

**LEGISLATIVE COUNCIL BRIEF**

**PUBLIC OFFICES (CANDIDACY AND TAKING UP OFFICES)  
(MISCELLANEOUS AMENDMENTS) BILL 2021**

**INTRODUCTION**

At the Executive Council (“ExCo”) meeting on 23 February 2021, the Council **ADVISED** and the Chief Executive (“CE”) **ORDERED** that the Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Bill 2021 (“the Bill”) (at Annex A) should be introduced into the Legislative Council (“LegCo”) to:

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- (a) amend the Interpretation and General Clauses Ordinance (Cap. 1) (“IGCO”) to explain the meaning of a reference to upholding the Basic Law (“BL”) and bearing allegiance to the Hong Kong Special Administrative Region (“HKSAR”) of the People’s Republic of China (“PRC”) (“to uphold the BL and bear allegiance to the HKSAR”) when used in legislation;
- (b) amend the Oaths and Declarations Ordinance (Cap. 11) (“ODO”) to introduce the requirement for Members of the District Councils (“DC”) to take oath when assuming office;
- (c) amend the ODO to reflect the oath-taking requirements and procedures as prescribed in the “Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China” (“the Interpretation”);
- (d) amend the ODO to specify CE or a person authorized by CE to be the oath administrator for the taking of oath of ExCo Members, LegCo Members, judges of the Courts at all level and other members of the judiciary, and DC Members;
- (e) amend the Legislative Council Ordinance (Cap. 542) (“LCO”) and the District Councils Ordinance (Cap. 547) (“DCO”) to enable the Secretary for Justice (“SJ”) to bring proceedings anytime against a LegCo / DC Member on the grounds of breach

of oath, or failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, and to provide that the functions and duties of the LegCo / DC Member will be suspended once such proceedings are brought until the decision of the Court in the proceedings becomes final;

- (f) amend the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (“CFAO”) to provide for application for leave to appeal against the decision of the Court of First Instance (“CFI”) in the above proceedings to the Court of Final Appeal (“CFA”) to expedite the judicial procedure (“a leap-frog appeal mechanism”); and
- (g) amend the Chief Executive Election Ordinance (Cap. 569) (“CEEO”), LCO and DCO to restrict persons who have been disqualified from entering on an office owing to declining or neglecting their oath duties, or breached an oath or failed to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, from standing for the relevant elections held within five years.

## **JUSTIFICATIONS**

### **Requirements on oath taking by public officers**

2. Article 104 of the BL provides that when assuming office, the CE, principal officials (“POs”), Members of the ExCo and of the LegCo, judges of the courts at all levels and other members of the Judiciary in the HKSAR must, in accordance with law, swear to uphold the BL of the HKSAR of the PRC and swear allegiance to the HKSAR of the PRC. The Standing Committee of the National People’s Congress (“NPCSC”) adopted the Interpretation on 7 November 2016, which explains that oath taking is the legal prerequisite and required procedure for public officers specified in Article 104 of the BL to assume office, and must comply with the legal requirements in respect of its form and content. The Interpretation also makes it clear that an oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with the law.

3. In addition, the “Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (“NSL”) promulgated on 30 June 2020 also stated clear requirements on oath taking. Article 6 stipulates that a resident of the

HKSAR who stands for election or assumes public office shall confirm in writing or take an oath to uphold the BL of the PRC and swear allegiance to the HKSAR of the PRC in accordance with the law.

4. In view of the HKSAR Government's decision to postpone the 2020 LegCo General Election by a year, NPCSC made a decision on 11 August 2020 that the sixth-term LegCo will continue to discharge its duties for not less than a year. The decision made in August 2020 was to resolve the constitutional issue of a lacuna in the legislature arising from the postponement of the LegCo General Election. The qualification for individual LegCo Members to continue to serve was not touched on in the August 2020 decision. On 11 November 2020, NPCSC made the "Decision on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region" ("the Decision on Qualification of LegCo Members"), expressly stating that a LegCo Member does not fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR of the PRC if the member advocates or supports "Hong Kong independence", refuses to recognize the PRC's sovereignty over Hong Kong and the exercise of the sovereignty, solicits intervention by foreign or external forces in the HKSAR's affairs, or carries out other acts that endanger national security. When the Member is so decided in accordance with law, he or she is immediately disqualified from being a LegCo Member.

5. In light of the promulgation of the aforementioned laws and decisions, we propose to make the following amendments to local legislation to implement the relevant requirements on oath taking by public officers.

## **Proposed Amendments**

### **(A) The "uphold the BL and bear allegiance to the HKSAR" reference**

6. We propose to add a provision in the IGCO to the effect that, without limiting the meaning of the expression, a person upholds the BL and bears allegiance to the HKSAR if the positive list (see paragraph 7 below) is satisfied and that the person does not uphold the BL and bear allegiance to the HKSAR if the person does or intends to do any of the things set out in the negative list (see paragraph 8 below).

## Positive List

7. The positive list is as follows:
- (a) upholds the constitutional order of the HKSAR established by the Constitution of the PRC and the BL;
  - (b) upholds the national sovereignty, unity, territorial integrity and national security of the PRC;
  - (c) upholds the fact that the HKSAR is an inalienable part of the PRC, the PRC's exercise of sovereignty over the HKSAR and the Central Authorities' exercise of governance over the HKSAR under the BL;
  - (d) upholds the implementation of "one country, two systems" principle, and safeguards the political structure of the HKSAR;
  - (e) upholds the objective to maintain the prosperity and stability of the HKSAR within the framework of the BL; and
  - (f) is loyal to, and safeguards the interests of, the HKSAR.

With reference to a CFI judgment <sup>1</sup>, we will further specify that the meaning of "uphold" should include genuinely and truthfully observe, support, maintain and embrace in words and deeds, as well as the intention to do so.

## Negative List

8. The negative list is as follows:
- (a) commits acts or carries out activities that endanger national security, including –
    - (i) commits an act required by Article 23 of the BL to be prohibited;
    - (ii) commits an offence under the NSL; and

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<sup>1</sup> See *Chan Ho Tin v Lo Ying-ki Alan and others* [2018] HKCFI 345, paragraph 132(1) and 142.

- (iii) commits an offence relating to endangering national security under an enactment or under the common law;
- (b) refuses to recognize the PRC's sovereignty over the HKSAR and the exercise of the sovereignty, including objecting to the performance of duties and functions by the body of central power in accordance with the Constitution of the PRC, the BL or the NSL;
- (c) refuses to recognize the constitutional status of the HKSAR as a local administrative region of the PRC;
- (d) advocates or supports "Hong Kong independence", including –
  - (i) pursues, promotes or implements "independence and state-building" of Hong Kong;
  - (ii) participates in an organization the object of which is "Hong Kong Independence";
  - (iii) pursues, promotes or implements an activity for "self-determination of sovereignty or jurisdiction", "referendum" or "devising constitution by all people", or participates in an organization the object of which is "self-determination"; and
  - (iv) pursues or promotes the reign over Hong Kong to be transferred to a foreign country;
- (e) solicits interference by foreign governments or organizations in the affairs of the HKSAR;
- (f) commits acts that undermine or have a tendency to undermine the order of the political structure led by the CE, contained in the BL, including–
  - (i) compels or overawes the CE by any unlawful means to change a policy, or a motion to be submitted to LegCo for consideration;
  - (ii) indiscriminately objects to the Government's motion, and with this, intends to threaten the Government, render the Government incapable of performing its duties and

functions as normal, or force the CE to step down and to overthrow the Government; and

- (iii) makes use of an election held by the Government to organize or implement, or to incite another person to organize or implement, a “de facto referendum” in any form to confront the Central People’s Government (“CPG”) and the Government;
- (g) commits acts that undermine or have a tendency to undermine the overall interests of the HKSAR;
- (h) desecrates the national flag or national emblem, or regional flag or regional emblem, by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it; and
- (i) insults or disrespects the national anthem or any other symbol and sign of national sovereignty.

**(B) Introduce the oath-taking requirements for DC Members when assuming office**

9. In accordance with section 34(1)(b) of the DCO, a person is not validly nominated as a candidate for the DC election unless he or she, as part of the statutory nomination procedure, makes a declaration in the nomination form to the effect that he or she will uphold the BL and pledge allegiance to the HKSAR. The DC is vested with the important functions to advise the Government on district administration affairs and where funds are made available for the purpose, to undertake environmental improvements, community activities and the promotion of recreational and cultural activities within the district. The statutory declaration requirement demonstrates that a DC Member, when discharging his / her duties, is expected to uphold the BL and bear allegiance to the HKSAR.

10. In line with the requirement of Article 6 of the NSL and to further highlight that upholding the BL and bearing allegiance to the HKSAR are the basic responsibilities of a DC Member, we propose to amend the ODO to introduce the oath-taking requirement. As a related amendment, we also propose to amend the National Anthem Ordinance (2 of 2020) (“NAO”) to add the oath-taking ceremony by DC Members as an occasion on which the national anthem must be played and sung. Unless otherwise specified, the requirements relating to oath taking as detailed in Parts (C) to (F) below are applicable to DC Members.

**(C) Oath-taking requirements as prescribed in the Interpretation**

11. The Interpretation sets out the following requirements in relation to oath taking by public officers:

- (a) “To uphold the BL of the HKSAR of the PRC” and “to bear allegiance to the HKSAR of the PRC” as stipulated in Article 104 of the BL, are not only the legal content which must be included in the oath prescribed by the Article, but also the legal requirements and preconditions for standing for election in respect of or taking up the public office specified in the Article (Article 1 of the Interpretation);
- (b) an oath taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law (Article 2(2) of the Interpretation);
- (c) an oath taker who intentionally reads out words which do not accord with the wording of the oath prescribed by law, or takes the oath in a manner which is not sincere or not solemn, shall be treated as declining to take the oath. The oath so taken is invalid and the oath taker is disqualified forthwith from assuming the public office specified in the Article (Article 2(3) of the Interpretation);
- (d) if the oath taken is determined as invalid, no arrangement shall be made for retaking the oath (Article 2(4) of the Interpretation); and
- (e) the taking of the oath stipulated by Article 104 of the BL is a legal pledge made by the public officers specified in the Article to the PRC and its HKSAR, and is legally binding. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law (Article 3 of the Interpretation).

12. Supplementing the requirements for oath taking as set out in the Interpretation, the Vice-Chairman of the Legislative Affairs Commission of the NPCSC pointed out in the “Explanations on the Draft Interpretation by the NPCSC of Article 104 of the BL” that:

- (a) if an oath taker intentionally contravenes the oath-taking procedure or desecrates the oath-taking ceremony by means of conduct, words, attire or paraphernalia; or intentionally alters, distorts the wording of the oath prescribed by law or reads out

words which do not accord with the wording of the oath prescribed by law, such oath-taking conduct shall be regarded as not in compliance with the requirements in respect of oath taking; and

- (b) as regards the situation where non-compliance is not caused intentionally on the part of the oath taker, the oath taker may be permitted to retake the oath.

13. Currently, the ODO does not contain any provisions regarding the detailed requirements on oath taking, save for the content of oaths prescribed in Schedule 2 to the ODO; nor does it contain any provisions regarding retaking of oaths. To better implement the requirements as prescribed by the Interpretation, we recommend amending the ODO to provide for such requirements by providing that a person is to be regarded as declining or neglecting to take the oath if the person intentionally:

- (a) contravenes the oath-taking procedure or desecrates the oath-taking ceremony;
- (b) alters or distorts the wording of the oath;
- (c) says words that do not accord with the wording of the oath; or
- (d) acts in a way that is not sincere or not solemn in purporting to take the oath.

14. An oath-taking ceremony in the aforementioned context would include the playing and singing of the national anthem (as required by section 5(1) of and Schedule 3 to the NAO) and the oath-taking procedure of any person during the ceremony. In line with Article 2(3) of the Interpretation, section 21 of ODO also provides that a person who declines or neglects to take the oath in accordance with the law must be disqualified from assuming the office, or must vacate it if the person has already assumed office.

