

Chief Executive Election (Election Petition) Rules
(Made under section 40 of the Chief Executive
Election Ordinance (Cap. 569))

1. Commencement

These Rules shall come into operation on 11 January 2002.

2. Interpretation

In these Rules, unless the context otherwise requires---

"judge" (法官) means a judge of the High Court;

"party" (一方當事人), in relation to a petition, means the petitioner or the respondent;

"petition" (呈請、呈請書) means an election petition;

"petitioner" (呈請人), in relation to a petition, means the person who lodges the petition;

"prohibited conduct" (受禁行爲) means---

(a) corrupt conduct within the meaning of Part 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or

(b) illegal conduct within the meaning of Part 3 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

"Registrar" (司法常務官) means the Registrar of the High Court;

"respondent" (答辯人), in relation to a petition, means a person named as a respondent in the petition.

3. General practice and procedure

Subject to Part 6 of the Ordinance and to these Rules, the practice and procedure of the High Court, including the rules relating to the discovery and inspection of documents and the delivery of interrogatories, shall apply to a petition as nearly as circumstances permit as if it were an ordinary action within the jurisdiction of the High Court.

4. Filing of documents

(1) Any document required to be filed in the proceedings for a petition shall be filed with the Registrar in the Registry of the High Court.

(2) The High Court Fees Rules (Cap. 4 sub. leg.) shall, subject to all necessary modifications, apply in respect of the proceedings for a petition.

5. Form and substance of petitions

A petition shall be in the form set out in the Schedule.

6. Signature and lodgement of petition

(1) A petition shall be signed---

- (a) by the petitioner or by each petitioner if there is more than one; and
- (b) by the subscribers to it under section 33(2) of the Ordinance.

(2) A petition shall be lodged by filing the petition together with 2 copies of it.

(3) The Registrar shall---

- (a) upon the lodgement of a petition, give a receipt for it;
- (b) as soon as practicable after the lodgement of the petition, display a certified true copy of the petition at a conspicuous place in the High Court Building; and
- (c) within 7 days after the lodgement of the petition, publish a notice in the Gazette stating---

(i) that a petition has been lodged; and

(ii) the parties concerned.

7. Notice of lodgement of petition

(1) The petitioner shall, within 2 days after the lodgement of the petition or such other period as the Court may direct, serve on---

- (a) the respondent;
- (b) the Secretary for Justice;
- (c) the Secretary for Constitutional Affairs; and
- (d) the Electoral Affairs Commission,

a notice of the lodgement of the petition and a copy of the petition.

(2) Service under subsection (1) shall be effected in the manner in which a writ of summons is served.

(3) An affidavit of service shall be filed by the petitioner as soon as practicable after service under subsection (1) has been effected.

8. Time and place for trial of petition

(1) The petitioner shall---

- (a) at the time when the petition is filed;
- (b) within 2 days after the filing of the petition; or
- (c) within such other period as the Court may direct, apply by summons to a judge for a date, time and place to be fixed for the trial of the petition.

(2) If the petitioner fails to make an application in accordance with subsection (1), any respondent may, within 3 days after the deadline for such application, apply by summons to a judge for a date, time and place to be fixed for the trial of the petition.

(3) If no application is made in accordance with subsection (1) or (2)---

- (a) the Registrar shall refer the matter to a judge; and
- (b) the judge shall upon such referral fix a date, time and place for the trial of

the petition.

(4) As soon as practicable after the date, time and place for the trial of a petition has been fixed, the Registrar shall display a notice of the date, time and place at a conspicuous place in the High Court Building and send a copy of that notice to---

- (a) the petitioner;
- (b) the respondent;
- (c) the Secretary for Justice;
- (d) the Secretary for Constitutional Affairs; and
- (e) the Electoral Affairs Commission.

9. Trial of petition

(1) Where more than one petition relating to the same election are lodged, the Court may, on its own motion or an application by a party to any such petition--

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- (a) order those petitions to be consolidated on such terms as it thinks fit; or
- (b) order them to be tried at the same time or one immediately after another.

(2) On the trial of a petition, unless the Court otherwise directs, any charge of prohibited conduct may be inquired into, and evidence relating to such charge may be received, before any proof has been given of agency on behalf of any candidate in respect of the conduct.

10. List of disputed ballot papers

(1) If the ground or one of the grounds for lodging a petition is that the person declared by the Returning Officer under section 28 of the Ordinance as elected was not duly elected because material irregularity occurred in relation to the counting of votes in respect of an election in that any vote was wrongly accepted or wrongly rejected by the Returning Officer---

- (a) the petitioner shall file a list of such votes; and
- (b) the respondent may file a list of votes which he claims to be wrongly accepted or wrongly rejected by the Returning Officer.

(2) A list filed under subsection (1) by a party shall---

- (a) state in respect of each vote in the list the grounds for his contention; and
- (b) be filed not less than 7 days before the date fixed for the trial of the petition.

