

CHAPTER 3

FUNCTIONAL CONSTITUENCIES

PART I : COMPOSITION

3.1 This chapter describes the FCs and the features relating to electoral procedure that electors of FCs may need to know. Electors of the GCs may refer to Chapter 2 : Geographical Constituencies.

3.2 In the general election for the fourth term of the LegCo, the 28 FCs are to return 30 of the 60 members of the LegCo. *[Amended in July 2008]*

3.3 The electorates of the 28 FCs are from particular professional, industrial or trade groups, etc. Except the Labour FC that is to return 3 members to LegCo, each of the other 27 FCs will return 1 member [s 21 of the LCO]. The FCs and their electors are provided for in ss 20A to 20ZB of and Schedules 1 to 1E to the LCO, and are set out in **Appendix B**.

PART II : REGISTRATION OF ELECTORS

Eligibility to Vote

3.4 Only a registered elector, ie a person whose name appears on the final register of FC which is in force at the time of the election is eligible to vote. An elector may vote at an election in respect of an FC if he is registered as an elector in that constituency [s 48 of the LCO].

Qualification for Registration as an Elector

The 28 FCs [s 25 of the LCO]

3.5 Two kinds of persons (ie a natural person (individual) and a body) are eligible to be registered as FC electors. A person who is one specified in column 2 of Appendix B opposite an FC is eligible to be registered as an elector for that FC but if the person is an individual, he must **also** be either registered for a GC or eligible to be registered for a GC and has made an application to be so registered. (For registration as an elector for a GC, please refer to para. 2.4 of Chapter 2.)

3.6 If a person is **already registered** in the existing final register for one of the 28 FCs in Appendix B and is eligible to be, and not disqualified from, being registered as an elector for the FC, then his/its name and address will be repeated in the next provisional register for FCs, and he/it **need not apply** to be registered.

3.7 A body specified in item 3, 12, 20, 21(1), 22(2), (4), (5), (10) or (11), 23(1) to (3), 24(4) or (5), 26(14) or 27(1) of Appendix B is eligible to be registered as a corporate elector for the relevant FC only if it has been operating for the 12 months immediately before making its application for registration as an elector. *[Amended in October 2007]*

3.8 A body that is a corporate member of a representative organisation specified in item 2(1), 14 to 19, 21(2), 22(1) or (7) to (9), 23(5), 24(1) or (2), 25 or 26(10), 12(a) or (13) of Appendix B is eligible to be registered as a corporate elector for the relevant FC if it has been a corporate member of the representative organisation and has been operating for the 12 months immediately before making its application for registration as an elector.

3.9 An individual who is a member of a representative organisation specified in item 14, 17, 18, 22(7) to (9), 23(5), 24(3) or 25 of Appendix B is eligible to be registered as an elector for the relevant FC only if the person has been a member of the body for the 12 months immediately before making an application for registration as an elector. *[Amended in October 2007]*

3.10 No person may be registered in 2 or more FCs. If he/it is eligible to be registered in 2 or more FCs, except any one of the 4 FCs shown in the following paragraph, he/it may choose to be registered in any one of the FCs.

3.11 A person who is eligible to be registered in one of the following 4 FCs, and if he wants to be registered as an FC elector, has **no choice** but to be registered in that FC although he may be eligible for any other FC. The voting system for these 4 FCs is different from that for the other 24 FCs [see paras. 3.28-3.30 below]:

- (a) Heung Yee Kuk FC,
- (b) Agriculture and Fisheries FC;
- (c) Insurance FC; and
- (d) Transport FC.

These 4 special FCs (FCs specified in s 20(1)(a) to (d) of the LCO) (items 1 - 4 of Appendix B) are referred to as “SFCs” below.

Authorised Representative [s 26 of the LCO]

3.12 A corporate elector is required to select an eligible individual to be its authorised representative (“AR”) for the purpose of casting its vote at any election, otherwise it cannot vote [see also s 48(8) of the LCO]. An individual is eligible to be appointed as an AR of a corporate elector only if he:

- (a) is registered, or eligible to be and has applied to be registered, as an elector of a GC;
- (b) is a member, partner, officer or employee of the corporate elector or has a substantial connection with it;
- (c) is not registered, and has not applied to be registered, as an elector for the FC of the corporate elector; and
- (d) is not disqualified from being registered or voting under s 31 or 53 of the LCO [see para. 3.15 below].