15. Section 22 of the ODO provides for the occasions where oaths need not be repeated upon reappointment. Despite the exemption provided under section 22 of the ODO, the established practice is that the public officers specified in Article 104 of the BL will take oaths upon assumption of office regardless of whether they are newly appointed or



reappointed<sup>2</sup>. According to Article 2(1) of the Interpretation, oath taking “is the legal prerequisite and required procedure for public officers specified in [Article 104 of the BL] to assume office”. The Interpretation does not provide for any exceptions to the taking of oath upon assumption of office. As such, we propose to repeal section 22 of the ODO to standardize the requirement for all such officers to take oath when assuming office.

#### **(D) Arrangement of Oath Administrator**

16. Article 2(4) of the Interpretation provides that “[t]he oath must be taken before the person authorized by law to administer the oath. The person administering the oath has the duty to ensure that the oath is taken in a lawful manner”. Currently, the ODO specifies different persons to be oath administrators for different categories of public officers<sup>3</sup>. As CE and POs are appointed by the CPG, we consider it appropriate to retain the current oath-taking arrangement for these two categories of public officers, i.e. to be administered by a representative of the CPG, or a person authorized by the CPG.

17. As for LegCo Members and those public officers the appointment authorities of whom rest with the HKSAR, we propose to standardize the corresponding oath administering arrangements. An oath taken under Article 104 of the BL is answerable to the HKSAR and the country. Therefore, the oath administrator should be a person who can represent the

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<sup>2</sup> According to section 22(3B) of ODO and the Rules of Procedure (“RoP”) of LegCo, where a general election of all Members of LegCo is held, a Member who has previously taken the LegCo Oath shall again take the Oath as required by the RoP. In practice, CE, POs and ExCo Members will retake their oaths upon their reappointment at the start of a new term of government. As for judges and other members of the judiciary, they will also retake their oaths upon their promotion to a new position.

<sup>3</sup> The current oath administrators for different public officers are as follows:

- (a) **CE and POs:** a representative of the CPG, or a person authorised by the CPG;
- (b) **ExCo Members:** CE, or other Member presiding;
- (c) **Judges and other judicial officers:** except for the judges whose oaths should be, as specified, administered by CE, oaths of other judges / judicial officers are administered by a judge of the CFI; and
- (d) **LegCo Members:**
  - (i) Clerk to LegCo (if an oath is taken at the first sitting of the session of the LegCo immediately after a general election of all Members of LegCo and before the election of the President of LegCo); or
  - (ii) President or any Member acting in his / her place (if it is taken at any other sitting of the LegCo).

HKSAR legally and be responsible to the CPG. Under the BL, CE is vested with the dual role as head of the executive authorities of the HKSAR, that is, the HKSAR Government, and that of the HKSAR representing the whole Region to be accountable to the CPG. In light of the important role of the oath administrator to determine the legality of an oath, we recommend to standardize the arrangement for CE to administer the oaths for ExCo Members, LegCo Members, judges and other judicial officers, and DC Members. To provide flexibility for actual arrangements, we recommend that CE may authorize a person to administer the oaths on his / her behalf as considered appropriate.

**(E) Proceedings against LegCo / DC Members on the grounds of breach of oath or failure to fulfil the legal requirements and conditions to uphold the BL and bear allegiance to the HKSAR**

18. Article 3 of the Interpretation stipulates that “[t]he taking of the oath stipulated by Article 104 of the BL of the HKSAR of the PRC is a legal pledge made by the public officers specified in the Article to the PRC and its HKSAR, and is legally binding. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with law”.

19. The situation of making a false oath can be covered by section 32 of the Crimes Ordinance (Cap. 200) which stipulates that any person, being required or authorised by law to make any statement on oath for any purpose and being lawfully sworn (otherwise than in a judicial proceeding), wilfully makes a statement which is material for that purpose and which the person knows to be false or does not believe to be true, is guilty of an offence and is liable on conviction upon indictment to imprisonment for seven years and to a fine.

20. As regards the direct legal consequence, we recommend amending section 15 of the LCO and sections 19 and 24 of DCO to provide that breach of oath, or failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR are grounds for disqualification of a LegCo / DC Member from holding office. The relevant electoral laws currently provide for the following mechanisms:

- (a) For the case of a LegCo Member, it is provided under section 73(1) of the LCO that an elector or SJ may bring proceedings in the CFI against any person who is acting, claims to be entitled to

act, as a LegCo Member on the ground that the person is disqualified from acting as such. Section 73(2) of the LCO further provides that such proceeding would need to be brought no later than six months from the date on which the person concerned acted, or claimed to be entitled to act, as a LegCo Member; and

- (b) As for a DC Member, it is provided under section 79(1) of the DCO that SJ may bring proceedings in the CFI against any person who is acting, claims to be entitled to act, as a Member on the ground that the person is disqualified from acting as such. Section 79(2) of the DCO further provides that such proceeding would need to be brought no later than six months from the date on which the person concerned acted, or claimed to be entitled to act, as a DC Member.

21. Given SJ's unique role as the guardian of public interest, we propose to amend section 73(2) of the LCO and repeal section 79(2) of the DCO such that SJ would not be subject to the time restriction and may bring such proceedings any time.

22. Once SJ has commenced legal proceedings against a LegCo / DC Member under section 73 of the LCO or section 79 of the DCO on the grounds of breach of oath or failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, we propose to provide for an immediate suspension of the Member's functions and duties until the decision of the Court becomes final. The Member concerned is, however, entitled to apply to the CFI to lift such suspension. The proposal will also provide that when a Member's functions and duties have been suspended as a result of proceedings brought under section 73 of the LCO or section 79 of the DCO, the legality of the LegCo / DC businesses transacted during which would not be affected.

23. Considering that the seat of a LegCo / DC Member involves important public interest, we propose to accelerate the final conclusion of related judicial proceedings. With reference to the existing election petition mechanism in various public elections<sup>4</sup> (including LegCo elections and DC elections), we recommend that a leap-frog appeal mechanism for proceedings brought under section 73 of the LCO and

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<sup>4</sup> The leap-frog appeal mechanism is adopted for the election petitions in various public elections, including CE (section 34 of the CEEO), LegCo (section 65(2) of the LCO), DC (section 53(2) of the DCO) and Rural Representatives (section 43(2) of the Rural Representative Election Ordinance (Cap. 576)) elections.

section 79 of the DCO should be introduced. A party who is not satisfied with a decision made by the CFI may lodge an appeal to the CFA direct (instead of lodging an intermediate appeal to the Court of Appeal of the High Court), subject to leave being granted by the Appeal Committee of the CFA. The period within which an application for leave to appeal to the CFA must be lodged will be within 14 working days after the day on which the relevant CFI judgment is handed down. Such arrangement would facilitate speedy resolution of proceedings brought by SJ on the grounds of breach of oath of a Member or failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, thereby ensuring the certainty of the composition of LegCo / DC and the seat of the Member concerned as soon as practicable.

#### **(F) Restrictions on participating in public elections**

24. While a person's right to stand for election is constitutionally protected under Article 26 of the BL and Article 21 of the Hong Kong Bills of Rights, such right is not absolute and can be subject to reasonable and justifiable restrictions<sup>5</sup>. Currently, the CEEO<sup>6</sup>, LCO<sup>7</sup> and DCO<sup>8</sup> all have relevant provisions providing, amongst others, that a person is disqualified from being nominated as a candidate, and from being elected, if the person:

- (a) has been convicted (within the previous five years before the date of nomination / polling date):
  - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding three months without the option of a fine;
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct Ordinance (Cap. 554);
  - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or

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<sup>5</sup> See paragraph 29 of the judgment in *Wong Hin Wai & Leung Kwok Hung v Secretary for Justice* (HCAL 51/2012 and HCAL 54/2012), reported in [2012] 4 HKLRD 70.

<sup>6</sup> Sections 14 and 20 of the CEEO.

<sup>7</sup> Section 39 of the LCO.

<sup>8</sup> Sections 21 and 24 of the DCO.

- (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”); or
- (b) is an undischarged bankrupt or, within the previous five years, has either obtained a discharge in bankruptcy or has entered into a voluntary agreement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person’s creditors, in either case without paying the creditors in full.

25. Having reviewed the disqualification provisions, we consider it appropriate to introduce restriction on persons who have failed to meet the various requirements in relation to oath taking from participating in elections. Specifically, we propose that a person is disqualified from being nominated or elected if the date of nomination/polling date is within five years after the person has:

- (a) vacated an office or disqualified from entering on an office for declining or neglecting to take an oath; or
- (b) breached the oath or failed to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR.

The above restrictions would be applicable to the elections of CE, LegCo and DC (collectively “elected offices”).

26. The restrictions are justified and proportionate, and seek to achieve a number of important objectives. First, to reflect the solemnity of the oath. An oath to uphold the BL and bear allegiance to the HKSAR is a legal pledge to the PRC and the HKSAR, and is the prerequisite for the specified public officers to assume office. If a person has declined or neglected to take the oath, breached the oath, or failed to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR (collectively “oath-related duties”), it is questionable if the person has a genuine and truthful intention and is fit to take up the office. The proposed restrictions should have real deterrent effect in this regard. Second, to ensure the proper operation of the elected offices. A person failing his / her oath-related duties is indicative that he may not be able to exercise the important functions and powers conferred on him properly which in turn will jeopardize the operation of the elected offices. Third, to uphold public confidence in the elected offices. In view of the important functions and powers of the elected offices and hence the

responsibilities associated with the office holder, it is necessary to maintain public trust and confidence in the elected offices. If a person has failed to fulfil his / her oath-related duties, the public could cast reasonable doubts on his / her credibility and ability to perform in the elected offices, and thereby affecting public's trust.

## **OTHER OPTIONS**

27. There is no option other than legislative means that may enable the implementation of the recommendations set out in paragraph 1(a) to (g).

## **THE BILL**

28. The main provisions are summarised below:

- (a) **Part 1** sets out the short title of the Bill;
- (b) **Part 2** amends the IGCO to explain the meaning of a reference to upholding the BL and bearing allegiance to the HKSAR;
- (c) **Part 3** amends the ODO to include an oath to be taken by DC members; provide for the oath-taking requirements; explain the meaning of declining or neglecting to take an oath and provide for related consequence;
- (d) **Part 4** amends the CFAO to provide for application for leave to appeal to the CFA in relation to proceedings brought under section 73 of the LCO or section 79 of the DCO;
- (e) **Part 5** amends the LCO to add new grounds for disqualification from holding office as a LegCo member. The new grounds relate to breach of an oath and failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR. It also disqualifies persons who have vacated an office / been disqualified from entering on an office for declining or neglecting to take an oath, breached an oath or failed to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, from being nominated as a candidate or being elected in the LegCo election held within five years. It also removes the time limit within which proceedings may be brought by SJ against a person on the ground of

disqualification from acting as a LegCo member and provides for the relevant suspension of functions and duties of such a member on certain of such proceedings being brought by SJ;

- (f) **Part 6** amends the DCO to add new grounds for disqualification from holding office as a DC member. The new grounds relate to breach of an oath and failure to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR. It also disqualifies persons who have vacated an office / been disqualified from entering on an office for declining or neglecting to take an oath, or breached an oath or failed to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR, from being nominated as a candidate or being elected in the DC election held within five years. It also removes the time limit within which proceedings may be brought by SJ against a person on the ground of disqualification from acting as a DC member and provides for suspension of functions and duties of such a member on certain of such proceedings being brought by SJ;
- (g) **Part 7** amends the CEEO to add new grounds for disqualification from being nominated as a candidate for CE election and from being elected as the CE. These grounds include the persons have vacated an office / been disqualified from entering on an office for declining or neglecting to take an oath, or breached an oath or failed to fulfil the legal requirements and conditions on upholding the BL and bearing allegiance to the HKSAR;
- (h) **Part 8** amends the NAO to add the oath-taking ceremony by DC Members as an occasion on which the national anthem must be played and sung; and
- (i) **Part 9** makes consequential amendments to the High Court Ordinance (Cap. 4) and the EACO.

