

LN196e

Election Committee (Appeals) Regulation

(Made by the Chief Executive in Council under section 46 of the Chief Executive Election Ordinance (Cap. 569))

1. Commencement

This Regulation shall come into operation on 16 November 2001.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires---

"appeal notice" (上訴通知書) means an appeal notice lodged by a person under section 3;

"appellant" (上訴人) means a person who---

(a) lodges an appeal notice to a Revising Officer to appeal against the result of a subsector election under section 3; or

(b) submits a written representation to a Revising Officer to object to the registration of a declared member as a member of the Election Committee in the final register under section 4;

"Assistant Electoral Registration Officer" (助理選舉登記主任) means an Assistant Electoral Registration Officer appointed under section 44(1) of the Schedule to the Ordinance;

"Assistant Returning Officer" (助理選舉主任) means an Assistant Returning Officer appointed under section 47(1) of the Schedule to the Ordinance;

"declared member" (獲宣布委員) means a nominee who is declared by the Returning Officer as a member of the Election Committee under section 7 of the Schedule to the Ordinance;

"designated body" (指定團體) means a designated body referred to in section 6 of the Schedule to the Ordinance;

"Electoral Registration Officer" (選舉登記主任) has the meaning assigned to it by section 1(1) of the Schedule to the Ordinance;

"final register" (正式委員登記冊) means a final register of members of the Election Committee;

"identity document" (身分證明文件) means---

(a) an identity card issued to a person under the Registration of Persons Ordinance (Cap. 177);

(b) a document issued to a person under regulations in force under that Ordinance certifying that the person is exempt from being required to register under that Ordinance; or

(c) any other document issued to a person that is acceptable to the Electoral

Registration Officer as proof of the person's identity;

"nominee" (獲提名人) means a nominee referred to in section 7 of the Schedule to the Ordinance;

"Returning Officer" (選舉主任) has the meaning assigned to it by section 1(1) of the Schedule to the Ordinance;

"sub-subsector by-election" (小組補選) has the meaning assigned to it by section 1(1) of the Schedule to the Ordinance;

"sub-subsector ordinary election" (小組一般選舉) has the meaning assigned to it by section 1(1) of the Schedule to the Ordinance;

"written representation" (書面申述) means a written representation referred to in section 4.

(2) In this Regulation, all references to "subsector election" shall, in respect of the sports, performing arts, culture and publication subsector, mean "sub-subsector ordinary election" or "sub-subsector by-election".

(3) In the Schedule, "subsector ordinary election" (界別分組一般選舉) and "subsector by-election" (界別分組補選) have the meaning assigned respectively to them by section 1(1) of the Schedule to the Ordinance.

3. Appeal against result of subsector election to Revising Officer

(1) A person claiming to be a candidate at a subsector election may appeal to a Revising Officer under section 39(1) of the Schedule to the Ordinance against the result of that subsector election by lodging an appeal notice.

(2) An appeal notice must be in the form specified in the Schedule.

(3) An appeal notice may be lodged to question a subsector election only on the ground that the person declared by the Returning Officer in accordance with EAC Regulations to have been elected as a member of the Election Committee at the subsector election was not duly elected because---

(a) the person was ineligible to be, or was disqualified from being, a candidate at the subsector election; or

(b) material irregularity occurred in relation to the subsector election, or to the polling or counting of votes at the subsector election.

(4) An appeal notice may be lodged to the Revising Officer only after the date on which the Returning Officer has published in the Gazette the result being appealed against and must reach the Revising Officer not later than 7 days after that date.

(5) Any person whose election is questioned by an appeal notice and the Returning Officer in respect of the subsector election concerned may be made a respondent to the appeal.

(6) Two or more candidates at a subsector election may be made respondents to

the same appeal and their cases may be tried at the same time, but for the purposes of this section and section 6, the appeal is taken to be a separate appeal against each respondent.

(7) In subsection (3), "subsector election" (界別分組選舉) includes nomination proceedings and the decisions of the Returning Officer or any Assistant Returning Officer.