3.13 An AR of a corporate elector is not eligible to be selected as the AR of another corporate elector.

3.14 An AR must be registered with the ERO. **A corporate elector is required to give notice of appointment of its AR to the ERO in its application form for registration as a corporate elector.** It may thereafter from time to time appoint a replacement AR by sending a specified form to reach the ERO not later than 14 days before the polling day of its FC. If the ERO is satisfied that the AR is dead or seriously ill or physically or mentally incapacitated, the deadline of 14 days for replacement is extended to 3 working days before the relevant polling day [s 20 of the EAC (ROE) (FCSEC) Reg].

Disqualifications

3.15 A natural person is disqualified from being registered as an elector and voting at an election for an FC or as an AR if he :

- (a) has ceased to be eligible to be registered as an elector for the GC;
- (b) has ceased to remain qualified for the FC (this does not apply to an AR or an elector for a GC);
- (c) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or any substitute sentence or received a free pardon;
- (d) on the polling day, is serving a sentence of imprisonment;
- (e) is or has been convicted of the following offences within 3 years before the polling day:
 - (i) of having engaged in corrupt or illegal conduct in contravention of the ECICO, or
 - (ii) of an offence against Part II of the POBO, or
 - (iii) of any offence prescribed by regulations in force under the EACO, eg the provision of false information to the ERO;
- (f) 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; or

(g) is a member of any armed forces.

[Ss 31 and 53 of the LCO.]

Roll-over of Electors

3.16 If an individual has been an elector in the FC final register, his name and residential address will be repeated in the next provisional register for FCs and he does not need to make any application for registration, unless he is no longer eligible to be a GC elector or has ceased to be eligible to be an elector of the relevant FC. The same rules apply to a corporate body whose name and particulars have appeared in the existing final register of the relevant FCs.

Application for Registration

3.17 The registration of electors is undertaken in accordance with the provisions of the EAC (ROE) (FCSEC) Reg.

3.18 A person (either an individual or a body) may send in his application for voter registration on the specified form to the ERO any time in the year. However, for inclusion of his name in the final register to be published on or before 25 July in a non DC election year (or 25 September in a DC election year), his application form must be received by the ERO **on or before 16 May of that year** (or 16 July in a DC election year).

3.19 The ERO will process the application forms after they have been received. An applicant who qualifies for registration will be allocated to the relevant FC, as appropriate, in accordance with his qualification and choice (if so entitled). Closer to the polling day, he will also be allocated to the appropriate polling station on the basis of his residential address and the

respective constituencies in which he is registered, and he will be notified in writing. The ERO will send written inquiries to applicants to seek further information or proof if the information on their applications is incomplete or incorrect. Applicants who are not qualified for registration will also be informed by registered mail.

3.20 The name and residential address of all eligible applicants will be entered in the registers of electors, including the name and business address of the relevant body, and the name of the AR of the body.

Change of Residential Address

3.21 It will not be necessary for a registered elector to re-apply for registration every year unless he has changed his residential address. In such a case, he **must notify** the ERO of his new address in Hong Kong to ensure that he will be registered in the current register of electors. **If he fails to do so, his name and particulars may be removed from the register.** A registered elector should also notify the ERO of any change of his circumstances that may affect his eligibility (eg his connection with a particular FC). Based on such information from the elector, the ERO will decide whether he remains eligible to be registered, and if so, in which constituency.

3.22 If the elector has emigrated overseas and ceased to be a permanent resident of Hong Kong or ceased to ordinarily reside in Hong Kong, his name may also be removed from the register of electors.