  B   The existing provisions being amended are at **Annex B**.

## **LEGISLATIVE TIMETABLE**

29. The tentative legislative timetable will be as follows –

Publication in the Gazette	26 February 2021
First Reading and commencement of Second Reading debate	17 March 2021
Resumption of Second Reading debate, Committee Stage and Third Reading	Q2, 2021 (to be notified)

## **IMPLICATIONS OF THE PROPOSAL**

30. The Bill is in conformity with the BL, including the provisions concerning human rights. The proposed amendments will not affect the current binding effect of the Ordinances and subsidiary legislation which the Bill seeks to amend. The proposal has no economic, productivity, environmental, sustainability, family and gender implications.

31. The civil services and financial implications should be minimal. It is difficult to assess at this stage if additional resource requirement will arise from the proposal to introduce the leap-frog appeal mechanism for proceedings brought under section 73 of the LCO and section 79 of the DCO. Nevertheless, the Judiciary may seek additional resources through the established mechanism as it considers necessary.

## **PUBLIC CONSULTATION**

32. CE has undertaken in the 2020 Policy Address (“PA”) to amend local legislation (including ODO) to enhance the oath-taking arrangements and to deal with those who have engaged in conduct that breaches the oath after swearing-in as well as the legal consequences and the relevant statutory procedures involved. On 5 January 2021, the Secretary for Constitutional and Mainland Affairs briefed the LegCo Panel on Constitutional Affairs on the implementation progress of various PA initiatives (including the implementation of oath-taking requirements). At the meeting, a majority of the Members supported and urged the Constitutional and Mainland Affairs Bureau to implement the oath-taking requirements by way of introduction of an amendment bill into LegCo as early as possible. At the CE’s Question and Answer Session on 4



February 2021, the CE has informed LegCo that the HKSAR Government will introduce the oath-taking requirement on DC members and provide for related arrangements in this legislative amendment exercise. As for other public officers, the Government will handle the matter separately.

## **PUBLICITY**

33. A press conference will be arranged to elaborate on details of the proposed legislative amendments and address queries from the media/public. A spokesperson will be made available to address media enquiries.

## **ENQUIRY**

34. For enquiries on this brief, please contact the Constitutional and Mainland Affairs Bureau at 2810 2059.

**Constitutional and Mainland Affairs Bureau**  
**23 February 2021**

**Public Offices (Candidacy and Taking Up Offices)  
(Miscellaneous Amendments) Bill 2021**

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## A BILL

### To

Amend the Interpretation and General Clauses Ordinance to explain the meaning of a reference to upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China; to amend the Oaths and Declarations Ordinance to include in Part IV of the Ordinance an oath to be taken by every member of the District Councils, the requirements for taking the oaths specified in that Part and the consequences of declining or neglecting to take an oath; to amend the Legislative Council Ordinance and the District Councils Ordinance to add new grounds for disqualification from being nominated as a candidate for election as a member of the Legislative Council or as a member of a District Council and for disqualification from being elected, and from holding office, as such a member, to remove the time limit within which proceedings may be brought by the Secretary for Justice against a person on the ground of disqualification from acting as such a member and to provide for suspension of functions and duties of such a member on certain of such proceedings being brought by the Secretary for Justice; to amend the Hong Kong Court of Final Appeal Ordinance to provide for application for leave to appeal to the Hong Kong Court of Final Appeal in relation to such proceedings; to amend the Chief Executive Election Ordinance to add new grounds for disqualification from being nominated as a candidate for election of the Chief Executive and from being elected as the Chief Executive; to amend the National Anthem Ordinance to add the oath-taking ceremony by members of the District Councils as an occasion on which the national anthem must be played and sung; and to provide for related matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title**

This Ordinance may be cited as the Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Ordinance 2021.

**2. Enactments amended**

The enactments specified in Parts 2 to 9 are amended as set out in those Parts.

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## Part 2

### Amendment to Interpretation and General Clauses Ordinance (Cap. 1)

#### 3. Section 3AA added

After section 3—

**Add**

#### **“3AA. References to upholding Basic Law and bearing allegiance to HKSAR**

- (1) For the purposes of an Ordinance, a person upholds the Basic Law and bears allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China if the person—
  - (a) upholds the constitutional order of the Hong Kong Special Administrative Region established by the Constitution of the People’s Republic of China and the Basic Law;
  - (b) upholds the national sovereignty, unity, territorial integrity and national security of the People’s Republic of China;
  - (c) upholds—
    - (i) the fact that the Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China;
    - (ii) the People’s Republic of China’s exercise of sovereignty over the Hong Kong Special Administrative Region; and

- (iii) the Central Authorities’ exercise of governance over the Hong Kong Special Administrative Region under the Basic Law;
  - (d) upholds the implementation of “one country, two systems” principle, and safeguards the political structure of the Hong Kong Special Administrative Region;
  - (e) upholds the objective to maintain the prosperity and stability of the Hong Kong Special Administrative Region within the framework of the Basic Law; and
  - (f) is loyal to, and safeguards the interests of, the Hong Kong Special Administrative Region.
- (2) In subsection (1), a reference to uphold is a reference to intend to genuinely and truthfully observe, support, maintain and embrace, and genuinely and truthfully observe, support, maintain and embrace in words and deeds.
  - (3) For the purposes of an Ordinance, a person does not uphold the Basic Law and bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China when the person does, or intends to do, any of the following—
    - (a) commits acts or carries out activities that endanger national security, including—
      - (i) commits an act required by Article 23 of the Basic Law to be prohibited;
      - (ii) commits an offence under the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (a translation of “《中

- 華人民共和國香港特別行政區維護國家安全法》”); and
- (iii) commits an offence relating to endangering national security under an enactment or under the common law;
  - (b) refuses to recognize the People’s Republic of China’s sovereignty over the Hong Kong Special Administrative Region and the exercise of the sovereignty, including objecting to the performance of duties and functions by the body of central power in accordance with—
    - (i) the Constitution of the People’s Republic of China;
    - (ii) the Basic Law; or
    - (iii) the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (a translation of “《中華人民共和國香港特別行政區維護國家安全法》”);
  - (c) refuses to recognize the constitutional status of the Hong Kong Special Administrative Region as a local administrative region of the People’s Republic of China;
  - (d) advocates or supports “Hong Kong independence”, including—
    - (i) pursues, promotes or implements “independence and state-building” of Hong Kong;
    - (ii) participates in an organization the object of which is “Hong Kong independence”;

- (iii) pursues, promotes or implements an activity for “self-determination of sovereignty or jurisdiction”, “referendum” or “devising constitution by all people”, or participates in an organization the object of which is “self-determination”; and
- (iv) pursues or promotes the reign over Hong Kong to be transferred to a foreign country;
- (e) solicits interference by foreign governments or organizations in the affairs of the Hong Kong Special Administrative Region;
- (f) commits acts that undermine or have a tendency to undermine the order of the political structure led by the Chief Executive, contained in the Basic Law, including—
  - (i) compels or overawes the Chief Executive by any unlawful means to change a policy, or a motion to be submitted to the Legislative Council for consideration;
  - (ii) indiscriminately objects to the Government’s motion, and with this—
    - (A) intends to threaten the Government;
    - (B) intends to render the Government incapable of performing its duties and functions as normal; or
    - (C) intends to force the Chief Executive to step down and to overthrow the Government; and
- (iii) makes use of an election held by the Government to organize or implement, or to

incite another person to organize or implement, a “de facto referendum” in any form to confront the Central People’s Government and the Government;

- (g) commits acts that undermine or have a tendency to undermine the overall interests of the Hong Kong Special Administrative Region;
  - (h) desecrates the national flag or national emblem, or regional flag or regional emblem, by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it;
  - (i) insults or disrespects the national anthem or any other symbol and sign of national sovereignty.
- (4) For the purposes of an Ordinance, this section does not limit the meaning of a reference to upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.
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### Part 3

#### Amendments to Oaths and Declarations Ordinance (Cap. 11)

**4. Section 16 amended (forms of Oaths)**

Before section 16(e)—

**Add**

“(db) the District Council Oath;”.

**5. Section 17 substituted**

Section 17—

**Repeal the section**

**Substitute**

**“17. Oaths of judicial officers**

- (1) Each of the judicial officers specified in Schedule 3 must take the Judicial Oath as soon as possible after appointment.
- (2) The Judicial Oath must be administered by—
  - (a) the Chief Executive; or
  - (b) a person authorized by the Chief Executive to administer the oath.”.

**6. Section 18 substituted**

Section 18—

**Repeal the section**

**Substitute**

**“18. Oaths of members of Executive Council**

- (1) A member of the Executive Council must take the Oath of Fidelity and the Executive Council Oath as soon as possible after appointment.
- (2) The Oath of Fidelity and the Executive Council Oath must be administered by—
  - (a) the Chief Executive; or
  - (b) a person authorized by the Chief Executive to administer the oaths.”.

**7. Section 19 substituted**

Section 19—

**Repeal the section**

**Substitute**

**“19. Oath of members of Legislative Council**

- (1) A member of the Legislative Council must take the Legislative Council Oath as soon as possible after the commencement of the member’s term of office.
- (2) The Legislative Council Oath must be administered by—
  - (a) the Chief Executive; or
  - (b) a person authorized by the Chief Executive to administer the oath.”.

**8. Section 19A added**

After section 19—

**Add**

**“19A. Oath of members of District Councils**

- (1) A member of a District Council must take the District Council Oath as soon as possible after the commencement of the member’s term of office.
- (2) The District Council Oath must be administered by—
  - (a) the Chief Executive; or
  - (b) a person authorized by the Chief Executive to administer the oath.”.

**9. Section 20A added**

After section 20—

**Add**

**“20A. Declining or neglecting to take oath**

- (1) This section applies to a person who is required by this Part to take an oath.
- (2) The person is to be regarded as declining or neglecting to take the oath if the person intentionally—
  - (a) contravenes the oath-taking procedure of the person or desecrates the oath-taking ceremony;
  - (b) alters or distorts the wording of the oath;
  - (c) says words that do not accord with the wording of the oath; or
  - (d) acts in a way that is not sincere or not solemn in purporting to take the oath.
- (3) In this section—
  - (a) a reference to the oath-taking ceremony includes—



- (i) the oath-taking procedure of any person during the ceremony; and
  - (ii) if section 5 of the National Anthem Ordinance (2 of 2020) requires the national anthem to be played and sung on the occasion of the ceremony, the playing and singing of the national anthem as required under that Ordinance; and
- (b) a reference to the oath-taking procedure of a person includes the taking of the oath by the person.

(4) Subsection (2) does not limit the operation of section 21.”.

**10. Section 21 amended (consequence of non-compliance)**

(1) Section 21, heading—

**Repeal**

“non-compliance”

**Substitute**

“declining or neglecting to take oath”.

(2) Section 21—

**Renumber the section as section 21(1).**

(3) After section 21(1)—

**Add**

“(2) No person may arrange for the person who declines or neglects to take the oath to retake it.

(3) However, subsections (1) and (2) do not apply if—

- (a) a person declined or neglected to take the oath before a person who is authorized by this Part to administer it (*oath administrator*); and

- (b) the oath administrator is satisfied that the person did not intentionally decline or neglect to take the oath.”.

**11. Section 22 repealed (when Oaths need not be repeated)**

Section 22—

**Repeal the section.**

**12. Schedule 2 amended**

Schedule 2, after Part IV—

**Add**

**“Part IVA**

**The District Council Oath**

I swear that, being a member of the \_\_\_\_\_  
District Council of the Hong Kong Special Administrative Region of  
the People’s Republic of China, I will uphold the Basic Law of the  
Hong Kong Special Administrative Region of the People’s Republic  
of China, bear allegiance to the Hong Kong Special Administrative  
Region of the People’s Republic of China and serve the Hong Kong  
Special Administrative Region conscientiously, dutifully, in full  
accordance with the law, honestly and with integrity.

(name of person making the oath)”.

