

CHAPTER 1

INTRODUCTION

PART I : THE CHIEF EXECUTIVE ELECTION

1.1 On 11 March 2021, the National People’s Congress (“NPC”) passed the “Decision of the NPC on Improving the Electoral System of the HKSAR”, and authorised the Standing Committee of the National People’s Congress (“NPCSC”) to amend Annex I to the Basic Law “Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region” and Annex II to the Basic Law “Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures”. The NPCSC on 30 March 2021 adopted the amended Annex I and Annex II to the Basic Law. For the corresponding enactment of local legislation, the Government introduced the Improving Electoral System (Consolidated Amendments) Bill 2021 (“Amendment Bill”) to the LegCo on 14 April 2021. The Amendment Bill was passed by the LegCo on 27 May 2021. The Improving Electoral System (Consolidated Amendments) Ordinance 2021 (“Amendment Ordinance”) was published in the Gazette and came into operation on 31 May 2021. Pursuant to the changes provided under the Amendment Ordinance to the method for the selection of the CE, this set of Guidelines has been updated to reflect the new arrangements and procedures of the CE elections. *[Added in January 2022]*

1.2 The CE of the HKSAR is the head of the HKSAR and the head of the HKSAR Government. The CE is elected by the Election Committee (“EC”) and appointed by the Central People’s Government (“CPG”). The specific method for selecting the CE is prescribed in Annex I to the Basic Law [s 7 of the CEEO].

1.3 According to the newly amended Annex I to the Basic Law, a candidate for the office of the CE shall be nominated by not less than 188 members of the EC, of which the number of members of each of the 5 EC sectors should not be less than 15. The CE shall be elected by the EC by secret ballot on a one-person-one-vote basis. The CE designate must obtain more than 750 votes in order to be returned at the election. *[Added in January 2022]*

1.4 In accordance with Article 46 of the Basic Law, the term of office of the CE of the HKSAR shall be 5 years, and he/she may serve for not more than two consecutive terms. When a vacancy arises in the office of the CE other than due to expiry of the term of office, the new CE who is elected to fill the vacancy during the remainder term is regarded as having served for one term and he/she may, if re-elected, only serve for one more term after the expiry of the remainder term. [S 3(1A), (2) and (2A) of the CEEO] *[Added in January 2007]*

1.5 The term of office of the CE shall commence on the date on which he/she assumes office being the date specified for this purpose by the CPG in the instrument of appointment and published by notice in the Gazette [s 3 of the CEEO]. The first term of office of the CE commenced on 1 July 1997. *[Added in January 2007]*

1.6 Article 53 of the Basic Law stipulates that in the event that the office of the CE becomes vacant, a new CE shall be selected within 6 months in accordance with the provisions of Article 45 of the Basic Law. A polling date will be fixed in accordance with ss 10 and 11 of the CEEO to elect a CE. If an election for a CE of a new term (5-year) is to be held within 6 months after a vacancy in the office of the CE has arisen, it will not be necessary to hold a by-election [s 6 of the CEEO]. *[Added in January 2007]*

Governing Legislation

1.7 The CE elections are governed by the statutory requirements provided in 3 different ordinances, namely the CEEO, the EACO and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”).

1.8 The CEEO provides for the election of the CE in accordance with Annex I to the Basic Law. The Schedule to the CEEO provides details on how the EC is to be constituted to elect the CE.

1.9 Under the EACO, the EAC is responsible for the conduct and supervision of the CE elections and matters incidental thereto.

1.10 The ECICO prohibits election-related corrupt and illegal conduct and is administered by the Independent Commission Against Corruption (“ICAC”).

1.11 These ordinances are complemented by 7 pieces of subsidiary legislation, including those set out in paras. 1.12 to 1.18 below, which provide the detailed procedures for the conduct of the CE elections.

1.12 The electoral procedures for conducting the CE elections are provided in the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) (“EP (CEE) Reg”).