Changes of Other Personal Particulars

3.23 Any registered elector who has changed his other personal particulars (eg name), or has ceased to be a permanent resident of Hong Kong or ceased to ordinarily reside in Hong Kong, should also notify the ERO. An

elector should notify the ERO of any change of any of his particulars in writing or by sending in a new registration form with the altered particulars. If the elector wishes to have the alteration of his particulars effected in the next final register of electors, he **must notify** the ERO as soon as possible and the **latest by 29 June in a non DC election year** (or 29 August in a DC election year). An elector who has reported change of particulars will be sent a notice by the ERO showing his updated electoral record [s 26 of the EAC (ROE) (FCSEC) Reg].

The Provisional Registers

3.24 The provisional register for FCs will be published **not later than 15 June in a non DC election year** (or 15 August in a DC election year). It includes:

- (a) the names and addresses of those electors whose names appear in the relevant register currently in force, updated and corrected by the ERO based on reported or available information;
- (b) the names and addresses of the eligible new applicants who have applied for registration in the constituency concerned on or before 16 May of that year (or 16 July in a DC election year); and
- (c) the names of the ARs of the corporate electors.

The provisional registers will be **available for public inspection** at the REO and certain District Offices, as specified in the Gazette notice of publication for a period after its publication and on or before the appeal deadline referred to in para. 3.26 below [ss 27 and 29 of the EAC (ROE) (FCSEC) Reg].

The Omissions List

3.25 By the time when the provisional registers are published, the ERO will also publish an omissions list each in respect of FCs containing the names and addresses of persons who were formerly registered as FC electors, but are struck out from the provisional register and proposed to be omitted from the next final register, based on the information received by the ERO who is satisfied on reasonable grounds that the concerned persons are no longer eligible to be registered or are disqualified. The names and addresses of the persons included in the omissions list will not appear on the provisional register.[s 32(4)(a) and (b) of the LCO and ss 24 and 25 of the EAC (ROE) (FCSEC) Reg].

Appeals – Objections and Claims

3.26 Members of the public may lodge with the ERO objections as regards entries in the relevant provisional register **not later than 29 June in a non DC election year** (or 29 August in a DC election year). On or before that date, a dissatisfied applicant or a person whose name has been included in the omissions list may lodge a claim in respect of the entry or any omission concerning himself/itself. Cases of objections and claims will be referred to the Revising Officer for consideration. The Revising Officer, who is a member of the Judiciary, will rule on each objection or claim and decide on the inclusion, exclusion or correction of the entry concerned in the relevant final register [s 34 of the LCO and Part VI of the EAC (ROE) (FCSEC) Reg].

The Final Registers

3.27 The final register for FCs will be published **on or before 25 July in a non DC election year** (or 25 September in a DC election year). It includes the entries in the relevant provisional register, the updated names and

addresses of electors who have applied to alter their particulars on or before 29 June of that year (or 29 August in a DC election year), and the names and addresses of those who were subject to a notice of objection or claim, updated and corrected to reflect the decisions of the Revising Officer as appropriate. The ERO will have also taken the opportunity to delete those entries of electors who are known to be dead and to correct any mistakes in the relevant provisional register. The final registers may also contain notations to show if a person registered for a GC is also registered in an FC. The final registers for FCs remain valid until the publication of the relevant final register in the following year. The final registers in force will be available for public inspection at the REO and facilities will be available at District Offices for the public to search for information in the register [s 38 of the EAC (ROE) (FCSEC) Reg].

IMPORTANT :

Information relating to a person contained in any register of electors or in any extract of any register of electors **can only be used for election-related purposes** under the electoral legislation. Any **abuse** or **misuse** of such information is an **offence** punishable with a fine at level 2 (up to \$5,000) and imprisonment for 6 months [s 42(3) of the EAC (ROE) (FCSEC) Reg].

PART III : THE VOTING SYSTEMS

3.28 Different voting systems apply to elections of different constituencies, namely,

- (a) for the 4 SFCs referred to in para. 3.11 above (items 1 – 4 of Appendix B), the preferential elimination system of voting; and
- (b) for the 24 ordinary FCs (items 5 – 28 of Appendix B), the first past the post voting system.

