

LABOUR ADVISORY BOARD

ELECTION OF EMPLOYEE REPRESENTATIVES 2020 —

RULES AND PROCEDURES

Introduction

1. The Labour Advisory Board (LAB) is a consultative body appointed by the Secretary for Labour and Welfare (in exercise of the authority delegated by the Chief Executive) to advise the Commissioner for Labour on matters affecting labour, including legislation and Conventions and Recommendations of the International Labour Organisation.

2. LAB comprises representatives of employers and employees respectively. Of the six employer representatives, five are nominated by major employer associations and one appointed ad personam. Of the six employee representatives, five are elected by employee unions registered under the Trade Unions Ordinance (Chapter 332 of the Laws of Hong Kong) (employee unions) (see Note 1) and one appointed ad personam. The term of office of LAB Members is two years, from 1 January to 31 December of the following year.

3. Prior to the expiry of the present term of office of LAB Members, employee unions may participate in an election to return five employee representatives. Upon appointment by the Secretary for Labour and Welfare with authority delegated by the Chief Executive, the elected representatives will become LAB Members for the coming term. The notice of appointment will also be published in the Gazette.

LAB Election of Employee Representatives

4. The current term of office of LAB Members will expire on 31 December 2020. An election will be held on **21 November 2020 (Saturday) at Mei Foo Community Hall, 1/F, Mei Foo Government Complex, 33 Mei Lai Road, Sham Shui Po, Kowloon** to return five employee representatives to LAB for the 2021 - 2022 term. For the purpose of the election, the Labour Department (LD) will issue a circular letter to all employee unions to:

- announce the election and its details, including the date, time and

venue;

- publish the election rules and procedures;
- invite all registered employee unions to nominate candidates to run for the election;
- invite employee unions that have registered as electors to appoint authorised representatives to take part in the voting on the Election Day; and
- invite employee unions that have not yet registered as electors to register and appoint authorised representatives to take part in the voting on the Election Day.

Details are set out below.

Nomination of Candidates

Eligibility

5. Nomination of candidates for the LAB Election of Employee Representatives 2020 starts on **28 September 2020 (Monday)**. Each employee union registered under the Trade Unions Ordinance on or before 16 October 2020 (Friday) is entitled to nominate **not more than five candidates** to run for the election. A candidate must be a **paid-up member** (see Note 2) of an employee union.

How to nominate

6. Nominations from employee unions must be made by **Form LAB/E1/2020** (nomination form) (see Note 3). A separate nomination form should be completed for each of the candidates nominated (see Note 4). Before completing the nomination form, the nominating party should read this “Rules and Procedures” and the “Statement of Purpose for the Collection of Personal Data” attached to the nomination form.

7. Part A of the nomination form must be stamped with the official seal of the employee union making the nomination and signed by an officer (see Note 5) of the union concerned. An officer of the candidate’s employee union should also sign a statement and stamp an official seal of the union in Part B of the nomination form to certify that the candidate is a paid-up member of that union. Moreover, the person nominated as a candidate should complete Part C of the nomination form. Please note that personal data including the particulars on the identification documents have to be collected through the nomination form so as to enable correct identification of persons nominated as candidates in activities relating to the election. The candidate shall provide LD with a recent full-face colour photograph for inclusion into the candidate list to be published by LD.

When to submit nomination form

8. Completed nomination forms must be sent to the International Liaison Division of LD (see Note 6) **on or before 20 October 2020 (Tuesday) by post** (see Note 7) **or by hand**. Submission of nomination forms by other means (e.g. by facsimile or electronic mail) will not be accepted. Nomination forms delivered by post must carry postmark dated **on or before 20 October 2020**. Nomination forms delivered by hand must reach the International Liaison Division of LD **during office hours** (see Note 8) **on or before 20 October 2020**. To allow time for any errors on the nomination forms to be corrected, employee unions are encouraged to submit their nominations well before the expiration of the nomination period. Except with the special permission of the Commissioner for Labour in exceptional circumstances, late nomination will not be accepted.

9. LD will publish a bilingual candidate list carrying a photograph of each candidate for use in activities relating to the election. The sequence of candidates on the list will be arranged according to the order of receipt of nominations by LD.

