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Your Ref.: LS/S/1/01-02

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Dear Stephen,

Election Committee (Appeals) Regulation (L.N. 196)

Thank you for your letter dated 12 October 2001. Our replies to your questions are set out in the following paragraphs.

General Observations

Q1: Could the Administration supply the Subcommittee with a comparison table to mark the differences and reasons for their changes on provisions between the Legislative Council (Formation of Election Committee) (Appeals) Regulation (Cap. 542 sub. leg.) and the Regulation.

A1: A comparison table highlighting the differences between the two Regulations is at the Annex.

Section 6(1)(a) & (2)(a)

Q2: The provisions impose an obligation on the Revising Officer to make a ruling within the period referred to in section 5(3) and (4) respectively to determine whether the person whose election is questioned was or was not duly elected (section 6(1)(a)), and

whether or not the declared member concerned should have been registered as a member of the EC etc. (section 6(1) (b)). What would be the legal consequence if the Revising Officer makes a ruling beyond the respective time limit?

A2: This section is modelled on section 6 of Legislative Council (Formation of Election Committee) (Appeals) Regulation (the old Regulation), under which the relevant appeal handling procedures used to be provided for. The purpose of setting a deadline for the Revising Officer (RO) to hand down his ruling is to ensure that the Electoral Registration Officer (ERO) will be able to reflect the RO's decision in the final register of EC members if directed to do so in a timely manner. This can bring the final register as up-to-date as possible before the election proceedings of the Chief Executive (CE) election commence. If the RO makes a ruling beyond the required time limit, the ERO will not take into account his ruling in updating the final register of EC members for use in the CE election.

Nevertheless, you may wish to note that we have consulted the Judiciary on the practicability of the hearing dates as set out in the Regulation. Both the Judiciary and the Registration and Electoral Office (REO) will adopt necessary arrangements to ensure that the appeals will be processed as expeditiously as possible so that the RO will be able to make the rulings within the required time limit.

Section 10(2)

Q3: The provision provides that a ruling made under section 6 during the period referred to in section 5(3) and (4) may only be reviewed during the period referred to in section 5(3) and (4) respectively. What would be the legal consequence if the review proceeding is not completed during the respective time limit?

A3: Again, this section is modelled on section 10 of the old Regulation. Similar to A2 above, the reason for asking the RO to complete the review within the period he is required to hand down his ruling is to ensure that the final register of EC members can be brought as up-to-date as possible before the election of the CE. The ERO will not be able to take into account the outcome of the review in updating the final register of EC members if the review proceeding is not completed within the required time limit.

Both the Judiciary and REO will take necessary steps to ensure the prompt handling of the appeal cases within the statutory time limits.

Section 12

Q4: Would it be necessary to provide for the Revising Officer's decision upon review under section 10 will not invalidate acts done by the person as a member of the EC whose election or whose registration as such a member is questioned before such decision?

A4: This section is modelled on section 12 of the old Regulation. We have not encountered any problem with the provision in the past. We therefore do not consider it necessary to made any changes to section 12.

Yours sincerely,

(Ms Doris Ho)
for Secretary for Constitutional Affairs

c.c. CEO/REO (Attn: Mr Stanley TO)
JA (Attn: Mrs Anita LO)
S for J (Attn: Miss Frances HUI)
CLC (Attn: Mrs Percy MA)

