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Chapter:	542	Title:	Legislative Council Ordinance	Gazette Number:	2 of 2011; 12 of 2012; G.N. 5176 of 2012
Section:	39	Heading:	When person is disqualified from being nominated as a candidate and from being elected as a Member	Version Date:	01/10/2012

(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)

(2A) A person is also disqualified from being nominated as a candidate at a by-election if—

(a) within the 6 months ending on the date of the by-election—

- (i) the person's resignation under section 14 as a Member took effect; or
- (ii) the person was taken under section 13(3) to have resigned from office as a Member; and

(b) no general election was held after the relevant notice of resignation or notice of non-acceptance took effect. (Added 12 of 2012 s. 3)

(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.

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