10. If no valid candidates have been nominated, further nominations from all employee unions registered as of 16 October 2020 will be invited again to fill the vacant seats. If the total number of candidates validly nominated is less than five, all the candidates will be declared elected, and further nominations from all employee unions registered as of 16 October 2020 will be invited to fill the remaining seat(s).

11. If the number of candidates validly nominated is five, all the candidates will be declared elected. Voting is not required.

12. If the number of candidates validly nominated exceeds five, employee unions that have registered as electors and appointed authorised representative(s) will be invited to participate in a secret ballot to elect five LAB employee representatives.

Withdrawal of Candidature

13. Any candidate wishing to withdraw candidature must complete and sign **Form LAB/EW/2020** (notice of withdrawal of candidature) (see Note 3). An officer of the nominating employee union should also complete and sign that notice of withdrawal of candidature and stamp an official seal of the union to acknowledge the candidate's withdrawal. The completed notice of withdrawal of candidature must be sent to the International Liaison Division of LD (see Note 6) **by post** (see Note 7) **or by hand before the expiration of the nomination period (i.e. on or before 20 October 2020)**. Submission of notice of withdrawal of candidature by other means (e.g. by facsimile or electronic mail) will not be accepted. A notice of withdrawal of candidature delivered by post must carry a postmark dated **on or before**

20 October 2020. A notice of withdrawal of candidature delivered by hand must reach the International Liaison Division of LD **during office hours** (see Note 8) **on or before 20 October 2020.** Except with the special permission of the Commissioner for Labour in exceptional circumstances, late submission of notice of withdrawal of candidature will not be accepted.

Registration of Employee Unions as Electors

Employee unions already registered as electors

14. Re-registration is not required for employee unions which have registered as electors in the LAB elections held in 2006 or thereafter and have a valid registration on the register of trade unions maintained by the Registrar of Trade Unions under the Trade Unions Ordinance. **Please note that employee unions already registered as electors are entitled to vote in the election only if they have appointed authorised representative(s) by using Form LAB/E2A/2020 (authorisation form) (see Note 3).**

Employee unions not yet registered as electors

15. Employee unions registered under the Trade Unions Ordinance on or before 16 October 2020 (Friday), but not yet registered as electors in the LAB elections held in 2006 or thereafter, may register as electors (see Note 9) and appoint authorised representatives. The employee unions are entitled to vote in the election only if they have registered as electors and appointed authorised representative(s) by using **Form LAB/E2B/2020** (registration and authorisation form) (see Note 3).

Appointment of Authorised Representatives to Vote in the Election

How to appoint

16. Each employee union registered as an elector can appoint **not more than two authorised representatives** to take part in the voting on the Election Day. The person(s) so appointed must be either the **paid-up member(s)** (see Note 2) **or officer(s)** (see Note 5) **or paid staff** (see Note 10) of that union. Appointment of authorised representatives must be made by using **Form LAB/E2A/2020** (authorisation form) (see paragraph 14 above) or **Form LAB/E2B/2020** (registration and authorisation form) (see paragraph 15 above). Before completing the authorisation form / registration and authorisation form, please read this “Rules and Procedures” and the “Statement of Purpose for the Collection of Personal Data” attached to the form.

17. The authorisation form / registration and authorisation form must be stamped with the official seal of the employee union and signed by an officer (see

Note 5) of the union concerned, certifying the authorised representative(s) as the paid-up member(s) or officer(s) or paid staff of the union. The person(s) authorised as representative(s) should also complete the form. Please note that personal data including particulars on the identification documents have to be collected through the authorisation form / registration and authorisation form so as to enable correct identification of persons authorised as representatives to take part in the voting on the Election Day.

When to submit authorisation form / registration and authorisation form

18. Completed authorisation forms / registration and authorisation forms must be sent to the International Liaison Division of LD (see Note 6) **on or before 20 October 2020 (Tuesday) by post** (see Note 7), **facsimile** (see Note 11), **electronic mail** (see Note 12) or **by hand**. Authorisation forms / registration and authorisation forms delivered by post, facsimile or electronic mail must carry postmark, facsimile timestamp or electronic mail timestamp dated **on or before 20 October 2020**. Authorisation forms / registration and authorisation forms delivered by hand must reach the International Liaison Division of LD **during office hours** (see Note 8) **on or before 20 October 2020**. To allow time for any errors on the forms to be corrected, employee unions are encouraged to submit their authorisation forms / registration and authorisation forms well before the expiration of the aforementioned period. Except with the special permission of the Commissioner for Labour in exceptional circumstances, late registration as electors and / or appointment of authorised representatives will not be accepted.