**Comparison Table
for the Election Committee (Appeals) Regulation (L.N. 196)**

Provision of the Election Committee (Appeals) Regulation <i>(Section Number and Heading)</i>	Similar Provision in the Legislative Council (Formation of Election Committee) (Appeals) Regulation (Cap. 542, sub.leg.) <i>Section Number</i>	Remarks
1. Commencement	-	The Election Committee (Appeals) Regulation ("the Regulation") will come into operation on 16 November 2001.
2. Interpretation	1	New terms adopted in the Regulation include "Assistant Electoral Registration Officer", "Assistant Returning Officer", "Electoral Registration Officer", "identity document", "Returning Officer", "sub-subsector by-election", "sub-subsector ordinary election" and "written representation". For majority of them, references are made to their definitions set out in the Schedule to the Chief Executive Election Ordinance (Cap. 569).
3. Appeal against result of subsector election to Revising Officer	2	Essentially the same, with the exception that appeals have to be lodged to the Revising Officer ("RO") not later than 7 days after the publication of the election result. The deadline stipulated in the Legislative Council (Formation of Election Committee) (Appeals) Regulation ("the old Regulation") was 14 days after the publication of the election result. The shorter appeal period is necessary to ensure that a new Chief Executive ("CE") can be elected within six months as required by the Basic Law if the office of the CE becomes vacant.
4. Appeal in relation to registration of nominees declared by Returning Officer as members of Election	4	Essentially the same, with the exception that appeals have to be filed with the RO within 7 days, instead of 14 days under the old Regulation, after the publication of the final register of members of the Election Committee

Provision of the Election Committee (Appeals) Regulation <i>(Section Number and Heading)</i>	Similar Provision in the Legislative Council (Formation of Election Committee) (Appeals) Regulation (Cap. 542, sub.leg.) <i>Section Number</i>	Remarks
Committee		(EC). The reason for having a shorter appeal period is the same as that stated above.
5. Fixing of hearing and notifying appellant thereof	5	Essentially the same, with the exception that the last day an appeal case can be heard is changed to the 20th day after the publication, of the election result (in the case of appeal against the result of election), or of the final register of members of the EC (in the case of appeal against the registration of nominees as a member of the EC). Under the old Regulation, the Revising Officer is required to complete the hearings on a date not later than 14 days before the holding of a LegCo general election. Again, this shorter hearing period is to ensure that a new CE can be elected within six months after a vacancy in the office of the CE arises.
6. Ruling of Revising Officer	6	Essentially the same, with the exception that:- <ul style="list-style-type: none"> • the last day on which the RO is required to make a ruling has been changed to tie in with the provisions of section 5 of the Regulation; • owing to the deletion of section 3 of the old Regulation¹, which is concerned about appeal against the vote-entitlement note of ex-officio members, the provision that the RO is to make a ruling on such appeal is also omitted from the Regulation.

¹ Section 3 of the old Regulation provides that an EC ex-officio member may appeal against the marking of his voting-entitlement note against his name in the final register if his choice of whether to vote in his concerned Functional Constituency (FC) or the EC is not properly reflected in the register. As only persons who were EC ex-officio members before the 2000 LegCo general election, but not after, could choose to vote in FC election or the EC election, it is no longer necessary to provide for an appeal mechanism in relation to the marking of voting-entitlement note.

Provision of the Election Committee (Appeals) Regulation <i>(Section Number and Heading)</i>	Similar Provision in the Legislative Council (Formation of Election Committee) (Appeals) Regulation (Cap. 542, sub.leg.) Section Number	Remarks
7. Appellant and other persons concerned to be notified of ruling	7	Identical.
8. Electoral Registration Officer to be notified of ruling	8	No substantive difference. But for the sake of clarity, we have made it clear that the RO should direct the Electoral Registration Officer to incorporate his ruling in the final register only if he determines that the person whose election is questioned was not duly elected, or the nominees concerned should not have been registered.
9. Determination of matters and powers of adjournment, etc.	9	Identical.
10. Review of rulings by Revising Officer	10	Identical.
11. Revising Officer may require Electoral Registration Officer and Returning Officer to provide information	11	Identical.
12. Validity of acts of person	12	Identical.
13. Revising Officer is required to determine forms, appropriate person and mode of service when exercising his powers	13	Identical.

Provision of the Election Committee (Appeals) Regulation <i>(Section Number and Heading)</i>	Similar Provision in the Legislative Council (Formation of Election Committee) (Appeals) Regulation (Cap. 542, sub.leg.) Section Number	Remarks
14. Schedule: Appeal notice	Schedule	Essentially the same, with necessary modification to make the form for use in case of subsector/sub-subsector by-election.

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