**13. Schedule 3 amended**

(1) Schedule 3—

**Repeal**

## **“Part I**

### **Oaths to be Administered by the Chief Executive”.**

- (2) Schedule 3—  
**Repeal**

## **“Part II**

### **Oaths to be Administered by a Judge of the Court of First Instance”.**

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## **Part 4**

### **Amendments to Hong Kong Court of Final Appeal Ordinance (Cap. 484)**

14. **Part II, Division 2 heading amended (appeal from Court of Appeal to Court; appeal relating to election)**  
Part II, Division 2, heading, after “Election”—  
**Add**  
“; Appeal relating to Certain Proceedings”.
15. **Section 22 amended (civil appeals)**
- (1) Section 22(1)(b)—  
**Repeal**  
“and”.
- (2) Section 22(1)(c)(viii)—  
**Repeal**  
“concerned.”  
**Substitute**  
“concerned;”.
- (3) After section 22(1)(c)—  
**Add**  
“(d) at the discretion of the Court, from a decision of the Court of First Instance in proceedings brought under section 73 of the Legislative Council Ordinance (Cap. 542) (including a decision for the purpose of an application under section 73(2D) of that Ordinance); and

- (e) at the discretion of the Court, from a decision of the Court of First Instance in proceedings brought under section 79 of the District Councils Ordinance (Cap. 547) (including a decision for the purpose of an application under section 79(2E) of that Ordinance).”

**16. Section 24 amended (applications for leave to appeal)**

Section 24(3)—

**Repeal**

“or order of the Court of First Instance referred to in section 22(1)(c)”

**Substitute**

“, order or decision of the Court of First Instance referred to in section 22(1)(c), (d) or (e)”.

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**Part 5**

**Amendments to Legislative Council Ordinance (Cap. 542)**

**17. Section 15 amended (when Member ceases to hold office)**

(1) Section 15(1)(e)—

**Repeal the full stop**

**Substitute**

“; or”.

(2) After section 15(1)(e)—

**Add**

“(f) is in breach of an oath taken under section 19 of the Oaths and Declarations Ordinance (Cap. 11); or

(g) fails, or is declared or decided in accordance with any law to have failed, to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.

(3) After section 15(1)—

**Add**

“(1AA) Paragraph (g) of subsection (1) applies to a declaration or decision made after the person is elected as a Member, whether or not it is made before, on or after the date on which that paragraph comes into operation.”.

**18. Section 17 amended (proceedings of Legislative Council not affected by vacancy in membership)**

(1) Section 17, heading, after “membership”—

**Add**

“etc.”.

(2) Section 17—

**Repeal subsections (1) and (2)**

**Substitute**

“(1) The power of the Legislative Council to transact business is not affected by—

- (a) a vacancy in the membership of the Legislative Council; or
- (b) the suspension of a person’s functions and duties as a Member under section 73(2A).

(2) The validity of the proceedings of the Legislative Council is not affected by—

- (a) a vacancy in the membership of the Legislative Council;
- (b) the suspension of a person’s functions and duties as a Member under section 73(2A); or
- (c) a defect in the election of a Member or as to the eligibility of a person to be a Member.”.

**19. Section 39 amended (when person is disqualified from being nominated as a candidate and from being elected as a Member)**

(1) After section 39(1)—

**Add**

“(1A) A person is also disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the election is held or is to be held within 5 years after—

- (a) the date on which the person vacates an office, or is disqualified from entering on an office, under the law, for declining or neglecting to take a specified oath; or
- (b) the date on which the person is declared or decided in accordance with any law—
  - (i) to be in breach of a specified oath; or
  - (ii) to have failed to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.

(2) Section 39(5), English text, definition of *prescribed public officer*, paragraph (f)—

**Repeal**

“bureau.”

**Substitute**

“bureau;”.

(3) Section 39(5)—

**Add in alphabetical order**

“*specified oath* (指明誓言) means an oath taken under the law that the oath-taker will uphold the Basic Law and bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.

**20. Section 65 amended (period within which election petition and appeal must be lodged)**

After section 65(2)—

**Add**

“(3) In subsection (2)—

*working day* (工作日) means any day other than—

- (a) a general holiday;
- (b) a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); or
- (c) a gale warning day as defined by that section.”.

**21. Section 73 amended (proceedings against persons on grounds of disqualification)**

(1) Section 73(2), after “brought”—

**Add**

“by an elector”.

(2) After section 73(2)—

**Add**

“(2A) Immediately after proceedings are brought by the Secretary for Justice under this section against a person on the ground that the person is disqualified from acting as a Member—

- (a) for breach of an oath taken under section 19 of the Oaths and Declarations Ordinance (Cap. 11); or
- (b) for failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing

allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China,

the person’s functions and duties as a Member are suspended until the decision of the Court in the proceedings becomes final.

(2B) For the purposes of subsection (2A), a decision of the Court becomes final—

- (a) if no motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(d) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is filed by the end of the period specified under subsection (4A)—when that period expires; or
  - (b) if, before the end of that period, motion for the purpose of such an application is filed—
    - (i) when the application is abandoned or otherwise ceases to have effect;
    - (ii) when the application is refused; or
    - (iii) if the application is granted—
      - (A) when the appeal is abandoned or otherwise ceases to have effect; or
      - (B) when the appeal is determined.
- (2C) If a person’s functions and duties as a Member are suspended under subsection (2A), the person—
- (a) must not act as a Member;
  - (b) must neither exercise any function nor perform any duty of a Member; and

- (c) is not to be regarded as a Member for the purposes of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).
- (2D) The Court may, on the application of a person whose functions and duties as a Member are suspended under subsection (2A), lift the suspension.
- (2E) If a person acts, or claims to be entitled to act, as a Member while his or her functions and duties as a Member are suspended under subsection (2A), the Secretary for Justice may apply to the Court for an interim injunction restraining the person from so acting or claiming.”.
- (3) After section 73(4)—  
**Add**  
“(4A) Despite section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(d) of that Ordinance must be filed within 14 working days after the date on which the written judgment of the Court to be appealed from is handed down, and the applicant must give the opposite party 3 days’ notice of his or her intended application at any time during the period of 14 working days.”.
- (4) After section 73(8)—  
**Add**  
“(9) In subsection (4A)—  
*working day* (工作日) means any day other than—  
(a) a general holiday;

- (b) a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); or
- (c) a gale warning day as defined by that section.”.
-

## Part 6

### Amendments to District Councils Ordinance (Cap. 547)

#### 22. Section 19 amended (disqualification of ex officio members)

(1) After section 19(1)—

**Add**

“(1A) An ex officio member is also disqualified from holding office if—

- (a) the term of office is to begin within 5 years after—
  - (i) the date on which the person vacates an office, or is disqualified from entering on an office, under the law, for declining or neglecting to take a specified oath; or
  - (ii) the date on which the person is declared or decided in accordance with any law—
    - (A) to be in breach of a specified oath; or
    - (B) to have failed to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China;
- (b) the person is in breach of an oath taken under section 19A of the Oaths and Declarations Ordinance (Cap. 11); or
- (c) the person fails, or is declared or decided in accordance with any law to have failed, to fulfil the legal requirements and conditions on upholding the

Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.

(1B) Subsection (1A)(c) applies to a declaration or decision made after the person holds office as such ex officio member, whether or not it is made before, on or after the date on which that subsection comes into operation.”.

(2) After section 19(6)—

**Add**

“(7) In this section—

*specified oath* (指明誓言) means an oath taken under the law that the oath-taker will uphold the Basic Law and bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.

#### 23. Section 21 amended (when person is disqualified from being nominated as a candidate and from being elected as an elected member)

(1) After section 21(1)—

**Add**

“(1A) A person is also disqualified from being nominated as a candidate at an election, and from being elected as an elected member, if the election is held or is to be held within 5 years after—

- (a) the date on which the person vacates an office, or is disqualified from entering on an office, under the law, for declining or neglecting to take a specified oath; or
- (b) the date on which the person is declared or decided in accordance with any law—

- (i) to be in breach of a specified oath; or
- (ii) to have failed to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.”.

(2) After section 21(3)—

**Add**

“(4) In this section—

*specified oath* (指明誓言) means an oath taken under the law that the oath-taker will uphold the Basic Law and bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.”.

**24. Section 24 amended (disqualification of elected members)**

After section 24(2)—

**Add**

“(2A) An elected member is also disqualified from holding office if the person, after being elected—

- (a) is in breach of an oath taken under section 19A of the Oaths and Declarations Ordinance (Cap. 11); or
- (b) fails, or is declared or decided in accordance with any law to have failed, to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

(2B) Subsection (2A)(b) applies to a declaration or decision made before, on or after the date on which that subsection comes into operation.”.

**25. Section 72 amended (proceedings of a District Council or a committee not affected by vacancy or defect in membership)**

(1) Section 72, heading, after “membership”—

**Add**

“etc.”.

(2) Section 72—

**Repeal subsection (1)**

**Substitute**

“(1) The power of a District Council to transact business is not affected by—

- (a) a vacancy in the membership of the District Council; or
- (b) the suspension of a person's functions and duties as a member under section 79(2A).”.

(3) After section 72(2)(a)—

**Add**

“(ab) the suspension of a person's functions and duties as a member under section 79(2A);”.

**26. Section 79 amended (proceedings against persons on grounds of disqualification)**

(1) Section 79—

**Repeal subsection (2).**

(2) Before section 79(3)—

**Add**

“(2A) Immediately after proceedings are brought by the Secretary for Justice under this section against a person



- on the ground that the person is disqualified from acting as a member—
- (a) for breach of an oath taken under section 19A of the Oaths and Declarations Ordinance (Cap. 11); or
  - (b) for failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China,
- the person's functions and duties as a member are suspended until the decision of the Court in the proceedings becomes final.
- (2B) For the purposes of subsection (2A), a decision of the Court becomes final—
- (a) if no motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(e) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is filed by the end of the period specified under subsection (4A)—when that period expires; or
  - (b) if, before the end of that period, motion for the purpose of such an application is filed—
    - (i) when the application is abandoned or otherwise ceases to have effect;
    - (ii) when the application is refused; or
    - (iii) if the application is granted—
      - (A) when the appeal is abandoned or otherwise ceases to have effect; or
      - (B) when the appeal is determined.

- (2C) If a person's functions and duties as a member are suspended under subsection (2A), the person—
    - (a) must not act as a member;
    - (b) must not do anything for the purpose of carrying into effect the provisions of this Ordinance or any other enactment conferring functions on a District Council; and
    - (c) is not to be regarded as a member for the purposes of section 86.
  - (2D) If a person's functions and duties as a member are suspended under subsection (2A) and the person is absent from a meeting of a District Council during the suspension, the person is not to be regarded as being absent from that meeting for the purposes of sections 19(4) and 24(5).
  - (2E) The Court may, on the application of a person whose functions and duties as a member are suspended under subsection (2A), lift the suspension.
  - (2F) If a person acts, or claims to be entitled to act, as a member while his or her functions and duties as a member are suspended under subsection (2A), the Secretary for Justice may apply to the Court for an interim injunction restraining the person from so acting or claiming.”
- (3) After section 79(4)—
- Add**
- “(4A) Despite section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(e) of that Ordinance must be filed within 14 working days after the date on

which the written judgment of the Court to be appealed from is handed down, and the applicant must give the opposite party 3 days' notice of his or her intended application at any time during the period of 14 working days.”.

- (4) After section 79(6)—

**Add**

- “(7) In subsection (4A)—

*working day* (工作日) means any day other than—

- (a) a general holiday;
- (b) a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); or
- (c) a gale warning day as defined by that section.”.

## Part 7

### Amendments to Chief Executive Election Ordinance (Cap. 569)

27. **Section 14 amended (disqualification from being nominated)**

- (1) Section 14—

**Renumber the section as section 14(1).**

- (2) After section 14(1)—

**Add**

- “(2) Without prejudice to section 13(1)(c) of the Electoral Affairs Commission Ordinance (Cap. 541), a person is also disqualified from being nominated as a candidate if, within the 5 years before the date of nomination—

- (a) the person has vacated an office, or has been disqualified from entering on an office, under the law, for declining or neglecting to take a specified oath; or
- (b) the person has been declared or decided in accordance with any law—
  - (i) to be in breach of a specified oath; or
  - (ii) to have failed to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

- (3) In this section—

*specified oath* (指明誓言) means an oath taken under the law that the oath-taker will uphold the Basic Law and bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.”.

