

**Bills Committee on
Legislative Council (Amendment) Bill 2012**

Disqualifications of Candidates at Elections

In response to a Member's request at the Bills Committee meeting held on 24 February 2012, this paper provides information on the conditions under which persons are disqualified from being nominated as candidates at elections in some overseas jurisdictions.

2. In the Hong Kong Special Administrative Region, the conditions under which a person is disqualified from being nominated as a candidate at the Legislative Council ("LegCo") election and from being elected as a LegCo Member are set out in section 39 of the Legislative Council Ordinance (Cap. 542). The relevant provision is extracted at **Annex A** for Members' reference.

3. The Administration has conducted some research on the legislatures of some overseas jurisdictions and sets out at **Annex B** the conditions under which a person is disqualified from being nominated as a candidate at an election. These include conditions such as conviction of certain crimes (corruption and election-related offences), imprisonment, declared bankruptcy and employment in public service.

Annex A

Chapter: 542	Title:	LEGISLATIVE COUNCIL ORDINANCE	Gazette Number:	2 of 2011
Section: 39	Heading:	When person is disqualified from being nominated as a candidate and from being elected as a Member	Version Date:	11/03/2011

Remarks:

The amendments made to this section by the Legislative Council (Amendment) Ordinance 2011 (2 of 2011) shall come into operation on 11 March 2011 for the purpose only of enabling arrangements to be made for-

- (a) the holding of the elections of members of the Election Committee under the Chief Executive Election Ordinance (Cap 569) in 2011; and
- (b) the holding of the Legislative Council general election in 2012.

(1) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person-

(a) is-

- (i) a judicial officer; or
- (ii) a prescribed public officer; or
- (iii) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; or
(Amended 48 of 1999 s. 24)

(b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-

- (i) served the sentence or undergone such other punishment as a competent authority may have been substituted for the sentence; or
- (ii) received a free pardon; or

(c) has been convicted of treason; or

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

(e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted-

- (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
- (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
- (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)

(f) is-

- (i) ineligible to be a candidate, or to be elected as a Member, at the election; or
- (ii) disqualified from being a candidate, or from being elected as a Member, at the election, because of the operation of this or any other law; or

(g) is a representative or salaried functionary of a government of a place outside Hong Kong; or

(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 or local level; or

(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 Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 25 of 2003 s. 22)

(2) A person is also disqualified from being nominated as a candidate at an election if the person has been found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Replaced 25 of 2003 s. 22)

(3) A person is also disqualified from being elected as a Member if the person has been found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it

is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Replaced 25 of 2003 s. 22)

(4) A person is also disqualified from being elected as a Member for a functional constituency (other than the District Council (first) functional constituency and the District Council (second) functional constituency) if, since the close of nominations, the person has ceased to have a substantial connection with the constituency. (Amended 2 of 2011 s. 17)

(5) In this section-

"judicial officer" (司法人員) means the holder of a judicial office, as defined in section 2 of the Public Service Commission Ordinance (Cap 93);

"prescribed public officer" (訂明的公職人員) means any of the following-

- (a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204);
- (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap 397);
- (d) a member of the Electoral Affairs Commission;
- (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;
- (ea) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap 486); (Added 48 of 1999 s. 24)
- (eb) 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); (Added 48 of 1999 s. 24)
- (f) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

Overseas Practice on Disqualification of Candidates at Elections of the Legislatures

	Unicameral/ Bicameral Legislature	Voting Method	Major Types of Disqualification/Restriction
Australia	The Parliament of Australia is a bicameral legislature.	Preferential voting	<ul style="list-style-type: none">• A person who-<ul style="list-style-type: none">(a) has a dual citizenship;(b) has been convicted of treason or a serious crime (more than 1 year jail);(c) has been declared bankrupt;(d) is employed in the public service;(e) has a contract with government that provides him/her with a direct monetary benefit; or(f) has been convicted of bribery charges within the last two years.
Canada	The federal Parliament of Canada consists of the Senate, comprising appointed members and the House of Commons, comprising elected members.	First-past-the-post	<ul style="list-style-type: none">• A person guilty of any corrupt electoral practice or of an illegal electoral practice is disqualified for five years after being found guilty.• A person who was a candidate in a previous election and failed to file an auditor's report or statement of election expenses forfeits the right to run again in the next election.• A person who is imprisoned in a correctional