Replacement of authorised representatives

19. If an employee union that has submitted an authorisation form / registration and authorisation form under paragraph 18 above finds it necessary to replace its authorised representative(s), it must notify the International Liaison Division of LD of such a replacement as soon as possible by completing **Form LAB/E3/2020(R)** (replacement of authorisation form) (see Note 3). The replacement of authorisation form must be stamped with the official seal of the employee union and signed by an officer (see Note 5) of the union concerned to certify the replacement representative(s) as the paid-up member(s) or officer(s) or paid staff of the union. Again, the person(s) authorised as replacement representative(s) should also complete the form. Completed replacement of authorisation forms must be sent to the International Liaison Division of LD (see Note 6) **on or before 18 November 2020 (Wednesday) by post** (see Note 7), **facsimile** (see Note 11), **electronic mail** (see Note 12) or **by hand**. Replacement of authorisation forms delivered by post, facsimile or electronic mail must carry postmark, facsimile timestamp or electronic mail timestamp dated **on or before 18 November 2020**. Replacement of authorisation forms delivered by hand must reach the International Liaison Division of LD **during office hours** (see Note 8) **on or before 18 November**

2020. Except with the special permission of the Commissioner for Labour in exceptional circumstances, late submission of replacement of authorisation forms will not be accepted.

20. An employee union which fails to comply with the requirements set out in paragraphs 14 to 19 above will not be allowed to vote in the election. The decision of the Commissioner for Labour shall be final in determining the validity of any nomination form, notice of withdrawal of candidature, authorisation form, registration and authorisation form, and replacement of authorisation form.

List of Employee Unions and List of Electors

21. A list of employee unions provided by the Registrar of Trade Unions is kept at the office of the International Liaison Division of LD (see Note 6) for inspection by representatives of employee unions during office hours (see Note 8) from 28 September 2020 to the Election Day. Moreover, after the close of registration of electors, a list of electors will be available at the office of the International Liaison Division of LD for inspection by representatives of the electors and the public during office hours from 30 October 2020 to the Election Day. The list of employee unions and the list of electors will also be available at LD's homepage (see Note 13) during the aforementioned periods respectively. The candidates will be provided with the list of electors for the purpose of the election.

Voting Procedure

22. The Commissioner for Labour will appoint a Returning Officer and a Deputy Returning Officer from among the staff of LD to supervise the conduct of the election. Around three weeks before the Election Day, the candidates and electors that have appointed authorised representatives (including replacement representatives) will be informed in writing of the candidate list and proceedings on the Election Day in detail.

23. The election will be held on **21 November 2020 (Saturday)** and the polling hours are from **9:00 am to 5:00 pm**. Authorised representatives of the electors may cast their votes during the polling hours at the polling station (**Mei Foo Community Hall, 1/F, Mei Foo Government Complex, 33 Mei Lai Road, Sham Shui Po, Kowloon**). These representatives shall register themselves at the registration counters and produce their identification documents as specified in Form LAB/E2A/2020, LAB/E2B/2020 or LAB/E3/2020(R) as appropriate, to the polling staff for checking against a register. After registration, they can cast their votes immediately. To avoid misidentification of authorised representatives, persons who

fail to produce identification documents stated in the above forms or whose identification documents carry information different from that submitted on the forms will not be allowed to take part in the voting.

24. The authorised representative of an elector shall be issued with **one** ballot paper on the Election Day. If an elector has appointed two authorised representatives, the ballot paper shall be issued to the authorised representative who first registers at the registration counter. Only the registered authorised representative who has been issued a ballot paper is allowed access to the voting area.

25. The ballot paper, affixed with a special seal of LD, will carry the names of the candidates (listed according to the sequence of the candidate list), their organisations and posts. It will not carry any serial number or other identification marks as secret ballot is adopted.

26. Each elector participating in the election can, through its authorised representative, use one ballot paper to elect **up to five candidates** by stamping on the ballot paper a tick “✓” in the box against the name(s) of the candidate(s) with a **chop provided at the polling booth**.

