

CAB C5/7/8
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Secretary for Constitutional Affairs
(Attn : Mr Chris Sun, AS(CA)5A)
Constitutional Affairs Bureau
3/F, Main and East Wings
Central Government Offices
Central
Hong Kong

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BY FAX

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Dear Chris,

Chief Executive Election (Election Petition) Rules (L.N. 241 of 2001)

We are scrutinising the legal and drafting aspects of the Rules. We have the following comments on the Rules.

General observation

Could you explain the reason for adopting "sections" for the provisions of the Rules, whereas "rules" for the provisions of the Legislative Council (Election Petition) Rules (Cap. 542 sub. leg.) ("LegCo (EP) Rules")?

Sections 9 & 15

Section 9 is based on rule 11 of the LegCo (EP) Rules. It is appreciated that rule 11(1) is not adopted because there is no substitution of respondent as reflected in section 70 of the LegCo Ordinance and rule 17 of the LegCo (EP) Rules. Instead of the arrangement for substitution of respondent, section 15 provides for the circumstances in which petition is regarded as withdrawn. Could you explain the appropriateness, as a matter of policy, in adopting the new arrangement under section 15?

Sections 11 and 12

Why is it appropriate to omit the reference to "abandon or cease to prosecute a petition" in sections 11 and 12 (c.f. rules 13 and 14 of the LegCo (EP) Rules)?

Section 14(2)(b)

Would it be clearer in meaning to add "with the Registrar" after "motion"?

Section 15(1)(b)

Section 11(3) of the Chief Executive Election Ordinance (Cap. 569) ("CEEO") provides for the fixing of a new polling date where the candidate returned at an election for appointment to fill the vacancy in the office of the Chief Executive that will arise under section 4(a) of the CEEO cannot assume that office. It does not specify the reason why the returned candidate cannot resume office. Therefore, would it be appropriate to specify in section 15(1)(b) the reason, i.e. "due to his death or otherwise", for the returned candidate's failure to assume office?

Section 15(1)(c)

Is the scope of section 15(1)(c) intended to cover the situation where an incumbent Chief Executive is the respondent of an election petition?

Section 5 of the CEEO refers to the declaration of vacancy of the office of the Chief Executive arising from section 4(b) (i.e. the death of the Chief Executive) or (c) (i.e. the removal of the Chief Executive from office in accordance with the Basic Law by the CPG) of the CEEO. Therefore, it would be appropriate to specify in section 15(1)(c) "death" as a ground for the Chief Executive ceases to hold the office of the Chief Executive. But would it be appropriate to specify in section 15(1)(c) a general ground (i.e. "or otherwise") for the Chief Executive ceases to hold the office of the Chief Executive other than that under section 4(c)?

Section 15(2)

Would it be clearer in meaning to add "with the Registrar" after "shall file a notice of the death of the petitioner"?

Section 17(1)(b)

Would it be clearer in meaning to add "with the Registrar" after "notice"?

Section 19

Could you explain why rule 21(3) of the LegCo (EP) Rules is not adopted?

***2(a) of the Schedule**

Is the term "determination" wide enough to cover the various acts of the Returning Officer under section 33(1) of the CEEO which is also reflected in (Or)*1.(a)?

According to LegCo Brief : CAB C5/7/8, there will not be a new set of rules governing the leap-frog arrangement for matters relating to CE election. Instead the existing procedures for appeal to the CFA set out in the Hong Kong Court of Final Appeal Ordinance (Cap. 484) ("HKCFA Ordinance") and its rules as modified by section 34(2) of the CEEO as regards the time within which an appeal has to be brought are also applicable to the leap-frog arrangement. In this respect, we have the following questions for your clarification.

Time requirements under the Hong Kong Court of Final Appeal Rules

There are various requirements for the time limit within which certain acts are required to be done by the applicant or respondent under the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg.) ("HKCFA Rules"). The whole process under the HKCFA Rules is rather time consuming. In the light of your intention that all election petitions and appeals should be dealt with expeditiously, would the arrangement for various time requirements under the existing HKCFA Rules serve your purpose?

Forms under Schedule 1

It appears that appeals to the CFA are classified as either civil or criminal. Rule 5 of the HKCFA Rules prescribes the procedure for filing of the notice of application in "every cause or matter, civil or criminal". Various Forms prescribed in Schedule 1 to the HKCFA Rules also refer to "CIVIL/CRIMINAL APPEAL NO.". Could you explain the nature of the appeals under section 22(1)(c) of the HKCFA Ordinance, so that they could fit in the existing Forms?

Furthermore, how does Form A (Notice of intended application for leave to appeal), which refers to appeal to the CFA from the Court of Appeal, fit in the leap-frog arrangement?

Scope of the HKCFA Rules

Does the scope of the HKCFA Rules cover determination, judgment or order made under section 22(1)(c) of the HKCFA Ordinance?

In facilitating the Subcommittee to study the Rules at its next meeting to be held on 26 November 2001, it is appreciated that your reply, in both languages, could reach us by 23 November 2001.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. Mr Jimmy Ma, LA
Mrs Percy Ma, CAS(2)3
Miss Kitty Cheng, ALA(Temp)