**28. Section 20 amended (disqualification from being elected)**

(1) Section 20(1)(b)—

**Repeal**

“section 14”

**Substitute**

“section 14(1)”.

(2) Section 20(1)(c)—

**Repeal**

“section 14(h); or”

**Substitute**

“section 14(1)(h);”.

(3) After section 20(1)(c)—

**Add**

“(ca) a candidate falls or has fallen, within the 5 years before the polling date, within any paragraph of section 14(2); or”.

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**Part 8**

**Amendments to National Anthem Ordinance (2 of 2020)**

**29. Schedule 3 amended (occasions on which national anthem must be played and sung)**

(1) Schedule 3, item 1(d)—

**Repeal**

“or”.

(2) Schedule 3, item 1(e)—

**Repeal**

“Ordinance”

**Substitute**

“Ordinance; or”.

(3) Schedule 3, after item 1(e)—

**Add**

“(f) for taking the District Council Oath under section 19A of that Ordinance”.

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## Part 9

### Consequential Amendments

#### Division 1—Amendment to High Court Ordinance (Cap. 4)

30. Section 14 amended (appeals in civil matters)

Section 14(3)(g)—

**Repeal**

“or order of the Court of First Instance referred to in section 22(1)(c)”

**Substitute**

“, order or decision of the Court of First Instance referred to in section 22(1)(c), (d) or (e)”.

#### Division 2—Amendment to Electoral Affairs Commission Ordinance (Cap. 541)

31. Section 7 amended (regulations)

Section 7(1A)(a)—

**Repeal**

“section 14(h)”

**Substitute**

“section 14(1)(h)”.

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## Explanatory Memorandum

The main objects of this Bill are—

- (a) to provide for matters relating to the taking of an oath under the law that the oath-taker will uphold the Basic Law of the Hong Kong Special Administrative Region (*Basic Law*) and bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China (*HKSAR*), including a new requirement for every member of the District Councils to take such an oath, and matters relating to the consequences of declining or neglecting to take such an oath and of breach of such an oath; and
- (b) to provide for matters relating to the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR, including matters relating to the consequences of failure to fulfil those legal requirements and conditions.

2. The Bill is divided into 9 Parts.

### Part 1—Preliminary

3. Clause 1 sets out the short title.

### Part 2—Amendment to Interpretation and General Clauses Ordinance (Cap. 1) (*IGCO*)

4. Clause 3 proposes to amend the IGCO to add a new section 3AA to explain the meaning of a reference to upholding the Basic Law and bearing allegiance to the HKSAR.

**Part 3—Amendments to Oaths and Declarations Ordinance (Cap. 11)  
(ODO)**

5. Clauses 4 and 12 propose to amend Part IV of, and Schedule 2 to, the ODO to include in that Part and that Schedule an oath to be taken by every member of the District Councils.
6. Clauses 5, 6, 7, 8 and 13 propose to amend Part IV of, and Schedule 3 to, the ODO to provide for the requirements for taking the oaths specified in that Part.
7. Clauses 9 and 10 propose to amend Part IV of the ODO to explain the meaning of declining or neglecting to take an oath and to provide for the consequences of declining or neglecting to take an oath.
8. Clause 11 proposes to repeal section 22 (when Oaths need not be repeated) of the ODO.

**Part 4—Amendments to Hong Kong Court of Final Appeal Ordinance  
(Cap. 484) (HKCFAO)**

9. Clauses 14, 15 and 16 propose to amend the HKCFAO to provide for application for leave to appeal to the Hong Kong Court of Final Appeal in relation to proceedings brought under section 73 of the Legislative Council Ordinance (Cap. 542) or section 79 of the District Councils Ordinance (Cap. 547).

**Part 5—Amendments to Legislative Council Ordinance (Cap. 542)  
(LCO)**

10. Clause 17 proposes to amend section 15 of the LCO to add new grounds for disqualification from holding office as a member of the Legislative Council. The new grounds relate to breach of an oath taken under section 19 of the ODO and to failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.

11. Clause 19 proposes to amend section 39 of the LCO to add new grounds for disqualification from being nominated as a candidate for election as a member of the Legislative Council and from being elected as such a member. The new grounds relate to—
  - (a) vacating an office, or disqualification from entering on an office, under the law, for declining or neglecting to take an oath to uphold the Basic Law and to bear allegiance to the HKSAR; and
  - (b) breach of such an oath or failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.
12. Clause 21 proposes to amend section 73 of the LCO to remove the time limit within which proceedings may be brought by the Secretary for Justice against a person on the ground of disqualification from acting as a member of the Legislative Council and to provide for suspension of functions and duties of such a member on certain of such proceedings being brought by the Secretary for Justice. Clause 18 proposes to amend section 17 of the LCO to provide that the power of the Legislative Council to transact business is not affected by the suspension of a person's functions and duties of such a member.

**Part 6—Amendments to District Councils Ordinance (Cap. 547) (DCO)**

13. Clause 22 proposes to amend section 19 of the DCO to add new grounds for disqualification from holding office as an ex officio member of a District Council. The new grounds relate to breach of an oath taken under section 19A of the ODO and to failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.
14. Clause 23 proposes to amend section 21 of the DCO to add new grounds for disqualification from being nominated as a candidate for

election as an elected member of a District Council and from being elected as such a member. The new grounds relate to—

- (a) vacating an office, or disqualification from entering on an office, under the law, for declining or neglecting to take an oath to uphold the Basic Law and to bear allegiance to the HKSAR; and
  - (b) breach of such an oath or failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.
15. Clause 24 proposes to amend section 24 of the DCO to add new grounds for disqualification from holding office as an elected member of a District Council. The new grounds relate to breach of an oath taken under section 19A of the ODO and to failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.
16. Clause 26 proposes to amend section 79 of the DCO to remove the time limit within which proceedings may be brought by the Secretary for Justice against a person on the ground of disqualification from acting as a member of a District Council and to provide for suspension of functions and duties of such a member on certain of such proceedings being brought by the Secretary for Justice. Clause 25 proposes to amend section 72 of the DCO to provide that the power of a District Council to transact business is not affected by the suspension of a person's functions and duties of such a member.

**Part 7—Amendments to Chief Executive Election Ordinance (Cap. 569) (CEEEO)**

17. Clauses 27 and 28 propose to amend sections 14 and 20 of the CEEEO to add new grounds for disqualification from being nominated as a candidate for election of the Chief Executive and from being elected as the Chief Executive. The new grounds relate to—

- (a) vacating an office, or disqualification from entering on an office, under the law, for declining or neglecting to take an oath to uphold the Basic Law and to bear allegiance to the HKSAR; and
- (b) breach of such an oath or failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.

**Part 8—Amendments to National Anthem Ordinance (2 of 2020) (NAO)**

18. Clause 29 proposes to amend the NAO to add the oath-taking ceremony by members of the District Councils as an occasion on which the national anthem must be played and sung.

**Part 9—Consequential Amendments**

19. Clauses 30 and 31 propose to make consequential amendments to the High Court Ordinance (Cap. 4) and the Electoral Affairs Commission Ordinance (Cap. 541) respectively.

**16. Forms of Oaths**

The Oaths referred to in this Ordinance as—

- (a) the Oath of the Chief Executive; (*Replaced 123 of 1997 s. 10*)
- (b) the Oath of the Principal Officials; (*Replaced 123 of 1997 s. 10*)
- (c) the Executive Council Oath; (*Replaced 123 of 1997 s. 10*)
- (ca) (*Repealed 123 of 1997 s. 10*)
- (d) the Legislative Council Oath; (*Replaced 123 of 1997 s. 10*)
- (da) (*Repealed 123 of 1997 s. 10*)
- (e) the Judicial Oath; (*Replaced 123 of 1997 s. 10*)
- (f) the Oath of Fidelity; and (*Added 123 of 1997 s. 10*)
- (g) the Oath of Secrecy, (*Added 123 of 1997 s. 10*)

shall be in the respective forms set out in Schedule 2.

*(Amended 123 of 1997 s. 10)*  
*[cf. 1868 c. 72 ss. 2, 3 & 4 U.K.]*

**17. Oaths of judicial officers**

Each of the judicial officers specified in Schedule 3 shall take the Judicial Oath, which shall be administered in the manner specified in that Schedule as soon as possible after his appointment.

*(Amended 123 of 1997 s. 12; L.N. 312 of 1998)*  
*[cf. 1868 c. 72 s. 6 U.K.]*

**18. Oaths of Executive Councillors**

- (1) A member of the Executive Council shall take the Oath of Fidelity and the Executive Council Oath as soon as possible after his appointment. (*Amended 32 of 1986 s. 3*)
- (2) (*Repealed 123 of 1997 s. 13*)
- (3) The Oaths taken by members of the Executive Council shall be administered by the Chief Executive, or other member presiding.

*(Amended 123 of 1997 s. 13)*  
*[cf. 1868 c. 72 s. 5 U.K.]*

**19. Oath of Legislative Councillors**

A member of the Legislative Council shall, as soon as possible after the commencement of his term of office, take the Legislative Council Oath which—

- (a) if taken at the first sitting of the session of the Legislative Council immediately after a general election of all members of the Council and before the election of the President of the Council, shall be administered by the Clerk to the Council;
- (b) if taken at any other sitting of the Council, shall be administered by the President of the Council or any member acting in his place.

*(Replaced 60 of 1995 s. 18. Amended 123 of 1997 s. 14)*

**21. Consequence of non-compliance**

Any person who declines or neglects to take an oath duly requested which he is required to take by this Part, shall— *(Amended 123 of 1997 s. 16)*

- (a) if he has already entered on his office, vacate it, and
- (b) if he has not entered on his office, be disqualified from entering on it.

*[cf. 1868 c. 72 s. 7 U.K.]*

**22. When Oaths need not be repeated**

(1A) A principal official is not required to take the Oath of the Principal Officials if he has taken it on a previous appointment as a principal official. *(Added 123 of 1997 s. 17)*

(1) No judicial officer specified in Schedule 3 shall be required to take the Judicial Oath, if he has taken it upon previous appointment to a judicial office specified in Schedule 3. *(Amended 13 of 1980 s. 2; L.N. 312 of 1998)*

(2) No member of the Executive Council shall be required to take the Executive Council Oath if he has taken—

- (a) the Executive Council Oath upon previous appointment to the Executive Council. *(Replaced 32 of 1986 s. 4)*
- (b) *(Repealed 123 of 1997 s. 17)*

(3) No member of the Executive Council shall be required to take —

- (a) the Oath of Fidelity, if he has taken it upon previous appointment to the Council.
- (b) *(Repealed 123 of 1997 s. 17)*



- (3A) Subject to subsection (3B), no member of the Legislative Council shall be required to take the Legislative Council Oath if he has taken—
- (a) *(Repealed 123 of 1997 s. 17)*
  - (b) the Legislative Council Oath upon previous election to the Legislative Council. *(Added 23 of 1985 s. 4. Amended 76 of 1991 s. 3; 60 of 1995 s. 19)*
- (3B) Where a general election of all members of the Legislative Council is held, a member who has previously taken the Legislative Council Oath shall, if so required by the Rules of Procedure of the Legislative Council, again take the Oath as required by those Rules of Procedure. *(Added 76 of 1991 s. 3. Amended 60 of 1995 s. 19; 27 of 1999 s. 3)*
- (4) Neither the Clerk to the Executive Council nor the Deputy Clerk to the Executive Council shall be required to take the Oath of Secrecy, if he has taken it upon previous appointment to either office. *(Amended 14 of 1994 s. 24)*
- (Amended 123 of 1997 s. 17)*  
*[cf. 1868 c. 72 s. 7 U.K.]*

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## Schedule 2

[ss. 16, 16A, 16B, 17, 18, 19  
& 20]

### Part I

#### The Oath of the Chief Executive

I, \_\_\_\_\_, swear that, in the office of Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity, and be held accountable to the Central People's Government of the People's Republic of China and the Hong Kong Special Administrative Region.

