

LEGISLATIVE COUNCIL BRIEF

Chief Executive Election Ordinance (Chapter 569)

CHIEF EXECUTIVE ELECTION (ELECTION PETITION) (AMENDMENT) RULES 2006

INTRODUCTION

On 11 October 2006, the Chief Justice of the Court of Final Appeal made the Chief Executive Election (Election Petition) (Amendment) Rules 2006 (“the Amendment Rules”) under section 40 of the Chief Executive Election Ordinance (Cap. 569) (“CEEEO”).

BACKGROUND

2. The Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (“Amendment Ordinance”), which came into effect on 13 May 2006, has amended the CEEEO to provide that, if only one CE candidate is validly nominated, election proceedings shall continue.

3. Under the amendments introduced by the Amendment Ordinance -

- (a) section 32(1) of the CEEEO, which specifies the grounds for election petition, has been amended to provide for an additional ground for petition, i.e. a sole candidate declared by the Returning Officer as not returned in an uncontested election is not returned because material irregularity occurred in relation to the election, the poll at the election, or the counting of votes in respect of the election (section 32(1)(b) of the CEEEO); and

- (b) section 37(1) of the CEEO, regarding the Court of First Instance’s determination of election petition, has also been amended to better cater for different situations relating to election petition. Under the amendments introduced by the Amendment Ordinance, section 37(1)(a) caters for the situation where an election petition is made to the Court questioning an election in which there is only one candidate, and the candidate is not returned at the election. Section 37(1)(b) caters for the situation where an election petition is made to the Court questioning an election in which there is one or more candidates, and a candidate is declared elected at the election.

Relevant extracts of sections 32(1) and 37(1) of the CEEO, as amended by the Amendment Ordinance, are at **Annex A**.

4. In the light of the above amendments to the CEEO, the Chief Executive Election (Election Petition) Rules (Cap. 569 sub. leg. E) (“the Petition Rules”) need to be amended to include the additional ground for election petitions (as set out in paragraph 3(a) above), and to make appropriate changes to the petition form.

5. Apart from the Petition Rules, consequential amendments to the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J) are also required to provide for the detailed arrangements for a poll conducted for an uncontested election. This will be the subject of a separate Legislative Council brief.

AMENDMENT RULES

6. The Amendment Rules are at **Annex B**. The major amendments are highlighted in the following paragraphs.

7. Section 10 of the Petition Rules is amended to provide for the requirement for the petitioner to file a list of disputed ballot papers for a petition on the ground that a sole candidate declared by the Returning Officer under section 22(1AB)(c) of the CEEO as not returned at an election was not returned because material irregularity occurred in relation to the counting of votes in respect of the election.

8. The petition form, as set out in the Schedule to the Petition Rules, is amended -

(a) to make reference to, in respect of an uncontested election, a declaration made by the Returning Officer that the sole candidate is elected, or that the sole candidate is not returned, as the case may be, after a poll at the election; and

(b) to set out the request of the petitioner for the Court to determine -

(i) in the case of an uncontested election in which the Returning Officer declared that no candidate was returned at the election, whether the candidate is duly elected; or

(ii) in the case of an election at which a candidate was declared as elected, whether the candidate is duly elected.

PUBLIC CONSULTATION

9. On 19 June 2006, we briefed the Legislative Council Panel on Constitutional Affairs on the tentative scope of amendments. Members did not raise any objection.

IMPLICATIONS OF THE AMENDMENT RULES

10. The Amendment Rules have no additional financial or civil service implications. The Amendment Rules are in conformity with the Basic Law, including the provisions concerning human rights.

LEGISLATIVE TIMETABLE

11. The Amendment Rules will be published in the Gazette on 13 October 2006 and tabled in the Council on 18 October 2006.

PUBLICITY

12. A press release will be issued to announce the publication of the Amendment Rules in the Gazette. A spokesman will be available for answering media enquiries.

Constitutional Affairs Bureau
October 2006

Extract from CEEO : Sections 32(1) and 37(1)

32. Election may be questioned only by election petition made on specified grounds

- (1) An election may be questioned only by an election petition on the ground that-
- (a) the person declared by the Returning Officer under section 28 as elected was not duly elected because-
 - (i) he was not eligible to be nominated as a candidate under section 13;
 - (ii) he was disqualified under section 14 from being nominated as a candidate;
 - (iii) he should have been disqualified under section 20(1) from being elected but was not so disqualified;
 - (iv) he engaged in corrupt conduct or illegal conduct at the election;
 - (v) another person engaged in corrupt conduct or illegal conduct in respect of him at the election in connection with his candidature;
 - (vi) corrupt conduct or illegal conduct was generally prevalent at the election;or
 - (vii) material irregularity occurred in relation to-
 - (A) the election;
 - (B) the poll at the election; or
 - (C) the counting of votes in respect of the election; or
 - (b) the candidate declared by the Returning Officer under section 22(1AB)(c) as not returned at the election is not returned because material irregularity occurred in relation to-
 - (i) the election;
 - (ii) the poll at the election; or
 - (iii) the counting of votes in respect of the election.