(3) A party shall, as soon as practicable after filing a list under subsection (1), serve on---

- (a) every other party;
- (b) the Secretary for Justice;
- (c) the Secretary for Constitutional Affairs; and
- (d) the Electoral Affairs Commission,

a copy of the list.

(4) Service under subsection (3) shall be effected in the manner in which a writ of summons is served.

(5) A party who serves a copy of a list under subsection (3) shall, as soon as practicable after effecting the service, file an affidavit for service.

(6) Except with leave of the Court and upon such terms as the Court may order, no evidence shall be given by any party---

(a) against the acceptance or rejection of any vote; or

(b) as to any contention,

which is not stated in a list filed under subsection (1).

11. Application for leave to withdraw petition

(1) An application for leave to withdraw a petition shall be made---

(a) where there is only one petitioner, by the petitioner;

(b) where there are more than one petitioner, jointly by all petitioners,

by motion to the Court at such date, time and place as the Court may appoint.

(2) Not less than 7 days before the date appointed under subsection (1), the applicant shall---

(a) serve a notice of the intended motion on---

(i) the respondent;

(ii) the Secretary for Justice;

(iii) the Secretary for Constitutional Affairs; and

(iv) the Electoral Affairs Commission;

(b) file a copy of the intended motion; and

(c) publish a notice of the intended motion in at least one Chinese newspaper and one English newspaper circulating daily in Hong Kong.

(3) The notice of the intended motion shall state the grounds on which the application is made.

(4) The Court may, upon an application under subsection (1), grant leave to withdraw a petition.

12. Evidence required for withdrawal of petition

(1) Before leave to withdraw a petition is granted, there shall be produced affidavits by all parties to the petition and their solicitors (if any) and by the election agents (if any) of all the parties who were candidates at the election, but the Court may dispense with the affidavit of any particular person if it seems to the Court on special grounds to be just to do so.

(2) Each affidavit---

(a) shall state that, to the best of the knowledge and belief of the deponent---

(i) no agreement of any kind has been made; and

(ii) no undertaking has been entered into, in respect of withdrawing the petition; or
(b) shall, where any agreement has been made in respect of withdrawing the petition---
(i) set forth that agreement; and
(ii) make the statement referred to in paragraph (a) subject to what appears from the affidavit.

(3) The affidavits of the petitioner and his solicitor (if any) shall further state the grounds on which the petition is sought to be withdrawn.

(4) Copies of the affidavits shall be delivered to the Secretary for Justice not less than 7 days before the date of hearing appointed under section 11(1).

(5) At the hearing of an application for leave to withdraw a petition, the Court may---

(a) hear the Secretary for Justice or his representative in opposition to the application; and

(b) receive the evidence on oath of any person whose evidence the Secretary for Justice or his representative considers material.

(6) Where more than one solicitor act for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

13. Withdrawal of petition

(1) A petition may, with leave granted under section 11(4), be withdrawn by the petitioner by filing a notice of withdrawal.

(2) The petitioner shall, as soon as practicable after filing a notice of withdrawal under subsection (1), serve on---

(a) the respondent;

(b) the Secretary for Justice;

(c) the Secretary for Constitutional Affairs; and

(d) the Electoral Affairs Commission,

a copy of the notice.

14. Application to stay or dismiss petition

(1) An application by a respondent to stay or dismiss a petition before the date fixed for the trial of the petition shall be made by motion to the Court at such date, time and place as the Court may appoint.

(2) Not less than 7 days before the date appointed under subsection (1), the respondent shall---

(a) serve a notice of the intended motion on---

(i) the petitioner;

(ii) any other respondent;

- (iii) the Secretary for Justice;
 - (iv) the Secretary for Constitutional Affairs; and
 - (v) the Electoral Affairs Commission; and
- (b) file a copy of the intended motion.

(3) The notice of the intended motion shall state the ground on which the application is made.

(4) The Court may, upon an application under subsection (1), stay or dismiss (as the case may be) a petition.

15. Circumstances in which petition is regarded as withdrawn

(1) A petition shall be regarded as having been withdrawn---

- (a) upon the death of the petitioner or, where the petition is lodged by more than one petitioner, the last remaining petitioner;
- (b) where the respondent returned at an election cannot assume the office of the Chief Executive due to his death or otherwise, upon the publication in the Gazette of a notice of the new polling date fixed under section 11(3) of the Ordinance; or
- (c) where the respondent returned at an election ceases to hold the office of the Chief Executive due to his death or otherwise, upon the publication in the Gazette of a notice declaring the vacancy in the office under section 5 of the Ordinance.

(2) If the proceedings for a petition shall be regarded as having been withdrawn under subsection (1) upon the death of the petitioner---

- (a) the solicitor acting for him in the proceedings at the date of his death; or
- (b) where no solicitor acts for him at such date, any respondent learning of the death, shall file a notice of the death of the petitioner.

(3) If a petition is regarded as having been withdrawn under subsection (1), the Registrar shall, as soon as practicable after the withdrawal, publish a notice of the withdrawal in the Gazette.

16. Filing copy particulars

A party giving particulars in accordance with an order or otherwise shall file a copy within 24 hours after delivering the particulars to the party requiring them.