(name of person making the oath)

## **Part II**

### **The Oath of the Principal Officials**

I swear that, in the office of \_\_\_\_\_ of the Government of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

(name of person making the oath)

## **Part III**

### **The Executive Council Oath**

I swear that, being appointed to the Executive Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

(name of person making the oath)

## **Part IV**

### **The Legislative Council Oath**

I swear that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

(name of person making the oath)

## **Part V**

### **The Judicial Oath**

I swear that, in the Office of a Judge/a judicial officer of the Judiciary of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit.

(name of person making the oath)

## **Part VI**

### **The Oath of Fidelity**

I swear that, being appointed to the Executive Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will use my best endeavours to assist the Chief Executive in the long term interests of Hong Kong as a whole; that I will not, except with the authority of the Chief Executive, reveal the agenda or proceedings of the Executive Council, or any document communicated to me or any matter coming to my knowledge in my capacity as a Member of the Executive Council; that I will not seek to make or assist others to make any personal gain through the exercise of my official duties and I will be bound by and be collectively accountable for the decisions of the Executive Council.

(name of person making the oath)

## **Part VII**

### **The Oath of Secrecy**

I, \_\_\_\_\_, swear that, having been appointed Clerk to the Executive Council (or Deputy Clerk to the Executive Council) of the Hong Kong Special Administrative Region, I will not, except with the authority of the Chief Executive, directly or indirectly reveal the business or proceedings

of the Executive Council or the nature or contents of any document communicated to me as Clerk to the Executive Council (or Deputy Clerk to the Executive Council) or any matter coming to my knowledge in my capacity as Clerk to the Executive Council (or Deputy Clerk to the Executive Council).

(name of person making the oath)

*(Schedule 2 replaced 123 of 1997 s. 18)*

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## **Schedule 3**

[s. 17]

*(Amended 123 of 1997 s. 18)*

### **Part I**

#### **Oaths to be Administered by the Chief Executive**

*(Amended 123 of 1997 s. 18)*

Chief Justice *(Added 79 of 1995 s. 50)*

Permanent judge of the Court of Final Appeal *(Added 79 of 1995 s. 50)*

Non-permanent Hong Kong judge of the Court of Final Appeal *(Added 79 of 1995 s. 50)*

Judge of the Court of Final Appeal from another common law jurisdiction *(Added 79 of 1995 s. 50)*

Chief Judge *(Added 123 of 1997 s. 18. Amended 27 of 1999 s. 3)*

Justice of Appeal *(Added 26 of 1997 s. 7)*

Judge of the Court of First Instance (other than a recorder of the Court of First Instance appointed under section 6A of the High Court Ordinance (Cap. 4) or a deputy judge of the Court of First Instance appointed under section 10(1) of that Ordinance). *(Amended 27 of 1999 s. 3)*

### **Part II**

#### **Oaths to be Administered by a Judge of the Court of First Instance**

Recorder of the Court of First Instance

Deputy Judge of the Court of First Instance

District Judge

Deputy District Judge  
Presiding Officer, Labour Tribunal  
Magistrate  
Adjudicator, Small Claims Tribunal  
President, Lands Tribunal  
Coroner  
Adjudication Officer, Minor Employment Claims Adjudication Board  
Deputy Presiding Officer, Labour Tribunal (*Added 21 of 1999 s. 20*)  
Deputy Magistrate (*Added 21 of 1999 s. 20*)  
Deputy Adjudicator, Small Claims Tribunal (*Added 21 of 1999 s. 20*)  
Temporary Member, Lands Tribunal (*Added 21 of 1999 s. 20*)  
Deputy Coroner (*Added 21 of 1999 s. 20*)

### **Part III**

*(Repealed 123 of 1997 s. 18)*

*(Schedule 3 replaced 80 of 1994 s. 11. Amended 123 of 1997 s. 18)*

**Division 2—Appeal from Court of Appeal to Court;  
Appeal relating to Election**

*(Added 11 of 2002 s. 3. Amended 18 of 2011 s. 31)*

**22. Civil appeals\***

- (1) An appeal shall lie to the Court— *(Amended 21 of 2001 s. 52)*
- (a) *(Repealed 20 of 2014 s. 8)*
  - (b) at the discretion of the Court of Appeal or the Court, from any judgment of the Court of Appeal in any civil cause or matter, whether final or interlocutory, if, in the opinion of the Court of Appeal or the Court, as the case may be, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court for decision; and *(Amended 21 of 2001 s. 52; 20 of 2014 s. 8)*
  - (c) at the discretion of the Court, from—
    - (i) a determination of the Court of First Instance under section 37(1) of the Chief Executive Election Ordinance (Cap. 569); *(Amended 18 of 2011 s. 32)*
    - (ii) a judgment or order of the Court of First Instance in —
      - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or
      - (B) any other proceedings under that Ordinance, which put in issue whether the candidate is duly determined to be not returned at an election under section 26A(4) of the Chief Executive Election Ordinance (Cap. 569) or whether the candidate declared under section 28 of that Ordinance as elected at an election can lawfully assume the office of the Chief Executive; *(Added 21 of 2001 s. 52. Amended 10 of 2006 s. 19; 18 of 2011 s. 32)*
    - (iii) a determination of the Court of First Instance under section 67 of the Legislative Council Ordinance (Cap. 542); *(Added 18 of 2011 s. 32)*

- (iv) a judgment or order of the Court of First Instance in —
  - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or
  - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 58 of the Legislative Council Ordinance (Cap. 542) as duly elected at an election can lawfully assume the office of a Member of the Legislative Council; (*Added 18 of 2011 s. 32*)
- (v) a determination of the Court of First Instance under section 55 of the District Councils Ordinance (Cap. 547); (*Added 18 of 2011 s. 32*)
- (vi) a judgment or order of the Court of First Instance in —
  - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or
  - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 46 of the District Councils Ordinance (Cap. 547) as duly elected at an election can lawfully assume the office of the elected member of the District Council constituency concerned; (*Added 18 of 2011 s. 32*)
- (vii) a determination of the Court of First Instance under section 45 of the Rural Representative Election Ordinance (Cap. 576); or (*Added 18 of 2011 s. 32. Amended 5 of 2014 s. 2*)
- (viii) a judgment or order of the Court of First Instance in —
  - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or
  - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 36 of the Rural Representative Election Ordinance (Cap. 576) as duly elected at an election can lawfully assume the office of the Rural Representative for the Rural Area concerned. (*Added 18 of 2011 s. 32. Amended 5 of 2014 s. 2*)

(2) (*Repealed 20 of 2014 s. 8*)

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Editorial Note:

\* For the application provision relating to the amendments made by 20 of 2014, see section 7 of 20 of 2014.

## **24. Applications for leave to appeal**

- (1) Applications to the Court of Appeal or the Court for leave to appeal shall be made by motion.
- (2) Notice of a motion for the purpose of subsection (1) shall be filed within 28 days from the date of the judgment to be appealed from, and the applicant shall give the opposite party 7 days notice of his intended application and such notice may be given at any time during the period of 28 days.
- (3) If an application for leave is refused by the Court of Appeal or in the case of an appeal from a determination, judgment or order of the Court of First Instance referred to in section 22(1) (c), an application may be made to the Court for leave and such application shall be made by motion. (*Amended 21 of 2001 s. 53*)
- (4) Notice of a motion for the purpose of subsection (3) shall be filed within 28 days from the date on which the application for leave is refused by the Court of Appeal, and the applicant shall give the opposite party 7 days notice of his intended application and that notice may be given at any time during the period of 28 days.
- (5) The Court of Appeal or the Court, as the case may be, may, on such terms as it considers appropriate, by order extend the period within which the applicant is required or authorized by subsection (2) or (4) to do any act.
- (6) The Court of Appeal or the Court, as the case may be, may extend any such period as is referred to in subsection (5) even though the application for extension is not made until after the expiration of that period.



**15. When Member ceases to hold office**

- (1) A Member's office becomes vacant if the Member—
- (a) resigns in accordance with section 14 or is taken to have resigned from that office in accordance with section 13; or
  - (b) dies; or
  - (c) subject to subsection (2), alters either the Member's nationality or the fact as to whether the Member has a right of abode in a country other than the People's Republic of China as declared under section 40(1)(b)(ii); or
  - (d) is the President and has been found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs; or (*Replaced 25 of 2003 s. 4*)
  - (e) is declared in accordance with Article 79 of the Basic Law to be no longer qualified to hold that office.
- (1A) A person disqualified under subsection (1)(d) is eligible for re-election if, under the Mental Health Ordinance (Cap. 136), it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (*Added 25 of 2003 s. 4*)
- (2) Subsection (1)(c) does not apply to a Member elected at an election for a functional constituency specified in section 37(3) unless the Member has declared under section 40(1)(b)(ii) that he or she has Chinese nationality or has no right of abode in a country other than the People's Republic of China and subsequently he or she—
- (a) acquires a nationality other than Chinese nationality; or
  - (b) acquires a right of abode in a country other than the People's Republic of China.
- (3) For the purposes of subsection (1)(e), the kind of misbehaviour for which a Member may be censured under Article 79(7) of the Basic Law includes (but is not limited to) a breach of an oath given under section 40(1)(b)(iii).

Note: Article 79 of the Basic Law provides as follows:

The President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When he or she, with no valid reason, is absent from meetings for three consecutive months without the consent of the President of the Legislative Council;
- (3) When he or she loses or renounces his or her status as a permanent resident of the Region;
- (4) When he or she accepts a government appointment and becomes a public servant;
- (5) When he or she is bankrupt or fails to comply with a court order to repay debts;
- (6) When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present; and
- (7) When he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present.

**17. Proceedings of Legislative Council not affected by vacancy in membership**

- (1) A vacancy in the membership of the Legislative Council does not affect its power to transact business.
- (2) Neither a vacancy in the membership of the Legislative Council nor a defect in the election of a Member, or as to the eligibility of a person to be a Member, affects the validity of its proceedings.
- (3) For the purposes of this section, a vacancy in the membership of the Legislative Council includes a vacancy in its membership when it first meets after a general election.

