Electoral Affairs Commission

Lawrence LOK Ying-kam
Member,
Electoral Affairs Commission

Andrew CHAN Chi-fai
Member,
Electoral Affairs Commission

Explanatory Note

This Regulation amends the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (Cap. 541 sub. leg. M) (“the existing Regulation”) to –

- (a) extend the arrangement of printing certain particulars relating to candidates on ballot papers for Legislative Council elections to apply also to District Council elections (“new arrangement”); and
 - (b) introduce necessary technical and consequential amendments.
2. Section 1 provides for 2 different commencement dates for this Regulation.
3. Section 2 amends the title to the existing Regulation to take into account the new arrangement.

Amendments to Part 1 of the existing Regulation

4. The existing Regulation only caters for Legislative Council elections. In order to give effect to the new arrangement and to differentiate between a Legislative Council election and a District Council election, amendments are made to section 2(1) of the existing Regulation by section 3 of this Regulation to –

- (a) expand the existing definitions of “by-election”, “candidate”, “election”, “prescribed political body” and “relevant nomination period”;
- (b) amend the existing definitions of “functional constituency” as “LC functional constituency”, “Member” as “LC member”, “nomination list” as “LC nomination list” respectively;

- (c) add the new definitions of “DC constituency”, “DC elected member”, “DC election”, “LC election”, “LC geographical constituency” and “member”.

Amendments to Part 2 of the existing Regulation

5. Section 4(2) amends section 3(1) of the existing Regulation to cover a candidate for a District Council constituency.

6. Sections 5(2) and 6 amend sections 4(1) and 5(1)(c)(ii) of the existing Regulation respectively to make it clear that the provisions relate to a Legislative Council election.

Amendments to Part 5 of the existing Regulation

7. Section 7 amends section 21(1)(a) and (2)(a) of the existing Regulation to make provisions for a District Council election.

Amendments to Part 6 of the existing Regulation

8. Section 8 amends section 32(2) of the existing Regulation to make it clear that the provision relates to a Legislative Council election.

9. Section 9 amends section 34 of the existing Regulation as a result of the new arrangement.

10. Section 10 introduces a transitional provision to substitute 18 June 2007 for 15 April 2007 as the relevant cut-off date for the purposes of the existing Regulation as amended by this Regulation. The effect of the provision is to cover certain applications and objections made within the period from 16 April 2007 to 18 June 2007 (“extended period”). In view of the new arrangement, the applications and objections made within the extended period are also processed within the annual registration cycle ending on 31 December 2007 so that the

relevant procedures are completed in time for the 2007 District Council ordinary election.

Consequential amendments

11. Sections 11 and 12 amend sections 2 and 49 of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D) respectively consequent upon the amendment of title to the existing Regulation.