4. Appeals in relation to registration of nominees declared by Returning Officer as members of
Election Committee

(1) A person who considers that a declared member is not eligible to be registered as a member of the Election Committee on the ground that---

(a) the declared member was ineligible to be selected as, or was disqualified from being, a nominee;

(b) material irregularity occurred in relation to the process of nomination;

(c) material irregularity occurred in relation to the determination of the Returning Officer as to the validity of the nomination of the declared member; or

(d) material irregularity occurred in relation to the determination of the Returning Officer under section 7(6) of the Schedule to the Ordinance,

may, by submitting a written representation, object to the registration of the declared member as a member of the Election Committee in the final register and request the Revising Officer to determine whether some other nominee nominated by the designated body concerned should be declared and registered as a member of the Election Committee instead.

(2) A written representation under subsection (1) may be submitted to the Revising Officer only after the date of the publication of the final register concerned and must reach the Revising Officer not later than 7 days after that date.

(3) The Electoral Registration Officer, or an Assistant Electoral Registration Officer, is required to appear as the respondent at the hearing.

(4) The written representation referred to in subsection (1) shall state---

(a) the name, address and identity document number (if any) of the appellant;

(b) the name and address of the declared member concerned;

(c) the date on which the declared member concerned was declared as such member by the Returning Officer;

(d) the ground of appeal; and

(e) any other relevant information.

5. Fixing of hearing and notifying appellant
thereof

(1) Where the Revising Officer receives an appeal notice or a written

representation, as the case may be, he shall, as soon as practicable---

(a) subject to subsections (3) and (4), fix a date, time and place for holding a hearing as regards the appeal notice or the written representation, as the case may be; and

(b) send by post a notice under subsection (2)---

(i) to the appellant concerned at the address furnished as his address in the appeal notice or the written representation, as the case may be; and

(ii)(A) in the case of an appeal notice, to the person whose election is questioned; or

(B) in the case of a written representation, to the declared member concerned.

(2) A notice for the purposes of subsection (1)(b) shall---

(a) state that a hearing is to be held as regards the appeal notice or the written representation, as the case may be;

(b) specify the date, time and place fixed under subsection (1)(a) for such hearing;

(c) state that the appellant or the person whose election is questioned or the declared member concerned, as the case may be---

(i) may appear in person at the hearing and make representations to the Revising Officer regarding the appeal notice or the written representation, as the case may be;

(ii) may be represented at the hearing by a legal practitioner, or by any other person authorized in writing by the appellant or the person whose election is questioned or the declared member concerned (as the case may be) who may make representations on his behalf; or

(iii) whether or not he appears or is represented, may make representations in writing regarding the appeal notice or the written representation, as the case may be, and submit them, by post or by hand, at an address (which shall be specified in the notice) to reach the Revising Officer on a date at least 1 clear day before the date fixed for the hearing;

(d) in the case of a notice sent to an appellant, state that---

(i) in the case of an appeal notice, if the appellant---

(A) does not appear at the hearing;

(B) is not represented at the hearing by a legal practitioner or any other person authorized in writing by the appellant; and

(C) does not make representations in writing regarding his appeal notice to be received by the Revising Officer on a date at least 1 clear day before the date of the hearing,

the result of the subsector election to which the appeal notice relates shall stand;

(ii) in the case of a written representation, if the Electoral Registration Officer does not make representations to the Revising Officer at the hearing and if the appellant---

(A) does not appear at the hearing;

(B) is not represented at the hearing by a legal practitioner or any other person authorized in writing by the appellant; and

(C) does not make representations in writing regarding his written representation to be received by the Revising Officer on a date at least 1 clear day before the date of the hearing,

the decision of the Electoral Registration Officer in relation to the registration to which the written representation relates shall stand.

(3) The date fixed under subsection (1)(a) as regards an appeal notice shall be a date during the period beginning immediately after the date on which the result of the subsector election to which the appeal notice relates is published in the Gazette ("publication date") and ending on a date not later than 20 days after the publication date.

(4) The date fixed under subsection (1)(a) as regards a written representation shall be a date during the period beginning immediately after the date on which the final register concerned is published ("publication date") and ending on a date not later than 20 days after the publication date.