**39. When person is disqualified from being nominated as a candidate and from being elected as a Member**

- (1) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person—
  - (a) is—
    - (i) a judicial officer; or
    - (ii) a prescribed public officer; or
    - (iii) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; or  
*(Amended 48 of 1999 s. 24)*
  - (b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—

- (i) served the sentence or undergone such other punishment as a competent authority may have been substituted for the sentence; or
- (ii) received a free pardon; or
- (c) has been convicted of treason; or
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or
- (e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted—
  - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
  - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
  - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or (*Replaced 10 of 2000 s. 47*)
- (f) is—
  - (i) ineligible to be a candidate, or to be elected as a Member, at the election; or
  - (ii) disqualified from being a candidate, or from being elected as a Member, at the election, because of the operation of this or any other law; or
- (g) is a representative or salaried functionary of a government of a place outside Hong Kong; or
- (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national or local level; or
- (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full. (*Amended 25 of 2003 s. 22*)

- (2) A person is also disqualified from being nominated as a candidate at an election if the person has been found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. *(Replaced 25 of 2003 s. 22)*
- (2A) A person is also disqualified from being nominated as a candidate at a by-election if—
- (a) within the 6 months ending on the date of the by-election—
- 
- (i) the person's resignation under section 14 as a Member took effect; or
- (ii) the person was taken under section 13(3) to have resigned from office as a Member; and
- (b) no general election was held after the relevant notice of resignation or notice of non-acceptance took effect. *(Added 12 of 2012 s. 3)*
- (3) A person is also disqualified from being elected as a Member if the person has been found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. *(Replaced 25 of 2003 s. 22)*
- (4) A person is also disqualified from being elected as a Member for a functional constituency (other than the District Council (first) functional constituency and the District Council (second) functional constituency) if, since the close of nominations, the person has ceased to have a substantial connection with the constituency. *(Amended 2 of 2011 s. 17)*
- (5) In this section—
- judicial officer** (司法人員) means the holder of a judicial office, as defined in section 2 of the Public Service Commission Ordinance (Cap. 93);
- prescribed public officer** (訂明的公職人員) means any of the following—
- (a) the Chairman of the Public Service Commission;

- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap. 204);
- (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap. 397);
- (d) a member of the Electoral Affairs Commission;
- (e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (ea) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap. 486); (*Added 48 of 1999 s. 24*)
- (eb) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap. 480); (*Added 48 of 1999 s. 24*)
- (f) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

**65. Period within which election petition and appeal must be lodged**

*(Amended 18 of 2011 s. 8)*

- (1) An election petition questioning an election may be lodged only during the period of 2 months following the date on which the Returning Officer has published the result of the election in the Gazette. (*Amended 18 of 2011 s. 8*)
- (2) Despite section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(c) of that Ordinance must be filed within 14 working days after the date on which the written judgment of the Court to be appealed from is handed down, and the applicant must give the opposite party 3 days' notice of his or her intended application at any time during the period of 14 working days. (*Added 18 of 2011 s. 8*)

**73. Proceedings against persons on grounds of disqualification**

- (1) An elector, or the Secretary for Justice, may bring proceedings in the Court against any person who is acting, claims to be entitled to act, as a Member on the ground that the person is disqualified from acting as such.
- (2) Proceedings under this section may not be brought after 6 months from the date on which the person concerned acted, or claimed to be entitled to act, as a Member.
- (3) If, in proceedings brought under this section, it is proved that the defendant acted as a Member while disqualified from acting in that office, the Court may—
  - (a) make a declaration to that effect; and
  - (b) grant an injunction restraining the defendant from so acting; and
  - (c) order the defendant to pay to the Government such sum as the Court thinks appropriate, not exceeding \$5,000 for each occasion on which the person so acted while disqualified.
- (4) If, in proceedings brought under this section, it is proved that the defendant claimed to be entitled to act as a Member while disqualified from acting in that office, the Court may—
  - (a) make a declaration to that effect; and
  - (b) grant an injunction restraining the defendant from so acting.
- (5) Proceedings brought under this section by a person other than the Secretary for Justice are to be stayed until the person has given security for all costs that the person may be ordered to pay to any witness giving evidence in the proceedings on that person's behalf or to a defendant.
- (6) The amount of security to be given under this section—
  - (a) is to be determined by the Court, but must not exceed \$20,000; and
  - (b) is to be in such manner and form as the Court directs.
- (7) Proceedings against a person on the ground that the person has, while disqualified from acting as, or claimed to have been entitled to act, as a Member may be brought only in accordance with this section.
- (8) For the purposes of this section, a person is disqualified from acting as a Member if the person—
  - (a) is not qualified to be, or is disqualified from being, a Member; or
  - (b) has ceased to hold office as a Member.

**19. Disqualification of ex officio members**

- (1) A person who is a Chairman of a Rural Committee is disqualified from holding office as an ex officio member, if the person—
- (a) is—
    - (i) a judicial officer; or
    - (ii) a prescribed public officer; or
  - (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
    - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
    - (ii) received a free pardon; or
  - (c) has been convicted of treason; or
  - (d) without limiting paragraph (b), where the term of office is to begin within 5 years after the date of the person's conviction, has been convicted, or is convicted after the beginning of the term of office—
    - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
    - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
    - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
    - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or (*Replaced 10 of 2000 s. 47*)
  - (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
  - (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or

- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full. (*Amended 33 of 2002 s. 6*)
- (2) An ex officio member is also disqualified from holding office if the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs. (*Amended 33 of 2002 s. 6*)
- (3) Subsection (2) does not prevent a person from holding office as an ex officio member if subsequently it is found under the Mental Health Ordinance (Cap. 136) that the person has become capable of managing and administering his or her property and affairs. (*Amended 33 of 2002 s. 6*)
- (4) Subject to subsection (6), an ex officio member is also disqualified from holding office until the members elected at the next ordinary election commence their term of office if the member does not attend meetings of the District Council for 4 consecutive months (*disqualifying period*) without obtaining the consent of the Council before the end of that period.
- (5) The disqualifying period under subsection (4) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.
- (6) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

**21. When person is disqualified from being nominated as a candidate and from being elected as an elected member**

- (1) A person is disqualified from being nominated as a candidate at an election, and from being elected as an elected member, if the person—
  - (a) is—
    - (i) a judicial officer; or
    - (ii) a prescribed public officer; or
  - (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
    - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or



- (ii) received a free pardon; or
- (c) has been convicted of treason; or
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or
- (e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted—
  - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
  - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
  - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or (*Replaced 10 of 2000 s. 47*)
- (f) is ineligible to be a candidate or to be elected as an elected member because of the operation of this Ordinance or any other law; or
- (g) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full.

- (2) A person is also disqualified from being nominated as a candidate at an election if the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs.
- (3) A person is also disqualified from being elected as an elected member if the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs.

*(Amended 33 of 2002 s. 7)*

#### **24. Disqualification of elected members**

- (1) An elected member is disqualified from holding office if the member—
  - (a) becomes—
    - (i) a judicial officer; or
    - (ii) a prescribed public officer; or
  - (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
    - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
    - (ii) received a free pardon; or
  - (c) has been convicted of treason; or
  - (d) without limiting paragraph (b), after being elected, is convicted—
    - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
    - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or

- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
  - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or (*Replaced 10 of 2000 s. 47*)
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
  - (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
  - (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full. (*Amended 33 of 2002 s. 8*)
- (2) Subsection (1)(d) does not prevent a person from being eligible to be a candidate at an election to be held 5 years after the disqualification.
  - (3) An elected member is also disqualified from holding office if the person is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs. (*Amended 33 of 2002 s. 8*)
  - (4) Subsection (3) does not prevent a person from being eligible to be a candidate at an election if subsequently it is found under the Mental Health Ordinance (Cap. 136) that the person has become capable of managing and administering his or her property and affairs. (*Amended 33 of 2002 s. 8*)
  - (5) Subject to subsection (7), an elected member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months (*disqualifying period*) without obtaining the consent of the Council before the end of that period.
  - (6) The disqualifying period under subsection (5) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.
  - (7) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

- (8) An elected member is also disqualified from holding office if the person was not eligible to be nominated as a candidate under section 20.

**72. Proceedings of a District Council or a committee not affected by vacancy or defect in membership**

- (1) A vacancy in the membership of a District Council does not affect its power to transact business.
- (2) The validity of proceedings of a District Council are not affected by—
- (a) a vacancy in the membership of the District Council;
  - (b) a defect in the election of a member; (*Amended 3 of 2013 s. 10*)
  - (c) a defect as to the eligibility of a person to be a member.
- (3) The validity of proceedings of a committee are not affected by a defect in the appointment of or eligibility of a person to be a member of the committee.
- (4) For the purposes of this section—
- (a) a vacancy in the membership of a District Council includes a vacancy in its membership when it first meets after an ordinary election; and
  - (b) a defect in the eligibility of a person to be an ex officio member includes failure to swear acceptance of office. (*Amended 3 of 2013 s. 10*)

**79. Proceedings against persons on grounds of disqualification**

- (1) The Secretary for Justice may bring proceedings in the Court against any person who is acting or claims to be entitled to act, as a member on the ground that the person is disqualified from acting as such.
- (2) Proceedings under this section may not be brought after 6 months from the date on which the person concerned acted or claimed to be entitled to act as a member.
- (3) If, in proceedings brought under this section, it is proved that the defendant acted as a member while disqualified from acting in that office, the Court may—
- (a) make a declaration to that effect; and
  - (b) grant an injunction restraining the defendant from so acting; and

- (c) order the defendant to pay to the Government such sum as the Court thinks appropriate, not exceeding \$5,000 for each occasion on which the person so acted while disqualified.
- (4) If, in proceedings brought under this section, it is proved that the defendant claimed to be entitled to act as a member while disqualified from acting in that office, the Court may—
- (a) make a declaration to that effect; and
  - (b) grant an injunction restraining the defendant from so acting.
- (5) Proceedings against a person on the ground that the person has acted, while disqualified from acting, or claimed to have been entitled to act, as a member may be brought only in accordance with this section and by the Secretary for Justice.
- (6) For the purposes of this section, a person is disqualified from acting as a member if the person—
- (a) is not qualified to be, or is disqualified from being, a member; or
  - (b) has ceased to hold office as a member.

**14. Disqualification from being nominated**

Without prejudice to section 13(1)(c) of the Electoral Affairs Commission Ordinance (Cap. 541), a person is disqualified from being nominated as a candidate if—

- (a) he is the Chief Executive and holds the office of the Chief Executive for the second consecutive term;
- (b) he is a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92);
- (c) he is a prescribed public officer;
- (d) he is adjudged bankrupt under the Bankruptcy Ordinance (Cap. 6) and has not been discharged under section 30A or 30B of that Ordinance;
- (e) he holds a passport or similar travel document other than—
  - (i) a Hong Kong Special Administrative Region Passport issued under the Hong Kong Special Administrative Region Passports Ordinance (Cap. 539);
  - (ii) a certificate of identity within the meaning of the Immigration Ordinance (Cap. 115); or
  - (iii) any entry permit issued by an authority in any part of the People's Republic of China which authorizes its holder to enter any part of the People's Republic of China;
- (f) he has, in Hong Kong or any other place, been sentenced to death and has not either—
  - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
  - (ii) received a free pardon;
- (g) he has been convicted of treason;
- (h) he has been convicted—
  - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;

- (ii) of having engaged in corrupt conduct or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);
- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
- (iv) of any offence prescribed by the EAC Regulations made for the purposes of this paragraph, within the 5 years before the date of nomination; or
- (i) he is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs.

**20. Disqualification from being elected**

- (1) If, after the close of nominations but before the close of polling, proof is given to the satisfaction of the Returning Officer that—
  - (a) a candidate does not satisfy the requirement in section 13(a), (b), (c) or (d);
  - (b) a candidate falls within any paragraph (except paragraph (h)) of section 14;
  - (c) a candidate is or has been convicted, within the 5 years before the polling date, in the manner prescribed by subparagraph (i), (ii), (iii) or (iv) of section 14(h); or
  - (d) the nomination of a candidate does not comply with this Ordinance,
 the Returning Officer shall, by a public declaration, disqualify the candidate from being elected at the election.
- (2) A declaration made under subsection (1) shall be published in the Gazette as soon as practicable after it is made.

