

## CHAPTER 1

### INTRODUCTION

#### **PART I : THE ELECTION COMMITTEE AND THE SUBSECTOR ELECTIONS**

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 amended Annex I and Annex II to the Basic Law were adopted by the NPCSC on 30 March 2021. For the corresponding enactment of local legislation, the Improving Electoral System (Consolidated Amendments) Bill 2021 (“Amendment Bill”) was submitted to and passed by the LegCo on 14 April 2021 and 27 May 2021 respectively. The Amendment Ordinance was published in the Gazette on 31 May 2021. *[Added in July 2021]*

1.2 According to the amended Annex I and Annex II to the Basic Law, the EC shall be composed of 1 500 members, who shall be responsible for nominating candidates for the Chief Executive (“CE”) election and electing the CE designate, as well as returning 40 LegCo members and nominating candidates for the LegCo election. The CE shall be elected by the EC and be appointed by the Central People’s Government [s 7 of the Chief Executive Election Ordinance (“CEEO”) (Cap 569)]. *[Amended in September 2006, October 2011, September 2016 and July 2021]*

1.3 Members of the EC must be Hong Kong permanent residents. The EC has 5 sectors, each comprising a number of subsectors (40 subsectors in total). The EC members would be returned by the following 3 methods: registering as ex-officio members, being nominated by the designated bodies of the relevant subsectors and being elected by eligible corporate voters or individual voters in the subsectors. Among the 40 EC subsectors, HKSAR deputies to the NPC (“NPC deputies”) and HKSAR members of the National Committee of the Chinese People’s Political Consultative Conference (“CPPCC members”), the Hong Kong members of the Committee for the Basic Law of the HKSAR under the NPCSC (“Basic Law Committee members”), members of the LegCo, university vice-chancellors/presidents/chairpersons of the board of governors or the councils of universities, and responsible persons of statutory bodies, major advisory committees and other relevant bodies of certain subsectors as specified in the electoral law are eligible to/may register as the ex-officio members of the EC. On the other hand, all the members of the religious subsector and the representatives of associations of Hong Kong residents in the Mainland subsector, and some of the members of the technology and innovation subsector, accountancy subsector, legal subsector, sports, performing arts, culture and publication subsector and Chinese medicine subsector shall be nominated by the designated bodies in their respective subsectors. The rest of the EC members shall be elected by eligible corporate voters or individual voters of their respective subsectors. Details of the composition of the EC are in Chapter 2. *[Amended in September 2006 and July 2021]*

1.4 The term of office of the EC is 5 years. The next EC shall be constituted on 22 October 2021 and its term shall end on 21 October 2026 [s 9 of the CEEO]. *[Amended in September 2006 and July 2021]*

1.5 The CE of a new term (5-year) will be elected by the EC of the new term. If a CE vacancy arises during the term of office of any CE, the current term EC will be responsible for electing a new 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 CE by-election [ss 6 and 9 of the CEEO]. Before a by-election is held to elect a CE, a subsector by-election and/or supplementary nomination will be held to update the membership of the EC if there are vacancies among the EC members [s 5(1)(b) of the Schedule to the CEEO]. However, no subsector by-election and/or supplementary nomination will be held if the membership of the EC has been updated within 12 months before the upcoming CE by-election. Besides, in view of the new functions bestowed upon the EC to nominate and elect LegCo members, an EC subsector by-election and/or supplementary nomination to fill EC vacancies will be required by the law if the end of the current term of the LegCo is more than 12 months away from the constitution date of the EC or the date of publication of the EC provisional register (“PR”) for the EC by-election to fill any EC vacancies for the sake of the next LegCo General Election [ss 4 and 5 of the Schedule to the CEEO] (As specified in the Gazette, s4 comes into operation on 1 May 2022). *[Amended in September 2006 and July 2021]*

### **Governing Legislation**

1.6 The EC subsector elections and nominations of the designated subsector 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”). *[Amended in September 2006 and July 2021]*

1.7 The CEEO provides, among other things, for the constitution, membership and term of office of the EC, the establishment of the CERC, registration of voters, conduct of subsector elections, election appeals and other related matters. *[Amended in July 2021]*

1.8 Under the EACO, the EAC is responsible for the conduct and supervision of EC subsector elections and matters incidental thereto.

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

1.10 These ordinances are complemented by 7 pieces of subsidiary legislation, including those set out in paras. 1.11 to 1.17 below, which provide the detailed procedures for the conduct of the EC subsector elections. *[Amended in September 2006]*

1.11 The electoral procedures for conducting EC subsector elections, the procedures for nominating EC members by the designated bodies, and the registration procedures of ex-officio members of the EC are provided in the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541I) (“EAC (EP) (EC) Reg”). *[Amended in September 2006 and July 2021]*

1.12 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 eligible persons to register as voters for the EC subsectors. *[Amended in September 2006]*

1.13 The Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap 569B) sets out the procedures for hearing and ruling by Revising Officers<sup>1</sup> concerning the registration of voters for the EC subsectors. *[Amended in September 2006]*

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<sup>1</sup> The Revising Officer may be any magistrate, former magistrate, retired magistrate, or any legal officer within as defined by the Legal Officers Ordinance (Cap 87), appointed by the Chief Justice [s 77(1) of the LCO].

1.14 The Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (Cap 541H) (“EAC (NAC) (EC) Reg”) stipulates the appointment and functions of the Nominations Advisory Committees (“NACs”) and the procedures for seeking the NAC’s advice on the eligibility of the prospective candidates/prospective nominees/designated bodies for nomination for the EC subsector elections. *[Amended in September 2006 and July 2021]*

1.15 The Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap 569C) (“EC Subscribers & Deposit Reg”) sets out the requirements for subscription and the payment and return of election deposit for the EC subsector elections. *[Amended in September 2006]*

1.16 The Election Committee (Appeals) Regulation (Cap 569A) (“EC (Appeals) Reg”) 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 EC members and the registration of ex-officio members as EC members. *[Amended in September 2006 and July 2021]*

1.17 The Maximum Scale of Election Expenses (Election Committee) Order (Cap 554I) sets out the maximum scales of election expenses that may be incurred by or on behalf of a candidate for an EC subsector election. *[Added in September 2006 and amended in October 2011]*

## **PART II : THE GUIDELINES**

1.18 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.

1.19 This set of Guidelines covers the following two aspects: (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 in buildings, to promulgate a code of conduct based on the principle 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 role of monitoring the elections as part of the endeavor to conduct public elections under the principles of openness, fairness and honesty. *[Amended in July 2021]*

1.20 This set of Guidelines applies to EC subsector ordinary elections and by-elections. It explains the various electoral arrangements for the EC subsector 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 can be found at **Appendix 1**.

1.21 In the context of this set of Guidelines, the term “election” means an ordinary election or a by-election, as appropriate.

### **PART III : SANCTION**

1.22 Voters of the subsectors, 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.

1.23 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 responsibility accordingly. *[Amended in October 2011]*