27. **The authorised representatives should not make any entry or marking of any kind other than that prescribed in paragraph 26 above, otherwise the ballot paper will be considered invalid and not be counted.**

28. If an authorised representative has not yet deposited the ballot paper into the ballot box, he / she is allowed to apply for a replacement of the ballot paper with a new one under the following circumstances:

- the representative has inadvertently damaged the ballot paper received;
or
- the representative has entered erroneous markings on the ballot paper.

The authorised representative should return the damaged / erroneously marked ballot paper to the Returning Officer / Deputy Returning Officer before he / she is issued a new ballot paper.

29. The authorised representatives should then deposit the ballot papers into the designated ballot box. The authorised representatives are free to leave the polling station after voting. For those who like to observe the voting proceedings, they can stay in a designated area of the polling station. They may also return to the designated area of the polling station after the close of the poll to observe the counting

proceedings.

30. The candidates will be admitted into the polling station (except for designated areas such as polling booths and the ballot box) to observe the voting proceedings subject to the verification of their identification documents by the polling staff.

31. **No publicity or canvassing activities are allowed inside the Mei Foo Government Complex on the Election Day, including the display or erection of any election poster, notice, banner or signboard, or distribution of any election advertisement or publicity materials. Unless authorised by the Returning Officer / Deputy Returning Officer, persons are not allowed to use mobile phones or any other forms of electronic communication devices, or any devices for capturing images in the polling station.**

32. The Returning Officer / Deputy Returning Officer has the authority to decide and order any person(s) to immediately leave the polling station should he / she cause interruption to the election process or interfere with candidates / authorised representatives / any other persons inside the polling station; and to prohibit the person(s) from entering the polling station again over a period of time as the Returning Officer / Deputy Returning Officer deems necessary.

33. If, after the close of nomination but before the close of polling, proof is given to the satisfaction of the Returning Officer that a validly nominated candidate for election has died, the proceedings for the election have to be terminated and a by-election will be arranged (see paragraph 45 below).

Counting of Votes

34. Votes shall be counted by officers of LD at the polling station right after the close of the poll.

35. The voting system adopted for the election is the “first past the post” system. 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 five seats of LAB employee representatives are filled.

36. Counting of votes will be supervised by:

- the Returning Officer and Deputy Returning Officer;
- the Registrar of Trade Unions or a representative thereof; and
- the candidates who wish to observe the counting.

37. **A ballot paper will be considered invalid and not be counted if:**

- **it is not affixed with the special seal of LD;**
- **it contains “✓” stamps in more than five boxes against the names of candidates;**
- **it does not contain any prescribed “✓” stamp;**
- **it carries markings other than the prescribed “✓”s;**
- **it is substantially mutilated;**
- **the elector’s intention is unclear; or**
- **it is marked in any way by which the elector can be identified.**

38. The decision of the Returning Officer shall be final in determining the validity of any ballot paper. The candidates can inspect all the invalid ballot papers.

39. After counting of votes has been completed, the results will in the first instance be presented to the Returning Officer, who will invite other persons in paragraph 36 above to inspect the same. In the case of very close votes, the candidate(s) concerned can request the Returning Officer to recount the votes. The Returning Officer will make a final decision on whether the votes should be recounted.

40. **If the ballot fails to clearly fill the five seats as a result of an equal number of votes cast for two or more of the candidates,** the filling of the remaining seat(s) will be **determined by drawing of lots** by the candidates receiving the same number of votes. The drawing of lots by the candidates receiving the same number of votes will be performed immediately under the supervision of the Returning Officer and may be observed by all present at the polling station. If the candidate(s) concerned is / are absent at the time of drawing lots, the Deputy Returning Officer will draw the lots on behalf of the candidate(s).