6. Ruling of Revising Officer

(1) As regards an appeal notice---

(a) in the case where the appellant---

(i) does not appear at the hearing;

(ii) is not represented at the hearing by a legal practitioner or any other person authorized in writing by the appellant; and

(iii) does not make representations in writing regarding his appeal notice to be received by the Revising Officer on a date at least 1 clear day before the date of the hearing,

the result of the subsector election to which the appeal notice relates shall stand;
or

(b) in any other case, the Revising Officer shall make a ruling within the period referred to in section 5(3) to determine whether the person whose election is questioned was or was not duly elected.

(2) As regards a written representation---

(a) in the case where the Electoral Registration Officer does not make representations to the Revising Officer at the hearing and the appellant---

(i) does not appear at the hearing;

(ii) is not represented at the hearing by a legal practitioner or any other person authorized in writing by the appellant; and

(iii) does not make representations in writing regarding his written representation to be received by the Revising Officer on a date at least 1 clear day before the date of the hearing,

the decision of the Electoral Registration Officer in relation to the registration to which the written representation relates shall stand; or
(b) in any other case, the Revising Officer shall make a ruling within the period referred to in section 5(4) to determine whether or not the declared member concerned should have been registered as a member of the Election Committee and if he determines that such person should not have been registered as a member of the Election Committee and the appellant has made a request referred to in section 4(1), determine whether some other nominee nominated by the designated body concerned should be declared and registered as a member of the Election Committee instead.

7. Appellant and other persons concerned to be notified of ruling

Where---

(a) the result of the subsector election to which the appeal notice relates stands pursuant to section 6;

(b) the decision of the Electoral Registration Officer stands pursuant to section 6; or

(c) the Revising Officer makes a ruling under section 6, the Revising Officer shall notify the appellant and, where appropriate, the person whose election is questioned or the declared member concerned, by post, that the result or decision shall stand or of his ruling, as may be appropriate.

8. Electoral Registration Officer to be notified of ruling

(1) Where---

(a) the result of the subsector election to which the appeal notice relates stands pursuant to section 6;

(b) the decision of the Electoral Registration Officer stands pursuant to section 6; or

(c) the Revising Officer makes a ruling under section 6, the Revising Officer shall notify the Electoral Registration Officer on a date not later than 3 working days after the expiry of the period referred to in section 5(3) or (4), as the case may be, that the result or decision shall stand or of his ruling, as may be appropriate.

(2) Where the Revising Officer---

(a) makes a ruling under section 6(1)(b) and determines that the person whose election is questioned was not duly elected; or
(b) makes a ruling under section 6(2)(b) and determines that the declared member concerned should not have been registered as a member of the Election Committee (whether or not he is also required to determine that some other nominee should be declared and registered as such a member instead),
he shall, on a date not later than 3 working days after the expiry of the period referred to in section 5(3) or (4), as the case may be, direct the Electoral Registration Officer to incorporate his ruling in the final register.

9. Determination of matters and powers of adjournment, etc.

The Revising Officer shall determine every matter to be determined by him under this Regulation as soon as practicable, and the hearing of any such matter shall, as far as is practicable having regard to the interests of justice, be continued from day to day (excluding general holidays) until its conclusion, but subject to the foregoing, the determination and hearing of any such matter may be adjourned at any time to a date not later than the last day of the period referred to in section 5(3) or (4), as the case may be.

10. Review of rulings by Revising Officer

(1) Subject to subsection (2), the Revising Officer may, on his own initiative or for good cause shown by the Electoral Registration Officer, the Returning Officer, the appellant, the person whose election is questioned or the declared member concerned, as the case may be, review any ruling made under section 6, and for that purpose may rehear the matter wholly or in part and reverse or confirm his previous ruling.

(2) 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.

(3) In the case where the Revising Officer decides to review any ruling made under section 6, he shall determine the procedure for such review.

11. Revising Officer may require Electoral Registration Officer and Returning Officer to provide information

The Revising Officer may require the Electoral Registration Officer and the Returning Officer to provide any information which the Revising Officer considers necessary for him to make a determination under this Regulation.

12. Validity of acts of person

Any ruling made by the Revising Officer under section 6 does not invalidate acts

done by the person as a member of the Election Committee whose election or whose registration as such a member is questioned before the making of such ruling.