* * * * *

37. Determination of election petition

- (1) The Court shall determine -
 - (a) an election petition questioning an election to which section 26A applies in which the Returning Officer declared under section 22(1AB) that no candidate was returned at the election by ruling that -
 - (i) the only candidate nominated at the election is duly elected; or
 - (ii) no candidate is returned at the election;
 - (b) an election petition questioning an election at which a candidate was declared as elected by ruling that -
 - (i) the candidate is duly elected; or
 - (ii) the candidate is not duly elected.

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CHIEF EXECUTIVE ELECTION (ELECTION PETITION)(AMENDMENT) RULES 2006

(Made by the Chief Justice under section 40 of the Chief Executive Election Ordinance (Cap. 569))

1. Commencement

These Rules shall come into operation on 8 December 2006.

2. List of disputed ballot papers

(1) Section 10(1) of the Chief Executive Election (Election Petition) Rules (Cap. 569 sub. leg. E) is amended in the Chinese text by repealing “唯一或其中一個原因” and substituting “理由或其中一個理由”.

(2) Section 10 is amended by adding –

“(1A) If the ground or one of the grounds for lodging a petition is that the candidate declared by the Returning Officer under section 22(1AB)(c) of the Ordinance as not returned at the election was not returned because material irregularity occurred in relation to the counting of votes in respect of the election in that any vote was wrongly accepted or wrongly rejected by the Returning Officer, the petitioner shall file a list of such votes.”.

(3) Section 10(2) is amended by adding “or (1A)” after “subsection (1)”.

(4) Section 10(3) is amended by adding “or (1A)” after “subsection (1)”.

(5) Section 10(6) is amended by adding “or (1A)” after “subsection (1)”.

3. Election Petition

(1) The Schedule is amended in the second paragraph 1 by repealing the first subparagraph (b) and substituting –

“*(b) *[in an uncontested election]* that the poll was conducted on the above day, that *(name of candidate)* was the only candidate nominated at the election, and on *(date on which the candidate was declared elected)* the Returning Officer declared *(name of candidate)* to be elected under section 28(1)(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 the Gazette of the notice of the result of the election)* under section 28(1)(b) of that Ordinance; and”.

(2) The Schedule is amended by adding after the first subparagraph (b) of the second paragraph 1–

“(or) *(b) *[in an uncontested election]* that the poll was conducted on the above day, that *(name of candidate)* was the only candidate nominated at the election, and on *(date on which the Returning Officer declared that no candidate was returned at the election)* the Returning Officer declared under section 22(1AB)(c) of the Chief Executive Election Ordinance (Cap. 569) that no candidate was returned at the election and that a notice of the result of the poll was published in the Gazette on *(date of publication in the Gazette of the notice of the result of the poll)* under section 22(1AB)(d) of that Ordinance; and”.

(3) The Schedule is amended in the last subparagraph (b) of the second paragraph 1 by repealing “in a contested election, that the poll was held” and substituting “*[in a contested election]* that the poll was conducted”.

(4) The Schedule is amended in the last subparagraph (b) of the second paragraph 1 by repealing “section 28(a)” and substituting “section 28(2)(a)”.

(5) The Schedule is amended in the last subparagraph (b) of the second paragraph 1 by repealing everything after “*date of publication in*” and substituting “*the Gazette of the notice of the result of the election*) under section 28(2)(b) of that Ordinance; and”.

(6) The Schedule is amended by repealing the first paragraph 2 and substituting –

“*2. The Petitioner therefore requests, in the case of an uncontested election in which the Returning Officer declared under section 22(1AB)(c) of the Chief Executive Election Ordinance (Cap. 569) that no candidate was returned at the election, the Court to determine whether (*name of the only candidate nominated at the election*) is duly elected.”.

(7) The Schedule is amended by repealing the second paragraph 2 and substituting –

“(or) *2. The Petitioner therefore requests, in the case of an election at which a candidate was declared as elected, the Court to determine whether the candidate is duly elected.”.

Chief Justice

Explanatory Note

The Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006) introduced a number of amendments to the Chief Executive Election Ordinance (Cap. 569) (“Election Ordinance”). One of the purposes of the amendments is to provide for the conduct of a poll where there is only one validly nominated candidate in a Chief Executive election. These Rules amend the Chief Executive Election (Election Petition) Rules (Cap. 569 sub. leg. E) (“principal Rules”) to –

- (a) provide for the requirement for the petitioner to file a list of disputed ballot papers for a petition on the ground that a sole candidate declared by the Returning Officer under section 22(1AB)(c) of the Election Ordinance as not returned at an election was not returned because material irregularity occurred in relation to the counting of votes in respect of the election;
- (b) amend the petition form to make reference to, in respect of an uncontested election, a declaration made by the Returning Officer under section 28(1)(a) of the Election Ordinance that the sole candidate is elected, or one made under section 22(1AB)(c) of the Election Ordinance that the sole candidate is not returned, as the case may be, after a poll at the election;
- (c) amend the petition form to set out the request of the petitioner for the Court of First Instance to determine –
 - (i) in the case of an uncontested election in which the Returning Officer declared under section 22(1AB)(c) of the Election Ordinance that no candidate was returned at the election, whether the candidate is duly elected; or

- (ii) in the case of an election at which a candidate was declared as elected, whether the candidate is duly elected;
- (d) introduce a minor amendment to the Chinese text of section 10(1) of the principal Rules to achieve consistency with the Election Ordinance.