1.13 The Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“EAC (ROE) (FCSEC) Reg”) sets out the procedures for, among other things, registration of members of the EC who are to elect the CE. *[Amended in January 2007]*

1.14 The Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541I) sets out the electoral procedures for conducting EC subsector elections, the procedures for nominating members of the EC by the designated bodies, and the registration procedures of ex-officio members of the EC, etc. *[Added in January 2022]*

1.15 The Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap 569B) sets out the procedures for, among other things, hearing and ruling by the Revising Officer concerning the registration of voters for EC subsectors. *[Amended in January 2007]*

1.16 The Election Committee (Appeals) Regulation (Cap 569A) sets out the procedures for appeal against the results of any subsector election to the Revising Officer, and for appeal in relation to the declaration and registration of nominees as members of the EC, and the registration of ex-officio members of the EC. *[Amended in January 2022]*

1.17 The Chief Executive Election (Election Petition) Rules (Cap 569E) set out the procedures for the lodgement of an election petition against the result of a CE election to the High Court.

1.18 The Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap 554A) sets out the maximum amount of election expenses that can be incurred by or on behalf of a candidate at a CE election.

PART II : THE GUIDELINES

1.19 According to s 6 of the EACO, the EAC may, in connection with an election, issue guidelines relating to:

- (a) the conduct or supervision of or procedure at an election;
- (b) the activities of a candidate, an agent of a candidate, any other person assisting a candidate or any other person;
- (c) election expenses;
- (d) the display or use of EAs or other publicity material; and
- (e) the procedure for making a complaint.

[Amended in November 2011]

1.20 The aim of this set of Guidelines is: (1) to explain in simple language the subsisting electoral law so as to remind candidates and other stakeholders of the provisions and requirements under the electoral law; and (2) with regard to election-related activities not stipulated by the law, such as media report and conduct of electioneering activities involving public places of buildings, to promulgate a code of conduct based on the principles of fairness and equality, and provide standard good practices. The Guidelines are also issued for reference by members of the public, so as to enable them to give play to the function of monitoring the elections and ensure that the elections are conducted in an open, fair and honest manner. *[Amended in November 2011 and January 2022]*

1.21 This set of Guidelines explains the various electoral arrangements for the CE elections, and the legislative provisions and regulations as well as guidelines to be observed by all relevant parties before, during and after an election (in relation to machinery of the election). The Guidelines also provide the procedure for lodging an election-related complaint. An action checklist for candidates is set out at **Appendix 1**. *[Amended in November 2011]*

PART III : ADVISORY SERVICE TO CANDIDATES ON THE GUIDELINES

1.22 Any person including candidates and their election agents may make enquiries with the ICAC on the provisions of the ECICO. Candidates may also seek independent legal advice in case of doubt. In addition, candidates (including those who have publicly declared their intention to stand for election but have not submitted a nomination form) may raise, in writing, with the EAC any questions that they may have on the interpretation or operation of this set of Guidelines, other than those covered by the ICAC. The EAC will, wherever practicable, respond to the candidate concerned within 3 working days after receiving his/her written enquiry. The question(s) and answer(s) relevant to the Guidelines will be published for public information for the better understanding of the Guidelines.

PART IV : SANCTION

1.23 Members of the EC, candidates and their agents, government officials engaging in election-related duties, and other persons involved in election-related activities should read, familiarise themselves with, and strictly observe the Guidelines.

1.24 The EAC always strives to conduct public elections under the principles of openness, fairness and honesty. If the EAC comes to know that any candidate or person has breached the Guidelines, it may notify the relevant authorities for actions to be taken and, furthermore, make a reprimand or censure in a public statement which will include the name of the candidate or person concerned (and where appropriate, other relevant parties (if any)) to allow full disclosure of the relevant facts to the public. Should any offences under the electoral law be committed, the candidate, the person or other parties concerned will also incur criminal liabilities pertinent to the offence

accordingly. *[Amended in November 2011 and January 2022]*