

# Electoral Affairs Commission responds to media enquiries on nomination of candidates for 2020 Legislative Council General Election

The following is issued on behalf of the Electoral Affairs Commission:

The nomination period for the 2020 Legislative Council General Election will start on Saturday (July 18). The Electoral Affairs Commission (EAC) reminds all candidates today (July 16) that they must duly complete the nomination form and sign the declarations therein.

A spokesman for the EAC said, "Any candidates who wish to run for the election must, in accordance with Section 40(1)(b)(i) of the Legislative Council Ordinance, sign a declaration in the nomination form to the effect that the person will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region. Otherwise, he/she is not a validly nominated candidate." The spokesman emphasised that signing of the declaration is a legal requirement and all validly nominated candidates have signed the declaration in the nomination form.

In 2016, there were comments and proposals in the public arena which were deviated from "one country, two systems". There were public concerns on whether candidates fully understand and uphold the Basic Law. To ensure that all candidates clearly understand the legal requirements and responsibilities involved in making the declaration, as well as the liability for making a false statement, the EAC has prepared a Confirmation Form for signature by the candidates since the 2016 Legislative Council General Election, and has adopted the same arrangement in the Chief Executive Election, District Council Election and By-elections, Legislative Council By-elections and Rural Representative Election held thereafter. The same arrangement is also adopted in this year's Legislative Council General Election.

The Confirmation Form is not part of the nomination form. However, according to the judgment on three cases related to the Confirmation Form (HCAL 162/2016, HCAL 133/2016 and HCAL 134/2016), the Court stated that the EAC is entitled and empowered to issue the non-mandatory Confirmation Form and it is lawful for the EAC to ask a candidate to submit the Confirmation Form together with the Nomination Form on a voluntary basis. The Returning Officer is also entitled to take into account a candidate's failure to return the Confirmation Form in deciding the validity of the nomination. All candidates are required to sign the declaration in the nomination form to the effect that they will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region.

Furthermore, the judgement handed down by the Court on one of the above

mentioned cases (HCAL 162/2016) also confirmed that Returning Officers, in accordance with the Legislative Council Ordinance, have the power to determine whether the declaration made by a person seeking candidature in the nomination form that he/she will uphold the Basic Law and pledge allegiance to the HKSAR is genuine, in order to decide whether the relevant nomination is valid.

Concurrently, on June 30 this year, the Standing Committee of the National People's Congress (NPCSC) passed "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region" (the National Security Law) and listed the legislation in Annex III to the Basic Law after consulting the NPCSC's Committee for the Basic Law of the Hong Kong Special Administrative Region and the Government of the Hong Kong Special Administrative Region as required under Article 18 of the Basic Law. The National Security Law took effect upon gazettal at 11pm on June 30. Article 6 of the National Security Law 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 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China in accordance with the law". According to Section 40(1)(b)(i) of the Legislative Council Ordinance, any candidates who wish to run for the election must sign a declaration in the nomination form to the effect that the person will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region.

In accordance with Section 78 of the Legislative Council Ordinance, the EAC has appointed the Returning Officers for the five geographical constituencies and 29 functional constituencies in this Legislative Council General Election. According to Section 42A of the Legislative Council Ordinance and Section 16 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, whether a candidate's nomination is valid or not is solely determined by the Returning Officer according to the legal requirements and relevant procedures.

The spokesman reiterated that whether a candidate's nomination is valid or not is solely determined by the Returning Officer according to the legal requirements and relevant procedures. Depending on the actual circumstances of each case, the Returning Officer may seek legal advice and according to the law request the candidate to provide other information that he/she considers appropriate. The Returning Officer shall, in accordance with the law and all relevant information, determine and announce whether the nomination is valid. The EAC is not empowered nor involved in vetting the eligibility of individuals running in the elections, or deciding the validity of the nomination. The EAC will, after receiving the list of validly nominated candidates, make practical arrangements for the elections.

The EAC will continue to decide on public election matters in accordance with actual and objective considerations and related legislations. It will continue to devote full efforts, acting in accordance with an open, honest and fair principle to make reasonably practicable arrangements for public

elections.