The Preferential Elimination System for the 4 SFCs

3.29 For each of the 4 SFCs, an elector is entitled to cast a single vote. The vote is transferable amongst the candidates nominated for the election, with the elector marking his preference or preferences for those candidates on the ballot paper against one or more of those candidates in descending order. In order to be elected, a candidate must obtain an absolute majority of the valid votes. If no candidate obtains an absolute majority of the votes at a particular stage of the counting of votes, the candidate with the least number of votes is to be eliminated at that stage, and that candidate's votes are to be transferred to the candidates then remaining in accordance with the next available preferences marked on the ballot papers. This process is to continue until one candidate obtains an absolute majority over the other candidate or candidates then remaining [s 50 of the LCO]. If, after the counting of votes is finished but before the result of an election of an FC is declared, proof is given to the satisfaction of the RO that the candidate who was successful at the election has died or is disqualified from being elected, that RO must not declare that candidate as elected and must publicly declare that the election has failed [ss 46A(3) and 50(8) of the LCO]. Details of how the votes are to be counted are set out in **Appendix C**.

The First Past the Post Voting System for the 24 Ordinary FCs

3.30 An elector of each of the 24 ordinary FCs is entitled to vote for as many candidates as there are vacancies and no more. The candidate who

obtains the greatest number of votes will be elected, followed by the next candidate who has the next greatest number of votes, and so on, until all the vacancies are filled [s 51 of the LCO]. Out of the 24 ordinary FCs, only the Labour FC has 3 seats to be filled and electors of that ordinary FC can therefore vote for up to 3 candidates. In each of the remaining 23 ordinary FCs, only 1 seat is to be filled and the elector can only vote for 1 candidate. In the event that more than 1 candidate has the equal highest number of votes, the RO will have to draw lots to determine which one of these candidates should be elected to fill the vacancy.

3.31 When the successful candidate has to be determined by the drawing of lots, 10 table-tennis balls each marked with a number from 1 to 10 will be put into an empty opaque bag, to be provided by the REO. Each candidate is to draw 1 ball from the bag. The number marked on the ball should be noted by the RO and the ball should be put back into the bag. The other candidate(s) will draw in the same way. The candidate on whom the lot falls is to be returned at the election. The RO would draw the lot on behalf of the candidate if the latter is absent at the time of drawing lots.

- (a) Where there is only 1 vacancy to be filled and there are 2 candidates, the candidate who draws the larger number from 1 to 10 will be the winner. 1 is the smallest number and 10 is the largest number.
- (b) Where there is only 1 vacancy to be filled and there are more than 2 candidates, if in the first draw, the numbers drawn by the candidates are different, then the candidate who draws the largest number will win. If, on the other hand, 2 or more of the candidates have drawn the same larger number and the remaining candidate(s) has/have drawn a smaller number, there must be a second draw. As the system of voting for the election is “first

past the post”, only those candidates who have drawn the same larger number in the first draw will participate in the second draw.

- (c) Where there are 3 candidates having an equal number of votes and there are only 2 vacancies to be filled, if the 3 candidates have obtained respectively the largest, the larger and the smallest numbers, the 2 candidates who have obtained the largest and the larger numbers should be successful in getting the 2 vacancies, and the remaining candidate will fail. If the 3 candidates have obtained respectively 2 larger equal and 1 smaller numbers, then again the 2 candidates who have obtained the larger equal numbers will be the winners to fill the 2 vacancies. If the 3 candidates have obtained respectively a larger and 2 equal smaller numbers, the candidate who has obtained the larger number will be successful and the remaining 2 candidates will participate in a second draw. The same principle will apply where there are more than 3 candidates having an equal number of votes and there are 3 vacancies to be filled as in the case of the Labour FC.

3.32 As soon as practicable after the result of the elections has been determined, the RO should publicly declare the successful candidate as elected.

3.33 In the event that before the declaration of the result of the elections, proof is given to the RO’s satisfaction that the successful candidate for a constituency has passed away or has been disqualified from being elected, the RO should not declare that candidate as elected and should declare that the election has failed or has failed to the extent that the number of candidates returned at the election was less than the number of members to be returned [ss 46A and 51(8) of the LCO].