

立法會 *Legislative Council*

LC Paper No. CROP 16/18-19

Ref: CB(4)/CROP/3/60

Paper for the House Committee meeting on 18 January 2019

Statutory declaration requirements for the nationality and residency status of Members running for the office of the President of the Legislative Council

Purpose

This paper seeks the views of the House Committee on the proposed amendments to the nomination form at Annex I to Schedule 1 to the Rules of Procedure ("RoP") to implement statutory declaration requirements for the nationality and residency status of Members running for the office of the President of the Legislative Council ("the President").

Background

2. Article 71 of the Basic Law ("BL") provides that the President shall be elected by and from among Legislative Council ("LegCo") Members. It further provides that the President shall be a Chinese citizen of not less than 40 years of age, who is a permanent resident of the Hong Kong Special Administrative 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. In the 2016-2017 and 2017-2018 LegCo sessions, the Committee on Rules of Procedure ("CRoP") reviewed the arrangement to require Members running for the office of the President to declare his/her nationality (including foreign right of abode, if any) and length of residency in Hong Kong during the nomination process. All Members were consulted in April 2017 on whether such candidates should be required to make a written declaration under the existing honour system of LegCo, or to make a statutory declaration under the Oaths and Declarations Ordinance (Cap. 11) similar to those required for candidates running in the Chief Executive ("CE") election. At the meeting of CRoP on 25 June 2018,

members considered the outcome of the consultation. Noting that the majority of Members indicated support for the proposal to introduce a statutory declaration, CRoP asked the Secretariat to work out the implementation details of the proposal, including the necessary amendments to RoP. The proposed amendments had been agreed to by CRoP at its meeting on 8 January 2019.

Proposed amendments to the nomination form

4. The procedure for election of the President is prescribed under RoP 4 and Schedule 1 to RoP. Paragraph 2 of Schedule 1 to RoP provides that not less than seven clear days before the day of the election, the Clerk to LegCo shall invite Members to make nominations for the office of President and distribute the nomination form as provided in Annex I to Schedule 1 to RoP. Paragraph 3 of Schedule 1 to RoP requires the Member being nominated to "sign on the [nomination] form to indicate acceptance of the nomination and to declare that he or she is qualified to become the President under Article 71 of the Basic Law and Rule 4(2) (Election of President)".

5. The nationality and residency requirements imposed on the President under BL 71 are the same as those imposed on CE under BL 44. In accordance with CRoP's decision, reference has been made to the nomination form for CE candidates¹ in the preparation of the proposed nomination form for candidates running for the office of the President. To satisfy the requirement under section 14(1) of the Oaths and Declarations Ordinance (Cap. 11),² the proposed nomination form follows the form set out in Schedule 1 to Cap. 11. A marked-up version of the proposed nomination form is in **Appendix I**.

¹ Under section 16(7)(b) of the Chief Executive Election Ordinance (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 practising certificate. In addition, a candidate must also complete and sign a consent form which includes declarations pertaining to the candidate's residence status and age.

² Section 14(1) of the Oath and Declarations Ordinance (Cap. 11) requires that a declaration shall be in one of the forms set out in Schedule 1 to Cap. 11.

6. Members may wish to note that the nomination form, which appears as an annex to Schedule 1, is part of RoP. As such, the proposed statutory declaration can only be added to the nomination form by way of a resolution of the Council, as an amendment to RoP. Subject to the adoption of the resolution by the Council, any Member who fails to make the statutory declaration as required will not be qualified to run in the election. In line with the LegCo honour system, the Clerk to LegCo will only ensure that each candidate has duly completed the nomination form (including the statutory declaration) as required, rather than verifying the accuracy of the information provided by the member concerned. Under section 36 of the Crimes Ordinance (Cap. 200), a person who knowingly and wilfully makes a materially 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.

Advice sought

7. Members are invited to consider and endorse the proposed amendments to RoP in **Appendix I**. Subject to the views of the House Committee, the Chairman of CRoP will move a motion at the Council meeting of 20 February 2019 to amend RoP. The wording of the motion is in **Appendix II**.

