

LEGISLATIVE COUNCIL BRIEF

Chief Executive Election Ordinance (Chapter 569)

CHIEF EXECUTIVE ELECTION (ELECTION PETITION) RULES

INTRODUCTION

On 12 November 2001, the Chief Justice of the Court of Final Appeal (“CJ”) made the Chief Executive Election (Election Petition) Rules (“the Petition Rules”) under section 40 of the Chief Executive Election Ordinance (“CEEO”) (Cap. 569).

BACKGROUND AND ARGUMENT

2. Election petition is a legal procedure that the CEEO provides for addressing grievances over the election result of the Chief Executive (“CE”) election. Its purpose is to settle such a dispute promptly, by clearly delineating who may lodge an election petition, the grounds on which the CE election result may be questioned and the period within which an election petition must be lodged.

3. Section 33 of the CEEO provides that an election petition may only be lodged by a validly nominated candidate at the CE election or a person, supported by not less than ten members of the Election Committee (“EC”), who was determined by the Returning Officer (“RO”) to be not validly nominated, whose nomination was not accepted by the RO or who was disqualified from being elected. The grounds for election petitions are stipulated in section 32 of the CEEO, which include contentions that the successful candidate was ineligible for being nominated in the first place or should have been disqualified from being nominated or elected, as well as allegations that corrupt or illegal conduct was engaged at the election or that material irregularity occurred in relation to the election (including the poll and counting of votes). As for the timing, section 34 of the CEEO provides that an election petition must

be lodged within seven working days after the declaration of the election result.

4. Section 40 of the CEEO empowers the CJ to make rules to provide for procedural matters in respect of an election petition.

THE PETITION RULES

5. The Petition Rules set out the procedures for the lodging, trial and withdrawal of election petitions at the Court of First Instance (“CFI”) as well as the ancillary matters relating to such election petitions. Appeals to the Court of Final Appeal (“CFA”) against the CFI’s decision under the leap-frog arrangement are outside the scope of the Petition Rules. The procedures of appeal to the CFA are set out in the CFA Ordinance (Cap. 484) and its Rules as modified by section 34(2) of the CEEO as regards the time within which an appeal has to be brought.

6. The provisions of the Petition Rules are summarised in the following paragraphs.

(i) Lodgement of an election petition (Rules 4, 5, 6 and 7)

7. An election petition must be completed in the specified form and signed by the petitioner himself and, where appropriate, each of the EC members subscribing to the petition. It should be filed with the Registrar of the High Court who will then display a certified true copy of it at a conspicuous place in the High Court Building and, within seven days after the filing of the petition, publish a notice in the Gazette.

8. The petitioner is responsible for sending copies of his petition to the respondent, the Secretary for Justice, the Secretary for Constitutional Affairs and the Electoral Affairs Commission.

(ii) Trial of an election petition (Rules 8, 9 and 10)

9. The Petition Rules require the petitioner to apply by summons to a judge of the CFI for a date, time and place to be fixed for the trial of the petition. If he fails to do so within the prescribed time limit (two days after the filing of his petition or such other period as the CFI may direct), the respondent may make such an application within three days after the first-mentioned deadline. Failing this, the Registrar will refer the case to a judge of the CFI who shall then fix a date, time

and place for the trial of the election petition.

10. The CFI may consolidate election petitions relating to the same election or order them to be tried at the same time or one immediately after another.

11. The Petition Rules provide for how and when disputed ballot papers (if any) should be filed for the trial. Such a list must be filed with the Registrar not less than seven days before the trial. Both the petitioner and the respondent are given the right to file such a list, stating the grounds of contention for each disputed ballot paper.

(iii) Withdrawal of an election petition (Rules 11, 12, 13 and 15)

12. Only the petitioner may withdraw an election petition by motion to the CFI. An application for withdrawal of election petition must be accompanied by affidavits by all parties to the petition, their solicitors (if any) and their election agents (if any), unless the CFI dispenses with any of these affidavits.

13. An election petition will be regarded as having been withdrawn –

- (a) if the petitioner dies or, if there are more than one petitioner, the last remaining petitioner dies;
- (b) if the successful candidate cannot assume the office of the CE before the deadline prescribed under section 11(3) of the CEEO; or
- (c) if the successful candidate ceases to hold the office of the CE because of death or otherwise.

(vi) Others (Rules 3, 14, 16, 17, 18, 19 and 20)

14. The Petition Rules provide that, subject to the CEEO and these Rules, the practice and procedure of the High Court shall apply to an election petition as nearly as circumstances permit.

15. The Petition Rules also provide –
- (a) for how a respondent may apply to the CFI for staying or dismissing an election petition;
 - (b) that the CFI may abridge or extend the time within which a person is required to do any act under the Petition Rules; and
 - (c) for miscellaneous procedural matters such as the witnesses' expenses, the defraying of costs of an election petition and the filing of copy particulars.

LEGISLATIVE TIMETABLE

16. The Petition Rules will be published in the Gazette on 16 November 2001 and tabled in the Legislative Council for negative vetting on 21 November 2001.

BASIC LAW IMPLICATIONS

17. The Department of Justice advises that the Petition Rules do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

18. The Department of Justice advises that the Petition Rules are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

19. The Petition Rules do not affect the current binding effect of the CEEO.

FINANCIAL AND STAFFING IMPLICATIONS

20. The Petition Rules have no additional financial or staffing implications.

PUBLIC CONSULTATION

21. Public consultation is considered unnecessary given the technical nature of the Petition Rules.

PUBLICITY

22. A press release will be issued before the Petition Rules are published in the Gazette. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

23. Enquiries on the Petition Rules should be addressed to Mr Chris SUN, Assistant Secretary for Constitutional Affairs, on 2810 2064.

15 November 2001
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