

## **LEGISLATIVE COUNCIL BRIEF**

District Councils Ordinance  
(8 of 1999)

### **DISTRICT COUNCILS (SUBSCRIBERS AND ELECTION DEPOSIT FOR NOMINATION) REGULATION**

#### **INTRODUCTION**

At the meeting of the Executive Council on 4 May 1999, the Council ADVISED and the Chief Executive ORDERED that the District Councils (Subscribers and Election Deposit for Nomination) Regulation (“the Regulation”), at Annex, should be made.

#### **BACKGROUND AND ARGUMENT**

2. Section 81 of the District Councils Ordinance (8 of 1999) empowers the Chief Executive in Council to make regulations to prescribe :-

- (a) the number or qualifications of subscribers required for nomination;
- (b) the amount of election deposit required for nomination; and
- (c) the minimum proportion of votes to be obtained by a candidate in the relevant constituency in order that the election deposit he has paid when submitting his nomination shall be returned (hereafter, referred to as “threshold for forfeiture”).

3. At the meeting of the Executive Council on 4 May 1999, the Regulation was made to prescribe the following :-

- (a) 10 subscribers will be required for a nomination;
- (b) A subscriber must be a registered elector in respect of the constituency which the candidate is contesting, and he will be allowed to subscribe to only one nomination paper;
- (c) The amount of election deposit required for nomination is \$3,000; and
- (d) The threshold for forfeiture of election deposit is 5% of the valid votes in the relevant constituency.

### **THE REGULATION**

4. The Regulation sets out the number and qualifications of subscribers, the amount of election deposit required for nomination, and the threshold for forfeiture of election deposit for the District Councils election. The same requirements will also apply to any District Councils by-elections.

### **LEGISLATIVE TIMETABLE**

5. The Regulation will be published in the Gazette on 7 May 1999 and tabled in the Legislative Council on 12 May 1999 for negative vetting.

### **BASIC LAW IMPLICATIONS**

6. The Department of Justice advises that the Regulation does not conflict with the provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

7. The Department of Justice advises that the Regulation is consistent with the human rights provisions of the Basic Law.

## **FINANCIAL AND STAFFING IMPLICATIONS**

8. The Regulation has no additional financial or staffing implications.

## **PUBLIC CONSULTATION**

9. The proposals in the Regulation were discussed at the meeting of the Legislative Council Panel on Constitutional Affairs on 19 April 1999.

## **PUBLICITY**

10. A press release will be issued to tie in with the gazetting of the Regulation. A spokesman will be available for answering media enquires.

Constitutional Affairs Bureau  
6 May 1999  
File Ref : CAB C2/10

LS253

**DISTRICT COUNCILS (SUBSCRIBERS AND ELECTION DEPOSIT FOR  
NOMINATION) REGULATION**

(Made by the Chief Executive in Council under  
section 81 of the District Councils  
Ordinance (8 of 1999))

**1. Interpretation**

(1) In this Regulation, unless the context otherwise requires - "deposit" (按金) means the deposit lodged under section 2(1).

(2) In this Regulation, any reference to the appropriate regulations shall be construed as a reference to any regulations made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) relating to procedure at an election.

**2. Amount of deposit**

(1) The amount of deposit to be lodged by or on behalf of a candidate in respect of his nomination as a candidate in an election is \$3,000.

(2) Where any deposit is lodged with a Returning Officer, he shall forthwith deposit it with the Director of Accounting Services.

**3. Return of deposit on invalid nomination etc.**

(1) Where, as regards any constituency -

(a) a deposit is lodged by or on behalf of a candidate in respect of his nomination as a candidate, and -

(i) the Returning Officer makes a decision under section 36(1) of the Ordinance that the

candidate is not validly nominated in respect of that constituency;

- (ii) the candidate withdraws his nomination for election in respect of that constituency under section 35 of the Ordinance; or
- (iii) the Returning Officer has made a decision under section 36(1) of the Ordinance that the candidate is validly nominated in respect of that constituency, and subsequently -
  - (A) comes to the knowledge that the candidate has died and makes the declarations referred to in section 36(2) of the Ordinance; or
  - (B) varies the decision to the effect that the candidate is not validly nominated and makes the declarations referred to in section 36(4) of the Ordinance,

the deposit so lodged; or

- (b) the proceedings for the election are terminated under section 40(1) of the Ordinance, the deposit lodged in respect of each candidate for that constituency,

shall be returned in accordance with this section.

(2) The Returning Officer for the constituency concerned shall, in the case referred to in -

- (a) subsection (1) (a) (i) and (ii), as soon as practicable after the publication under the appropriate regulations of a notice containing particulars of the candidates

validly nominated in respect of that constituency, notify the Director of Accounting Services in writing that the deposit lodged by or on behalf of that candidate is returnable to that candidate or to the person who lodges the deposit on behalf of such candidate, as the case may be;

- (b) subsection (1) (a) (iii), as soon as practicable after the declarations referred to in section 36(2) or (4), as the case may be, of the Ordinance are made in accordance with the appropriate regulations, notify the Director of Accounting Services in writing that the deposit lodged by or on behalf of that candidate is returnable to that candidate or to the person who lodges the deposit on behalf of such candidate, as the case may be;
- (c) subsection (1) (b), as soon as practicable after the publication under the appropriate regulations of a notice declaring that the proceedings for the election are terminated, notify the Director of Accounting Services in writing that the deposit lodged by or on behalf of each candidate for the constituency concerned is returnable to such candidate or to the person who lodges the deposit on behalf of such candidate, as the case may be.

(3) The Director of Accounting Services shall, as soon as practicable after the receipt of a notification under subsection (2), return the amount of the deposit to the candidate or to the person who

lodges the deposit on behalf of such candidate, as the case may be, specified in the notification.

