

Legislative Council Panel on Constitutional Affairs

Nomination Matters in Legislative Council Elections

In response to concerns expressed by individual Members over matters in relation to nomination in the Legislative Council (“LegCo”) elections, the Chairman has invited the Government to submit a paper to elaborate on the relevant nomination procedures. We herewith provide the information for Members’ reference.

Confirmation Form

2. In accordance with section 40(1)(b)(i) of the Legislative Council Ordinance (Cap. 542), a person is not validly nominated as a candidate for the LegCo election unless he/she, as part of the statutory nomination procedure, makes a declaration in the nomination form to the effect that he/she will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region (“HKSAR”).

3. To ensure that the nomination procedure can be completed in accordance with the law, the Electoral Affairs Commission (“EAC”) has prepared a Confirmation Form for the use of the Returning Officers (“ROs”). The Confirmation Form, which is not part of the nomination form, serves to elaborate the matters as regulated by section 40(1)(b)(i) of the Legislative Council Ordinance. It will facilitate the ROs’ discharge of their duties under the nomination procedure to ensure that all candidates fully understand the legal requirements, and on such basis, are bona fide when signing the declaration in the nomination form, lest violating the offence of false declaration in the nomination form as stipulated in section 103 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (“EAC(EP)(LC) Regulation”).

Power of the Returning Officers

4. In accordance with sections 38(5) and 42A of the Legislative Council Ordinance and section 16 of the EAC(EP)(LC) Regulation, whether a candidate’s nomination is valid or not is determined by the RO according to the legal requirements and relevant procedures. All public officers responsible for electoral affairs, including the ROs, have all along strictly adhered to the Basic Law, relevant legislation and legal advice, as

well as the principles of political neutrality and impartiality, in the due execution of their public duties. They will adopt the same principles in handling matters relating to LegCo elections, in order to ensure that the election will be conducted in an open, fair and honest manner in strict accordance with the law.

5. Depending on the actual circumstances of each case, the RO may seek legal advice and may, where necessary, require the candidate to furnish additional information that he/she considers appropriate according to section 10(10) or 11(11) of the EAC(EP)(LC) Regulation, so as to satisfy himself/herself as to the eligibility of the candidate or the validity of the nomination. The RO shall, in accordance with the law and having considered the relevant information, decide whether or not a person is validly nominated as a candidate. The Government welcomes the Court of First Instance's recent decision in respect of an election petition lodged against the results of the 2016 LegCo General Election, which, among others, confirms that the ROs, in accordance with the Legislative Council Ordinance, have the power to determine whether the declaration made by a candidate in the nomination form that he/she will uphold the Basic Law and pledge allegiance to the HKSAR is genuine, thereby deciding whether the relevant nomination is valid.

6. In accordance with section 3(1)(b) of the Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap. 541C), the ROs may seek the advice of the Nominations Advisory Committee ("NAC") as to whether a particular candidate for a general election or by-election is eligible to be, or disqualified from being, nominated as a candidate. However, section 1(2)(a) of the Regulation stipulates that the Regulation does not empower or require the NAC to advise on any matter relating to the requirements under section 40 of the Legislative Council Ordinance.

7. Besides, in accordance with section 19 of the EAC(EP)(LC) Regulation, if the RO decides that a nomination is invalid, he/she must endorse on the nomination form his/her decision and the reason(s) for it, which will be made available for public inspection in accordance with section 14 of that Regulation.

8. Any person seeking candidature who does not agree with the RO's decision may lodge an election petition in accordance with section 61 of the Legislative Council Ordinance, with a view to handling possible disputes arising from the election. The mechanism has all along been effective. The Government will, as in the past, continue to

work closely with the EAC to ensure that LegCo elections are conducted in an open, honest and fair manner.

Rights to Vote and to Stand for Election

9. Article 26 of the Basic Law stipulates that “Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law”. The HKSAR Government all along respects and safeguards the rights enjoyed by Hong Kong residents according to law, including the aforesaid rights to vote and to stand for election. At the same time, the HKSAR Government has a duty to implement and uphold the Basic Law and to ensure that all elections will be conducted in accordance with the Basic Law and relevant electoral laws.

10. The constitutional and legal status of the HKSAR is very clear. Article 1 of the Basic Law points out that the HKSAR is an inalienable part of the People’s Republic of China (“PRC”). Article 12 of the Basic Law states that the HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government. Further, Article 159(4) of the Basic Law stipulates that no amendment to the Basic Law shall contravene the established basic policies of the PRC regarding Hong Kong (i.e. Hong Kong should be a special administrative region of the PRC under the "one country, two systems" principle).

11. “Self-determination” or changing the HKSAR system by referendum which includes the choice of independence is inconsistent with the constitutional and legal status of the HKSAR as stipulated in the Basic Law, as well as the established basic policies of the PRC regarding Hong Kong. Upholding the Basic Law is a basic legal duty of a legislator. If a person advocates or promotes self-determination or independence by any means, he or she cannot possibly uphold the Basic Law or fulfil his or her duties as a legislator, and cannot possibly comply with the requirement of the Legislative Council Ordinance that requires a candidate to make a declaration to uphold the Basic Law and pledge allegiance to the HKSAR.

12. In respect of the 2018 LegCo By-election, the ROs, having considered the facts and requirements of relevant electoral laws, decided that three persons seeking candidature did not comply with the Legislative Council Ordinance and their nominations for the by-election were invalid. The HKSAR Government supports the making of

decisions on the validity of nomination by the ROs in accordance with the law.

13. Decisions made by the ROs are aimed to ensure that the LegCo by-election is held in strict accordance with the Basic Law and other applicable laws in an open, honest and fair manner. There is no question of any restriction of the freedom of speech or deprivation of the right to stand for elections.

14. Members are invited to note the above information.

**Constitutional and Mainland Affairs Bureau
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