### Schedule 3

[s. 5]

#### **Occasions on which National Anthem must be Played and Sung**

1. Oath-taking Ceremony—
  - (a) for taking the Oath of the Chief Executive under section 16A of the Oaths and Declarations Ordinance (Cap. 11);
  - (b) for taking the Oath of the Principal Officials under section 16B of that Ordinance;
  - (c) for taking the Judicial Oath under section 17 of that Ordinance;
  - (d) for taking the Oath of Fidelity and the Executive Council Oath under section 18 of that Ordinance; or
  - (e) for taking the Legislative Council Oath under section 19 of that Ordinance
2. A national flag raising ceremony, including—
  - (a) Flag Raising Ceremony held by the Government at Golden Bauhinia Square;
  - (b) Flag Raising Ceremony held by the Government to celebrate the Anniversary of the Founding of the People's Republic of China; and
  - (c) Flag Raising Ceremony held by the Government to celebrate the Anniversary of the Establishment of the Hong Kong Special Administrative Region of the People's Republic of China
3. National Day Reception held by the Government to celebrate the Anniversary of the Founding of the People's Republic of China
4. Reception held by the Government to celebrate the Anniversary of the Establishment of the Hong Kong Special Administrative Region of the People's Republic of China
5. Ceremony held by the Government to commemorate the victory day of Chinese people's war of resistance against Japanese aggression
6. Ceremony held by the Government to commemorate those who died in the defence of Hong Kong



7. Ceremony held by the Government on Nanjing Massacre National Memorial Day
8. A major sporting event held by the Government
9. Ceremonial Opening of the Legal Year

**14. Appeals in civil matters**

- (1) Subject to subsection (3) and section 14AA, an appeal shall lie as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil cause or matter. (*Amended 25 of 1998 s. 2; 3 of 2008 s. 24*)
- (2) (*Repealed 52 of 1987 s. 10*)
- (3) No appeal shall lie—
  - (a) from an order of the Court of First Instance allowing an extension of time for appealing from a judgment or order; (*Amended 25 of 1998 s. 2*) [*cf. 1925 c. 49 s. 31 U.K.*]
  - (b) (*Repealed 52 of 1987 s. 10*)
  - (c) from a judgment or order of the Court of First Instance, where it is provided by any Ordinance or by rules of court that the same is to be final; (*Amended 25 of 1998 s. 2*)
  - (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;
  - (e) without the leave of the court or tribunal in question or of the Court of Appeal, from an order of the Court of First Instance or any other court or tribunal made with the consent of the parties or relating only to costs which are by law left to the discretion of the court or tribunal; (*Replaced 52 of 1987 s. 10. Amended 25 of 1998 s. 2*) [*cf. 1981 c. 54 s. 18 U.K.*]
- (ea) except as provided by the Arbitration Ordinance (Cap. 609), from any judgment or order of the Court of First Instance— (*Amended 25 of 1998 s. 2; 17 of 2010 s. 112*)
  - (i) under section 15(2) of that Ordinance refusing to direct an issue to be determined in accordance with an arbitration agreement; (*Replaced 17 of 2010 s. 112*)
  - (ii) under section 20(1) or (2) of that Ordinance refusing to refer the parties to arbitration; (*Replaced 17 of 2010 s. 112*)

- (iii) under section 60(1) of that Ordinance directing the sale of property; *(Added 17 of 2010 s. 112)*
  - (iv) under section 81 of that Ordinance to set aside an arbitral award; *(Added 17 of 2010 s. 112)*
  - (v) under section 84, 87 or 92 of that Ordinance to grant or refuse leave to enforce an arbitral award; *(Added 17 of 2010 s. 112)*
  - (vi) under section 3 of Schedule 2 to that Ordinance on a question of law arising in the course of arbitral proceedings; *(Added 17 of 2010 s. 112)*
  - (vii) under section 4 of Schedule 2 to that Ordinance on a challenge against an arbitral award on the ground of serious irregularity; *(Added 17 of 2010 s. 112)*
  - (viii) under section 5 or 6 of Schedule 2 to that Ordinance on a question of law arising out of an arbitral award; *(Added 17 of 2010 s. 112)*
  - (ix) under section 7(2) and (3) of Schedule 2 to that Ordinance for an arbitral tribunal to state the reasons for its award and on related costs; *(Added 17 of 2010 s. 112)*
  - (x) under section 7(4) and (6) of Schedule 2 to that Ordinance on the giving of security for the costs of an application to challenge an arbitral tribunal or an appeal on a question of law arising out of an arbitral award, and for the money payable under the award pending the determination of the application or appeal; or *(Added 17 of 2010 s. 112)*
  - (xi) under section 7(7) of Schedule 2 to that Ordinance to impose conditions on granting leave to appeal on a question of law arising out of an arbitral award; *(Added 17 of 2010 s. 112)*
- (Added 52 of 1987 s. 10)*
- (eb) from a decision of the Court of First Instance in respect of which a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and leave to appeal is granted under section 27D of that Ordinance in any proceedings; *(Added 11 of 2002 s. 6)*

- (f) without the leave of the Court of First Instance or the Court of Appeal, from a judgment or order of the Court of First Instance given or made in summarily determining under rules of court any question at issue in interpleader proceedings: (*Amended 25 of 1998 s. 2*)  
Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury; (*Amended 21 of 2001 s. 48*)
- (g) from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). (*Added 21 of 2001 s. 48*)
- (4) Rules of court made under section 54 may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interlocutory. (*Added 52 of 1987 s. 10*)  
[*cf. 1981 c. 54 s. 60 U.K.*]
- (5) No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that court, final or interlocutory. (*Added 52 of 1987 s. 10*)

**7. Regulations**

- (1) The Commission may, by regulation, provide for the following
- 
- (a) the—
- (i) registration of electors;
  - (ii) determination (where applicable) of—
    - (A) the appropriate constituency; (*Amended 2 of 2003 s. 68*)
    - (B) in the case of the Election Committee, the appropriate sectors or subsectors; or (*Amended 21 of 2001 s. 59; 2 of 2003 s. 68*)
    - (C) for an election held for electing a Rural Representative for a Rural Area, the appropriate Rural Area or Rural Areas, (*Replaced 5 of 2014 s. 64*)for such registration;
  - (iii) form, compilation, revision and correction, and the manner of publication of the register of persons entitled under any electoral law to vote at an election; and
  - (iv) ascertainment of qualifications of electors;
- (b) the conduct or supervision of, and procedure at any election;
- (c) the conduct or supervision of, and procedure for the formation of, or the filling of vacancies in the membership of, the Election Committee; (*Amended 21 of 2001 s. 59*)
- (d) without limiting the generality of paragraphs (b) and (c)
- 
- (i) the procedure for the nomination of candidates in an election, including provision for consent by a candidate for nomination, and withdrawal of a nomination;
  - (ii) the procedure for lodging a deposit in respect of the nomination of a candidate;

- (iii) the appointment by the candidate, of agents and other persons to assist him in an election and matters relating to such appointments;
  - (iv) the designation of polling stations;
  - (v) the supervision of polling stations and the regulation of the ballot;
  - (vi) the procedure or procedures for voting and counting at an election;
  - (vii) the designation and supervision of counting stations;
  - (viii) the declaration and publication of results of an election;
  - (ix) the disposal of ballot or other papers after an election; and
  - (x) the making of a report to the Commission by any person, or any person specified in the regulations, regarding any occurrence considered by such a person as an irregularity relating to an election, the poll or a counting of the votes;
- (e) the appointment and conduct of persons authorized to incur election expenses on behalf of candidates; *(Amended 11 of 2012 s. 5)*
  - (ea) the matters relating to the display or use of election advertisements or other publicity materials relating to an election and matters relating to grant of relief by the Court of First Instance in respect of election advertisements; *(Added 11 of 2012 s. 5)*
  - (f) the Commission or such other person specified in the regulations to require any information reasonably required in respect of any matter referred to in paragraph (a), from a person or a class or description of persons specified in the regulations;
  - (g) the establishment or appointment of committees (including or consisting of a person or persons other than members of the Commission) and provide for the functions, proceedings and regulation of those committees;
  - (h) the termination of proceedings for an election on the ground of the death or disqualification of a candidate; *(Amended 8 of 1999 s. 89)*
  - (ha) the declaration of failure of an election; *(Added 48 of 1999 s. 51)*

- (hb) the procedure to implement the scheme for the payment of financial assistance set out in Part 6A of the Legislative Council Ordinance (Cap. 542), including, in particular, the procedure for— (*Amended E.R. 2 of 2012*)
  - (i) making or withdrawing claims for financial assistance;
  - (ii) repaying to the Government amounts or parts of amounts paid as financial assistance;
  - (iii) supporting and verifying claims for financial assistance;
  - (iv) making a payment of financial assistance to a candidate or in respect of a list of candidates;
  - (v) making a claim for financial assistance in respect of the estate of a deceased person, the payment of financial assistance on such a claim, and the taking of any action for those purposes by a legal personal representative of a deceased person or by such other person as specified in the regulations; (*Added 25 of 2003 s. 52*)
  
- (hc) the procedure to implement the scheme for the payment of financial assistance set out in Part VA of the District Councils Ordinance (Cap. 547), including, in particular, the procedure for—
  - (i) making or withdrawing claims for financial assistance;
  - (ii) repaying to the Government amounts or parts of amounts paid as financial assistance;
  - (iii) supporting and verifying claims for financial assistance;
  - (iv) making a payment of financial assistance to a candidate; and
  - (v) making a claim for financial assistance in respect of the estate of a deceased person, the payment of financial assistance on such a claim, and the taking of any action for those purposes by a legal personal representative of a deceased person or by such other person as specified in the regulations; (*Added 1 of 2007 s. 10*)
  
- (i) the determination or specification of forms; and
- (j) generally providing for the better carrying into effect the provisions and purposes of this Ordinance or any electoral law.

- (1A) The Commission may by regulation—
- (a) prescribe offences for the purposes of section 14(h) of the Chief Executive Election Ordinance (Cap. 569);
  - (b) specify the form and manner of nomination of a candidate for the purposes of section 16(1) of the Chief Executive Election Ordinance (Cap. 569);
  - (c) provide for withdrawal of candidature for the purposes of section 19(2) of the Chief Executive Election Ordinance (Cap. 569);
  - (d) provide for the postponement or adjournment of a poll or the counting of votes in respect of a poll under section 21 of the Chief Executive Election Ordinance (Cap. 569) and the appointment of a new date for the poll or the count. (*Added 21 of 2001 s. 59*)
- (2) Subject to subsection (3), the Commission may make regulations to provide for the postponement or adjournment of —
- (a) an election;
  - (b) the poll; or
  - (c) the counting of votes (*the count*),  
where the Commission or any person specified in the regulations is of the opinion that the election, the poll or the count is likely to be or is being obstructed, disrupted or undermined or seriously affected by—
    - (i) a typhoon or other climatic condition of a serious nature;
    - (ii) riot or open violence or any danger to public health or safety; or (*Amended 12 of 2014 s. 80*)
    - (iii) an occurrence which appears to the Commission or the specified person to be a material irregularity relating to the election, the poll or the count.
- (3) Subsection (2) shall not be construed as empowering the Commission to postpone or adjourn—
- (a) a general election;
  - (b) (*Repealed 78 of 1999 s. 7*)
  - (ba) an ordinary election; or (*Added 8 of 1999 s. 89*)
  - (c) the poll (at all the polling stations) or the count in respect of a general election or an ordinary election, (*Amended 78 of 1999 s. 7*)  
on any ground referred to in subsection (2)(ii). (*Amended 8 of 1999 s. 89*)
- (4) The Commission may by regulation provide for—



- (a) the appointment of a new date—
  - (i) for an election, the poll or the count postponed or adjourned pursuant to subsection (2); and
  - (ii) which shall be not later than 14 days after the original date fixed for the election, the poll or the count, as the case may be; (*Amended 12 of 2014 s. 80*)
- (b) the procedure for the postponement or adjournment of a general election or an ordinary election or the poll or the count in respect of a general election or an ordinary election, on any ground referred to in subsection (2)(ii) by the authority or person who has power under any electoral law to effect the postponement or adjournment, and the procedure for the appointment of a new date for the election, the poll or the count by that authority or person. (*Amended 8 of 1999 s. 89; 48 of 1999 s. 51; 78 of 1999 s. 7*)
- (c) (*Repealed 48 of 1999 s. 51*)
- (5) Regulations under this section may provide that any contravention of a requirement in or made under the regulations is an indictable or summary offence and is punishable by a fine not exceeding level 3 and imprisonment not exceeding 2 years. (*Amended 8 of 1999 s. 89; 12 of 2014 s. 176; 1 of 2019 s. 3*)
- (6) Regulations under this section may provide that—
  - (a) where a body corporate is convicted of an offence under these regulations and the offence is proved to have been committed with the consent, connivance of, or was attributable to the neglect or omission on the part of a director, manager, secretary or any other person concerned in the management of the body corporate, the director, manager or secretary or that other person is liable for the offence; and
  - (b) where a partner of a partnership is convicted of an offence and it is proved that the offence was committed with the consent or connivance of, or was attributable to the neglect or omission on the part of any other partner or person concerned in the management of the partnership, the partner or that other person is liable for the offence.

- (7) In this section, **constituency** (選區或選舉界別) means—
- (aa) a District Council constituency; (*Added 12 of 2014 s. 107*)
    - (a) a geographical constituency; or
    - (b) a constituency of any other description by which one or more members may be returned to the Legislative Council under any electoral law.