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23 May 2003

Mr Arthur CHEUNG
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Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr CHEUNG,

**Legislative Council
(Subscribers and Election Deposit for Nomination)
(Amendment) Regulation 2003 (LN119)**

**District Councils
(Subscribers and Election Deposit for Nomination)
(Amendment) Regulation 2003 (LN120)**

Thank you for your letter of 20 May 2003. Our reply to your questions are set out below.

Point (a)(i)

The reference to “one other nomination paper” in the new subsection (3A)(d) means literally the nomination paper other than the first one mentioned in the opening sentence of subsection (3A). There should be no ambiguity in the meaning, and the wording used is consistent with the reference to “that other nomination paper” in subsection (3A)(c). Indeed, for consistency, we have also proposed vide clause 3(c) of the Amendment Regulation, adding the word “other” before “nomination paper” and “nomination papers” in the existing subsection (3)(ii).

Point (a)(ii)

It is our policy intention that “the first one delivered” means the first one of those other nomination papers delivered on which the signature is NOT surplus (or NOT “unused”). To put this intention beyond doubt, we propose to further amend subsections (3)(ii) and (3A)(d) along the following line –

(a) subsection (3)(ii) –

“... his signature shall be inoperative on any of those other nomination papers so subscribed other than the first one delivered (disregarding those delivered in respect of a nomination list or candidate referred to in paragraph (a) or (b) and those on which his signature is surplus under subsection (3A)”); and

(b) subsection (3A)(d) –

“... his signature shall be inoperative on any of those other nomination papers so subscribed other than the first one delivered (disregarding those delivered in respect of a nomination list or candidate referred to in subsection (3)(a) or (b) and those on which his signature is surplus)”.

The above two further amendments should achieve our policy intention to –

- (a) recognize/accept a subscriber’s signature on the nomination paper first delivered on which the signature is NEITHER surplus NOR “unused”; and
- (b) reject the subscriber’s signature on any subsequent nomination paper other than one mentioned in (a) above.

Point (a)(iii)

Subsection (1)(b) is a general prohibition against subscription of more than one nomination paper, while subsection (3) and the new subsection (3A) provide exceptions to subsection (1)(b). The new subsection (3A) provides that a subscriber may subscribe other nomination paper(s) as long as his signature is surplus on the previous nomination paper delivered. However, where a subscriber subscribes more than one other nomination paper (e.g. a third paper) and his signature is NOT surplus on the

previous nomination paper delivered (i.e. the second paper), he will contravene this subsection. In this case, his signature will only be operative on the first nomination paper delivered after the nomination paper on which his signature is surplus (in this example the second paper). Thus, we do not consider the reference to “contravention of this subsection or subsection (3)” out of place. It is consistent with the approach and wording adopted for the existing subsection (3)(ii).

Point (a)(iv)

Subsection (1)(a) specifies the number of 100 as the requirement in respect of the number of subscribers in the case of Legislative Council (“LegCo”) geographical constituency (“GC”) elections. It is our policy intention to specify an exact figure, and not a range of numbers. Thus, it is not necessary, and indeed not appropriate, to state that “100” is the minimum number required. Even though subsection (1)(a), which is now subject to new subsection (1)(aa), provides that the number of persons who may subscribe a nomination paper shall not in any case be more than 200, this does not change the fact that under subsection (1)(a) the number required is 100.

Point (a)(v)

The new subsection (3A) already provides explicitly that “any person who has subscribed the nomination paper but his signature is surplus may subscribe another nomination paper”. Therefore, the effect of any subscriber whose name appears in a nomination paper which have subscribers exceeding the required number and is regarded as surplus is explicit and clear. No further provision is necessary to put this beyond doubt.

Furthermore, we will put in place administrative means to deal with nomination papers which have subscribers exceeding the required number. As explained in our paper on “Number of Subscribers on Nomination Papers for Legislative Council Elections and District Council Elections” submitted to the LegCo Panel on Constitutional Affairs for its meeting on 24 April 2003, the Electoral Affairs Commission (“EAC”) will design nomination papers in such a way so as not to allow candidates to submit more than the minimum requirement plus the 100% buffer. Subject to the EAC, the nomination paper may contain a footnote to the effect that the nomination paper should not contain more than 200 (or 20 as the case may be) subscribers’ signatures and that, in the case of an excess, the “excessive” signatures will be disregarded by the Returning Officer.

Point (a)(vi)

Our comments above also apply, mutatis mutandis, to the proposed arrangements regarding LegCo functional constituency elections and District Council elections.

Point (a)(vii)

Subsection (3) as amended and the new subsection (3A) only seek to provide for subscription of another nomination paper in case of death, withdrawal or surplus signature. The right of a subscriber to subscribe nomination papers up to the number of seats available in a FC is vested in subsection (2)(b) and will be unaffected by the amendments proposed.

Our legal advice is that the reference to “other nomination paper in contravention of this subsection or subsection (3)” in the new subsection (3A) could not reasonably be interpreted to include nomination paper which a subscriber is entitled to subscribe up to the number of seats in a FC. In addition, the reference to “in contravention of this subsection or subsection (3)” further restricts the scope of “other nomination papers so subscribed” and precludes nomination papers which can be validly subscribed under subsection (2)(b).

Point (b)

The inconsistency in the Chinese expression is noted and will be picked up when the opportunity arises.

We trust the above will assist your consideration of the two Regulations.

Yours sincerely,

(Bassanio SO)
for Secretary for Constitutional Affairs

c.c. D of J

(Attn : Miss Carmen CHU)

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