17. Notice of respondent's solicitor and service of notices

(1) A solicitor appointed to act for the respondent in the proceedings for a petition shall, as soon as practicable after his appointment---

- (a) give a notice of the appointment to the petitioner; and
- (b) file a copy of the notice.

(2) Subject to section 7(2), any notice required to be served under these Rules on a party may be served---

- (a) by delivering or sending it by post to the solicitor acting for the party; or
- (b) where no solicitor acts for the party---
 - (i) by delivering it to the party;
 - (ii) by leaving it at, or sending it by post or by recorded delivery or by a registered letter to, the party's last known residence in Hong Kong; or
 - (iii) in such other manner as the Court may direct.

(3) Subject to section 7(2), any notice required to be served under these Rules on---

- (a) the Secretary for Justice;
 - (b) the Secretary for Constitutional Affairs; or
 - (c) the Electoral Affairs Commission,
- may be served by delivering or sending it by post to the Secretary or the Commission, as the case may be.

18. Witnesses' expenses

The reasonable expenses incurred by any person in appearing to give evidence at the trial of a petition, equal to such sum of money as would be allowed to such person under section 52 of the High Court Ordinance (Cap. 4) if he were a witness in any civil proceedings---

- (a) may be allowed to him by a certificate of the Court or of the Registrar; and
- (b) shall be deemed to be costs of the petition.

19. Costs of petition

(1) All costs of, or incidental to, the lodgement of a petition and the proceedings for the petition shall be defrayed by the parties to the petition in such manner and in such proportions as the Court may determine.

(2) Any---

- (a) costs which in the opinion of the Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part of the petitioner or the respondent; and
 - (b) needless expenses which in the opinion of the Court have been incurred or caused by the petitioner or the respondent,
- may be ordered by the Court to be defrayed by the party by whom those costs or expenses have been incurred or caused whether or not that party is on the whole successful in the proceedings for the petition.

20. Court may abridge or extend time

Notwithstanding any provision of these Rules, the Court may abridge or extend the time within which a person is required to do any act under that provision.

SCHEDULE [s. 5]

Election Petition

In the Court of First Instance of the High Court of Hong Kong
Original Jurisdiction

In the Matter of the Chief Executive Election Ordinance (Cap. 569)
and

In the Matter of the election of the Chief Executive held on (date of election).

*1. The Petition of (name of Petitioner) states---

(a) that the Petitioner was a candidate at the above election;

(or) *1. The Petition of (name of Petitioner) as subscribed to by (names of members of the Election Committee) states---

(a) that the Petitioner is *a person who was determined under section 17 of the Chief Executive Election Ordinance (Cap. 569) to be not validly nominated/a person the nomination of whom was not accepted by the Returning Officer/a person who was disqualified under section 20(1) of that Ordinance from being elected and that the persons who have subscribed to the Petition are members of the Election Committee;

*(b) in an election which was not contested, that (name of candidate) was a candidate at the election, and on (date on which that candidate was declared elected) the Returning Officer declared that that candidate was returned at the election in a notice published in accordance with section 10 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg.); and

(or) *(b) in a contested election, that the poll was held on the above day, that (name of each candidate) were candidates at that election, and on (date on which the successful candidate was declared elected) the Returning Officer declared (name of the successful candidate) to be elected under section 28(a) of the Chief Executive Election Ordinance (Cap. 569), and that a notice of the result of the election was published in the Gazette on (date of publication in Gazette of notice of result of election) under section 28(b) of that Ordinance; and

(c) that (ground under section 32(1) of the Chief Executive Election Ordinance (Cap. 569) on which the election is questioned and on which relief is sought and the facts on which the Petitioner relies).

*2. The Petitioner therefore requests, in the case of an election which was not contested, the Court to determine---

(a) whether the determination of the Returning Officer was wrongful; and

(b) if the Court determines that the determination of the Returning Officer was wrongful, whether the candidate declared by the Returning Officer to have been returned at the election in the notice published in accordance with section 10 of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg.) was duly elected.

(or) *2. The Petitioner therefore requests, in the case of a contested election,

the Court to determine whether (name of the successful candidate) who was declared by the Returning Officer to be elected in the notice of the result of the election was duly elected.

Dated this day of 20

Signed

*Petitioner

(or) *Solicitors

Subscribers

Name of Address of Signature of

Election Committee Election Committee Election Committee

Member Member Member

*This Petition is lodged by the Petitioner.

(or) *This Petition is lodged by (name of solicitors), Solicitors acting for and on behalf of the Petitioner.

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

It is proposed to serve a copy of this Petition on (name of Respondent or names of Respondents), the Secretary for Justice, the Secretary for Constitutional Affairs and the Electoral Affairs Commission.

*Delete whichever is inapplicable.

Andrew LI

Chief Justice

12 November 2001

Explanatory Note

These Rules provide for matters relating to the preparation, lodgement, service, trial, withdrawal and costs of election petitions to the High Court for the purpose of questioning the election of the Chief Executive.