Council Business Division 4
Legislative Council Secretariat
16 January 2019

Marked-up version of the proposed nomination form for candidates running for the office of the President of the Legislative Council

To: Clerk to the Legislative Council

Election of the President of the Legislative Council

Nomination Form

Part I: Nomination

1. In accordance with the election procedure prescribed under Schedule 1 to the Rules of Procedure, I nominate the Honourable _____ for the office of President of the Legislative Council commencing _____ (date).

	<u>Name</u>	<u>Signature</u>
Member making the nomination	_____	_____
Members seconding the nomination (at least three)	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____

Date: _____

2. I accept the nomination.

	<u>Name</u>	<u>Signature</u>
Member being nominated	_____	_____

Date: _____

Part II: Statutory declaration

***Rule 4(1) and (2) of and Schedule 1 to
the Rules of Procedure of the Legislative Council
of the Hong Kong Special Administrative Region***

I, _____
(Name)
of _____
(Residential address)

_____,
solemnly and sincerely declare that I am qualified to become the President of the
Legislative Council under Article 71 of the Basic Law and Rule 4(2) of the Rules
of Procedure in that:

- (a) I will have reached 40 years of age on the day on which the election of
the President of the Legislative Council will take place (i.e. date of
election);
- (b) I am a Chinese citizen and permanent resident of the Hong Kong
Special Administrative Region with no right of abode in any foreign
country; and
- (c) I will have ordinarily resided in Hong Kong for a continuous period of
not less than 20 years before the day on which the election of the
President of the Legislative Council will take place (i.e. date of
election).

And I make this solemn declaration conscientiously believing the same to be
true and by virtue of the Oaths and Declarations Ordinance (Cap. 11).

(Signature of Declarant)

Declared at _____ in
(Place where the declaration is made)
Hong Kong this _____ day of _____ 20 ____.

Before me,

Signature: _____

Name in BLOCK LETTERS: _____

Designation: *Justice of the Peace/Notary
Public/Commissioner for Oaths/
solicitor with a practising certificate

Note: * Please delete whichever is inapplicable

Legend:

Texts proposed to be added are shown in *italics*.

**Basic Law of the Hong Kong Special Administrative Region of the
People's Republic of China**

Resolution

(Under Article 75 of the Basic Law of the Hong Kong Special
Administrative Region of the People's Republic of China)

**Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region**

Resolved that the Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region be amended as set out in the
Schedule.

Schedule

**Amendment to Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region**

**1. Schedule 1 amended (procedure for the election of the President
of the Legislative Council)**

Schedule 1—

Repeal Annex I

Substitute

“Annex I

To: Clerk to the Legislative Council

Election of the President of the Legislative Council

Nomination Form

Part I: Nomination

1. In accordance with the election procedure prescribed under Schedule 1 to the Rules of Procedure, I nominate the Honourable _____ for the office of President of the Legislative Council commencing _____ (date).

Name

Signature

Member making the nomination

Members seconding the nomination
(at least three)

_____	_____
_____	_____
_____	_____
_____	_____

Date: _____

2. I accept the nomination.

Name

Signature

Member being nominated

_____	_____
-------	-------

Date: _____

Part II: Statutory declaration

**Rule 4(1) and (2) of and Schedule 1 to
the Rules of Procedure of the Legislative Council
of the Hong Kong Special Administrative Region**

I, _____
(Name)

of _____
(Residential address)

_____,
solemnly and sincerely declare that I am qualified to become the President
of the Legislative Council under Article 71 of the Basic Law and Rule 4(2)
of the Rules of Procedure in that:

- (a) I will have reached 40 years of age on the day on which the election of the President of the Legislative Council will take place (i.e. date of election);
- (b) I am a Chinese citizen and permanent resident of the Hong Kong Special Administrative Region with no right of abode in any foreign country; and
- (c) I will have ordinarily resided in Hong Kong for a continuous period of not less than 20 years before the day on which the

election of the President of the Legislative Council will take place (i.e. date of election).

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance (Cap. 11).

(Signature of Declarant)

Declared at _____ in
(Place where the declaration is made)
Hong Kong this _____ day of _____ 20__.

Before me,

Signature: _____

Name in BLOCK LETTERS: _____

Designation: *Justice of the Peace/Notary
Public/Commissioner for Oaths/
solicitor with a practising
certificate

Note: * Please delete whichever is inapplicable”.