13. Revising Officer is required to determine forms, appropriate person and mode of service when exercising his powers

When exercising the powers referred to in section 46(4) of the Schedule to the Ordinance, the Revising Officer shall---

(a) determine the forms to be used;

(b) determine, having regard to the circumstances of the case, who is the appropriate person to serve a summons issued by the Revising Officer on the person to whom the summons is directed; and

(c) determine, having regard to the circumstances of the case, the mode of service of a summons referred to in paragraph (b).

SCHEDULE[ss. 2 & 3]

Appeal Notice

APPEAL NOTICE

In the Matter of the Chief Executive Election Ordinance (Cap. 569) and *In the Matter of a *subsector ordinary election/subsector by-election for the (name of subsector) subsector held on (date of election).

(or)*In the Matter of a *sub-subsector ordinary election/sub-subsector by-election for the *sports/performing arts/culture/publication sub-subsector held on (date of election).

To: Revising Officer

I, (name to be stated), holder of an identity card issued under the Registration of Persons Ordinance (Cap. 177), (number to be stated) state---

1. (a) that I was a candidate at the above-mentioned election;

*(b)in an election which was not contested, that *(name of candidate) was a candidate at the above-mentioned election/(name of each candidate) were candidates at the above-mentioned election, and on (date on which the candidate was declared elected or the candidates were declared elected) the Returning Officer for the above-mentioned *subsector/sub-subsector declared in a notice published in accordance with regulations made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) that *that candidate/those candidates *was/were elected for the above-mentioned *subsector/sub-subsector;

*(b)in a contested election, that the poll was held on the above day, that (name of each candidate) were candidates at the above-mentioned election, and on (date on which the successful candidate was declared elected or the successful candidates were declared elected) the Returning Officer for the above-mentioned *subsector/sub-

subsector declared in a notice published in accordance with regulations made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) that *(name of successful candidate)/(names of successful candidates) *was/were elected for the above-mentioned *subsector/sub-subsector;

(c) that (ground under section 3(3) of the Election Committee (Appeals) Regulation (L.N. 196 of 2001) on which the election is questioned and the facts on which the appellant relies).

2. I therefore request the Revising Officer to determine whether the *candidate/candidates (to be named) declared by the Returning Officer for the above-mentioned *subsector/sub-subsector in accordance with regulations made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) to have been elected *was/were duly elected.

Dated this day of 20

Signed

Appellant

The address for service is (address to be stated).

*Delete whichever is inapplicable.

CHENG Mei-sze, Maisie

Clerk to the Executive Council

Council Chamber

25 September 2001

Explanatory Note

The object of this Regulation is to provide for the procedure for the exercise of the right of appeal to the Revising Officer in relation to the registration and return of members of the Election Committee conferred by the Chief Executive Election Ordinance (Cap. 569).

2. Section 2 contains the definitions necessary for the interpretation of the Regulation.

3. Section 3 provides that a person claiming to be a candidate at an Election Committee subsector election may appeal against the result of that election.

4. Section 4 enables a person to object to the registration of a person as a member of the Election Committee representing the religious subsector in the final register of members of the Election Committee and request the Revising Officer to determine

whether some other person should be declared and registered as a member of the Election Committee instead.

5. Section 5 requires the Revising Officer to fix a date, time and place for a hearing in relation to any appeal notice or written representation.

6. Section 6 requires the Revising Officer to make rulings in relation to any appeal notice or written representation.

7. Section 7 requires the Revising Officer to notify the appellant and other persons concerned of his ruling as regards any appeal notice or written representation.

8. Section 8 requires the Revising Officer to notify the Electoral Registration Officer of his ruling and in certain circumstances direct the Electoral Registration Officer to incorporate the ruling in the final register of members of the Election Committee.

9. Section 9 requires that a hearing be continued as far as is practicable from day to day and also enables the adjournment of any hearing.

10. Section 10 enables the Revising Officer to review his ruling.

11. Section 11 enables the Revising Officer to require the Electoral Registration Officer and the Returning Officer to provide information.

12. Section 12 provides that the Revising Officer's ruling does not invalidate acts done by the person as a member of the Election Committee whose election or whose registration as such a member is questioned before the making of such ruling.

13. Section 13 requires the Revising Officer to determine the forms, the appropriate person to serve a summons and the mode of service.