

立法會
Legislative Council

LC Paper No. CROP 75/17-18

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Tel : 3919 3403
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From : Clerk to Committee on Rules of Procedure
To : All Members of the Legislative Council

Committee on Rules of Procedure

**Consultation on the proposed options for declarations of nationality
and residency status by candidates in the election of the
President of the Legislative Council**

The Committee on Rules of Procedure ("CRoP") would like to invite Members' views on the proposal to require Members running for the office of the President of the Legislative Council ("LegCo") to declare his/her nationality and residency status in Hong Kong during the nomination process.

Background

2. Article 71(1) of the Basic Law ("BL") provides that the President of LegCo ("the President") shall be elected by and from among LegCo Members. BL 71(2) provides that the President shall be a Chinese citizen of not less than 40 years of age, who is a permanent resident of the Region with no right of abode in any foreign country, and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

3. The procedure for election of the President is prescribed under Rule 4 (Election of President) and Schedule 1 (Procedure for the Election of the President of the Legislative Council) to the Rules of Procedure ("RoP"). Paragraph 2 of Schedule 1 to RoP provides that, in not less than seven clear days before the day of the election, the Clerk to LegCo ("the Clerk") shall invite Members to make nominations for the office of the President and distribute the nomination forms as provided in Annex I of Schedule 1 to RoP. Paragraph 3 of Schedule 1 to RoP requires the Member being nominated "to declare that he or she is qualified to become the

President under Article 71 of the Basic Law and Rule 4(2)" in addition to signing on the nomination form to indicate acceptance of the nomination.

4. At its meetings held on 14 March 2017 and 10 April 2018, CRoP reviewed the arrangement to require Members running for the office of the President to declare his/her nationality and length of residency in Hong Kong during nomination process, and decided that all Members should be consulted on whether such candidates should be subject to an obligation to make statutory declaration or written declaration under the existing honour system of LegCo. Details of the proposed arrangement are set out in the ensuing paragraphs.

Statutory declaration

5. CRoP notes the suggestions that candidates for the office of the President should be subject to an obligation to make **statutory declarations** similar to those required for the election of the Chief Executive ("CE"), as both positions were comparable in terms of their importance to Hong Kong's constitutional structure.

6. The nationality and residency requirements imposed on CE under BL 44 are the same as those imposed on the President under BL 71. The verification procedures for the residency requirements for CE candidates are stipulated in the Chief Executive Election Ordinance (Cap. 569), whereas there are no laid down procedures (in legislation or RoP) for verifying the residency requirements for the President. Under section 16(7)(b) of Cap. 569, a CE candidate's nomination shall be accompanied by, among others, a declaration as to his nationality and whether he has a right of abode in any foreign country. Under section 4(1)(a) of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J), a nomination form nominating a person as a CE candidate shall be in the specified form. Part IV of the specified nomination form includes the candidate's solemn declaration made under the Oaths and Declarations Ordinance (Cap. 11) that he or she is a Chinese citizen with no right of abode in any foreign country. The candidate is required to make the declaration in the presence of a justice of the peace, a notary public, a commissioner for oaths, or a solicitor with a practicing certificate.

7. In addition to the statutory declaration, a candidate for election for CE must also complete and sign a "consent to nomination, declaration of eligibility and authorization for release of record/information" (Part II of the nomination form). The consent form includes **declarations** pertaining to the candidate's residence status and age. While the consent form (Part II)

must be attested by a witness (Part III), the candidate is not required to make the requisite declarations under Cap. 11 or in the presence of any of the persons specified in Cap. 11.

8. Under section 36 of the Crimes Ordinance (Cap. 200), a person who knowingly and willfully makes a false statement in a statutory declaration commits an offence, and is liable on conviction upon indictment to imprisonment for two years and to a fine.¹

9. As for declaration requirements in the LegCo elections under the Legislative Council Ordinance (Cap.542), instead of making a statutory declaration, a candidate is required to declare his or her nationality and right of abode status in the nomination form, which is signed by the candidate and attested by a witness.

Declaration under honour system

10. CRoP notes the procedures for verifying nationality and residency status under Cap. 569 are different from the honour system being practised in LegCo as in other Westminster-modelled legislatures. Under an honour system, it is the responsibility of Members to comply with RoP, and the Clerk is not empowered to verify the qualifications of any candidate nominated for the office of the President or to inquire into the adequacy or authenticity of any evidence of qualifications provided by a candidate. It is for Members, being voters in the election of the President, to decide whether they are satisfied with the materials provided by the candidate(s) as required under paragraph 3 of Schedule 1 to RoP.

Consultation with Members

11. In the light of the above, CRoP decides that all Members should be consulted on the following two options for the implementation of the declaration requirements for candidates for the office of the President:

- (a) **Option 1:** Candidates for the office of the President should be required to make a statutory declaration in compliance

¹ By virtue of section 101F(b) of the Criminal Procedure Ordinance (Cap. 221), if the amount of a fine is unspecified in any Ordinance, the relevant offence shall, without prejudice to any law against excessive or unreasonable fines, be punishable by a fine of any amount.

with the requirements under Cap. 11 as regards his/her nationality and length of residency in Hong Kong similar to that required in the CE election as prescribed in Cap. 569 (Paragraphs 6 to 7 above). This arrangement would deviate from the honour system; or

- (b) **Option 2:** It would be sufficient for candidates for the office of the President to make a written declaration of his/her nationality and length of residency in Hong Kong based on the existing honour system (Paragraph 10 above).

Questionnaire

12. Members are invited to give their views on the the proposed requirements for Members running for the office of the President to declare his/her nationality and length of residency in Hong Kong in the nomination process as outlined in paragraph 11 above by completing and returning the questionnaire at the **Appendix by Thursday, 10 May 2018**.

(Daniel SIN)
Clerk to
Committee on Rules of Procedure

Encl.

c.c. Hon Andrew LEUNG Kwan-yuen, GBS, JP (President of the Legislative Council)
Hon Paul TSE Wai-chun, JP (Chairman)
SG, LA, DSG, ASG1, ASG2, ASG3, ASG4, SALA2, H(PI), ALA4

Questionnaire

(to be returned by Thursday, 10 May 2018)

Fax No. : 3151 7052

To : Mr Daniel SIN
Clerk to Committee on Rules of Procedure
Legislative Council

Committee on Rules of Procedure

**Consultation on the proposed options for declarations of nationality
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President of the Legislative Council**

My views on the two proposed options set out in LC Paper No. CROP 75/17-18 are as follows:

*(Please tick **only one box** as appropriate to indicate your choice. If the space for comments is insufficient, please provide your comments in separate sheets.)*

1. **Candidates for the office of the President of the Legislative Council ("the President") should be required to make a statutory declaration in compliance with the requirements under the Oaths and Declarations Ordinance (Cap. 11) as regards his/her nationality and length of residency in Hong Kong similar to that required in the Chief Executive election as prescribed in the Chief Executive Election Ordinance (Cap. 569). This arrangement would deviate from the honour system. (paragraph 11(a))**

Support in principle

Other views, if any:

2. **It would be sufficient for candidates for the office of the President to make a written declaration of his/her nationality and length of residency in Hong Kong based on the existing honour system. (paragraph 11(b))**

Support in principle

Other views, if any:

3. **Additional comments**

Signature : _____

Name of Member : _____

Date : _____