41. If the filling of the seat(s) has to be determined by drawing of lots, the method will be as follows:

- (a) A total of 10 identical cards each marked with a number from 1 to 10 will be put into an empty opaque paper box provided by LD. Each candidate receiving the same number of votes is to draw one card from the paper box according to the sequence of the candidate list. The number marked on the card should be noted by the Returning Officer and then the card should be put back into the paper box.
- (b) Where there is only one seat to be filled, the candidate who draws the larger

number from 1 to 10 will fill the seat. 1 is the smallest number and 10 is the largest number. If two or more of the candidates have drawn the same larger number and the remaining candidate(s) has / have drawn a smaller number (if applicable), there must be a second draw. Only those candidates who have obtained the same larger number in the first draw will participate in the second draw. If two or more of the candidates have also drawn the same larger number and the remaining candidate(s) has / have drawn a smaller number (if applicable) in the second draw, there must be a third drawing of lots by those candidates who have obtained the same larger number in the second draw, and so on until the seat is filled by the candidate with the larger number.

- (c) Where there is more than one seat to be filled, the candidates who draw the larger numbers will fill the seats in descending order (10 to 1) until all the seats are filled. If two or more of the candidates have drawn the same number and the seats cannot be clearly filled, there must be a second draw, and so on until all the seats are filled by candidates drawing the larger number (see Note 14).

Announcement of Election Results

42. The Returning Officer will announce the number of votes received by each candidate and the election results upon completion of counting of votes and, where necessary, upon completion of drawing of lots.

43. If, before declaring the result of the election, proof is given to the satisfaction of the Returning Officer that the candidate who is found to be successful at the election has died, the election should be considered as failed and a by-election will be arranged (see paragraph 45 below).

44. All employee unions will be notified in writing of the election results.

Special Circumstances

45. In case the election cannot be conducted or completed on 21 November 2020 owing to inclement weather or circumstances beyond the control of LD (such as the circumstances as mentioned in paragraphs 33 and 43 above), LD will arrange another election / by-election as soon as possible and will inform all the candidates and qualified electors of the arrangements.

Labour Department
September 2020

~ The End ~

Notes

- Note 1 Employee unions refer to trade unions registered under the Trade Unions Ordinance of which all the voting members are employees and the trade unions have a valid registration as of the Election Day.
- Note 2 A paid-up member is a member who has paid membership fee in accordance with the rules of the employee union.
- Note 3 The form can be downloaded from LD's homepage as follows:
www.labour.gov.hk/eng/news/content.htm (English version)
www.labour.gov.hk/tc/news/content.htm (Chinese version)
- Note 4 In order to comply with the requirements of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), a separate nomination form should be completed for nomination of each of the candidates to avoid the disclosure of personal data of a nominee to other individuals who are not data-users. Employee unions may make photocopies of the nomination form of their own accord.
- Note 5 An officer means any member of the executive of the employee union but not an auditor thereof.
- Note 6 The address of the International Liaison Division of LD is as follows:
15/F, Harbour Building
38 Pier Road
Central
Hong Kong
- Note 7 To minimise the risk of loss of forms sent by post, employee unions must affix sufficient postage or use registered mail.
- Note 8 Office hours of the International Liaison Division of LD are as follows:
Monday – Friday 9:00 am to 1:00 pm; and 2:00 pm to 6:15 pm
(closed on Saturdays, Sundays and public holidays)
- Note 9 Once registered, employee unions will be included in the list of electors of future LAB elections and by-elections (if applicable) and re-registration will not be required. LD will update the list according to the register of trade unions before every election.
- Note 10 A paid staff means a person appointed by and acting under the instructions of the executive of the employee union and paid from the funds thereof.
- Note 11 The facsimile numbers of the International Liaison Division of LD are as follows:
2854 3435 and 3579 4395

- Note 12 The email address of the International Liaison Division of LD is as follows:
ild-hq@labour.gov.hk
- Note 13 The list of employee unions and the list of electors will be available at LD's homepage as follows:
www.labour.gov.hk/eng/news/content.htm (English version)
www.labour.gov.hk/tc/news/content.htm (Chinese version)
- Note 14 Example: Where there are three candidates having an equal number of votes and there are only two seats to be filled, if the three candidates have obtained respectively the largest, the larger and the smallest numbers, the two candidates who have obtained the largest and the larger numbers will fill the two seats. If the three candidates have obtained respectively two larger equal and one smaller numbers, then the two candidates who have obtained the larger equal numbers will fill the two seats. If the three candidates have obtained respectively a larger and two equal smaller numbers, the candidate who has obtained the larger number will fill one seat and the remaining two candidates will participate in another draw.