**4. Disposal of deposit after publication of election result or declaration of failure of election**

- (1) Subject to subsection (2), as regards -
  - (a) an election in which a candidate is declared under section 39(1) of the Ordinance to be duly elected as an elected member in respect of a constituency;
  - (b) an election in which a candidate is declared under section 41(4) of the Ordinance as elected in respect of a constituency; or
  - (c) an election which is declared under section 40(3) of the Ordinance to have failed,

after such declaration, the deposit lodged by or on behalf of the candidate for the constituency concerned, unless it shall be returned in accordance with section 3, shall be returned in accordance with this section.

(2) Where the total number of ballot papers containing valid votes in favour of an unsuccessful candidate in respect of a constituency received by such candidate is less than 5% of the total number of ballot papers containing valid votes received in that constituency, as determined by a counting of the votes and any re-count, the deposit lodged in respect of his nomination shall be forfeited to the general revenue in accordance with this section.

(3) Subject to subsection (5), the Returning Officer for the constituency concerned shall, in the case of -

- (a) an election referred to in subsection (1) (a), as soon as practicable after the publication under the appropriate regulations of a notice declaring that the candidate is duly elected in respect of that constituency;
- (b) an election referred to in subsection (1) (b), as soon as practicable after the publication under the appropriate regulations of a notice of the result of the election in respect of that constituency;
- (c) an election referred to in subsection (1) (c), as soon as practicable after the publication under the appropriate regulations of a notice declaring that the election have failed,

notify the Director of Accounting Services in writing that the deposit lodged by or on behalf of the candidate for the constituency concerned is returnable to such candidate or to the person who lodges the deposit on behalf of such candidate, as the case may be.

(4) The Director of Accounting Services shall, as soon as practicable after the receipt of a notification under subsection (3), return the amount of the deposit to the candidate or to the person who lodges the deposit on behalf of such candidate, as the case may be, specified in the notification.

(5) The Returning Officer shall, as soon as practicable after the publication of the notice referred to in subsection (3) (b) or (c), notify the Director of Accounting Services in writing, as regards any unsuccessful candidate referred to in subsection (2), that the deposit lodged in respect of his nomination for that constituency at the relevant



election is to be forfeited to the general revenue.

**5. Disposal of deposit in case of death of candidate**

(1) Where -

- (a) a deposit is lodged by a candidate, or by a person on his behalf, in respect of his nomination as a candidate;
- (b) the deposit shall be returned to that candidate or that person, as the case may be, in accordance with section 3 or 4; and
- (c) that candidate or that person, as the case may be, dies after the deposit is lodged,

the deposit shall, notwithstanding those sections, be paid to the estate of that candidate or that person, as the case may be, and the Returning Officer for the constituency concerned shall notify the Director of Accounting Services in writing accordingly.

(2) The Director of Accounting Services shall, as soon as practicable after the receipt of a notification under subsection (1), pay the deposit to the legal personal representative of the candidate or person referred to in subsection (1), as the case may be.

**6. Notifications in specified form**

Any notification for the purposes of this Regulation shall be in a form specified in the appropriate regulations.

**7. Number and qualifications of subscribers to a nomination paper**

(1) The nomination paper of any person seeking nomination as a

candidate in respect of any constituency shall be subscribed by at least 10 other persons each being an elector registered in respect of the relevant constituency.

(2) Subject to subsection (4), an elector may subscribe only one nomination paper as regards a particular election.

(3) If an elector subscribes more than one nomination paper in contravention of subsection (2), his signature shall, subject to subsection (4), be inoperative on any nomination paper other than the one first delivered.

(4) Where, as regards any constituency -

- (a) the Returning Officer makes a decision under section 36(1) of the Ordinance that a candidate is not validly nominated in respect of that constituency;
- (b) a candidate withdraws his nomination for election in respect of that constituency under section 35 of the Ordinance; or
- (c) the Returning Officer has made a decision under section 36(1) of the Ordinance that a candidate is validly nominated in respect of that constituency, and subsequently -
  - (i) comes to the knowledge that the candidate has died and makes the declarations referred to in section 36(2) of the Ordinance; or
  - (ii) varies the decision to the effect that the candidate is not validly nominated and makes the declarations referred to in section 36(4) of the Ordinance,

the elector who has subscribed the nomination paper of that candidate in accordance with this section may subscribe another nomination paper, and -

- (A) his signature shall not be inoperative on that other nomination paper only because he has previously subscribed the nomination paper of that candidate;
- (B) if he subscribes more than one nomination paper in contravention of this subsection, his signature shall be inoperative on any nomination paper so subscribed other than the first-one delivered.

Clerk to the Executive Council

COUNCIL CHAMBER

1999

#### Explanatory Note

This Regulation in -

- (a) section 2 specifies the amount of the deposit to be lodged for the purpose of nominating a candidate at an election held under the District Councils Ordinance (8 of 1999);
- (b) section 3 provides for the return of the deposit in the case of invalid nomination, withdrawal of nomination,

- death of candidate or termination of election proceedings;
- (c) section 4 provides for the return of the deposit after the publication of the election result or the declaration of the failure of an election, and for the forfeiture of the deposit of any unsuccessful candidate if the total number of votes received by him is less than 5% of the total number of valid votes cast;
- (d) section 5 specifies the procedure for the payment of a deposit to the estate of a deceased candidate or a deceased person who lodges the deposit on behalf of a candidate;
- (e) section 6 requires notifications sent by a Returning Officer to the Director of Accounting Services to be in the form specified in regulations to be made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541);
- (f) section 7 specifies the minimum number of subscribers required for subscribing a nomination paper and the number of nomination papers that a subscriber can subscribe.