	Unicameral/ Bicameral Legislature	Voting Method	Major Types of Disqualification/Restriction
			institution serving a sentence of two years or more.
France	The French Parliament is a bicameral legislature, consisting of the Senate and the National Assembly. The members of the Senate are elected indirectly while members of the National Assembly are elected directly by the electors.	Proportional representation system	<ul style="list-style-type: none"> • A person who- <ul style="list-style-type: none"> (a) is of age but who is placed under guardianship; (b) has not satisfied the obligations of national/military service; or (c) has had his civil and electoral rights withdrawn by the court.
Finland	Finland has a unicameral Parliament.	Proportional representation system	<ul style="list-style-type: none"> • A person who- <ul style="list-style-type: none"> (a) is under guardianship; (b) is holding military office; or (c) is a Judge.

	Unicameral/ Bicameral Legislature	Voting Method	Major Types of Disqualification/Restriction
Japan	The Diet of Japan is a bicameral legislature.	For the Lower House, first-past-the-post is used for single-member constituency; proportional representation system is used for multi-member constituency. It gives each voter two votes, an electorate vote and a party vote. Electorate voters are counted in each electorate on the basis of first-past-the-post. Party votes are counted across the constituency block using a proportional representation formula.	<ul style="list-style-type: none"> • A person who is sentenced due to crimes on bribery, corruption, and election-related offences. • A Member elected from a single-member constituency will be restricted from standing in the ensuing by-election if he resigns.
New Zealand	The Parliament of New Zealand is a unicameral legislature.	The mixed member proportional system is used. It gives each voter two votes, an electorate vote and a	<ul style="list-style-type: none"> • A New Zealand citizen who is outside New Zealand and has not been in New Zealand within the last 3 years. • A permanent resident who is outside New Zealand and has not been in New Zealand within

	Unicameral/ Bicameral Legislature	Voting Method	Major Types of Disqualification/Restriction
		party vote. Electorate voters are counted in each electorate on the basis of first-past-the-post. Party votes are counted across the entire country using a proportional representation formula.	<p>the last 12 months.</p> <ul style="list-style-type: none"> • A person who is detained in a mental hospital or a secure facility under the relevant law. • A person who is detained in a prison pursuant to a sentence of imprisonment imposed for relevant offences. • A person whose name is on the Corrupt Practices List.
United Kingdom	The UK Parliament consists of the House of Lords and the House of Commons. Only the House of Commons are elected by universal suffrage.	First-past-the-post	<ul style="list-style-type: none"> • A person who- <ul style="list-style-type: none"> (a) is the subject of a bankruptcy restrictions order in England or a debt restrictions order in Wales; (b) has had their estate sequestrated in Scotland and remains undischarged; (c) has been adjudged bankrupt in Northern Ireland and remains undischarged; (d) is a convicted prisoner who is serving a prison sentence of more than 12 months; (e) is a civil servant; (f) is a member of police forces; (g) is a member of the armed forces; (h) is a Government-nominated director of

	Unicameral/ Bicameral Legislature	Voting Method	Major Types of Disqualification/Restriction
			<p>commercial companies;</p> <ul style="list-style-type: none"> (i) is a Judge; (j) is a member of the legislature of any country or territory outside the Commonwealth; (k) is found guilty of certain electoral offences (corrupt or illegal practices); (l) is a peer who sits and can vote in the House of Lords; (m) is a Bishop of the Church of England (known as the Lords Spiritual) who is entitled to sit and vote in the House of Lords; or (n) is a holder of public offices specified in Schedule 1 to the House of Commons Disqualification Act 1975.