

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

**ELECTORAL AFFAIRS COMMISSION
(NOMINATIONS ADVISORY COMMITTEES
(DISTRICT COUNCILS)) REGULATION**

INTRODUCTION

A At its meeting held on 5 May 1999, the Electoral Affairs Commission (EAC) made the Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation (the Regulation) (Annex A) under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) in respect of elections of the District Councils (DCs).

BACKGROUND

2. Under the District Councils Ordinance (8 of 1999), there are certain qualifications which prospective candidates for elections to the DCs must satisfy and certain disqualifications to which they may be subject. The question regarding the validity of the candidature is a matter of concern in that -

(a)

for the prospective candidates, they may wish, for planning purpose, to clarify their eligibility before submitting their nomination so as to avoid incurring time, effort and expenses which might be wasted; and

(b) for the ROs, they need legal advice regarding the validity of the nomination of candidates before making a decision on the matter.

3. To address their

concerns, the EAC has made the Regulation to provide for the setting up of the Nominations Advisory Committees (District Councils) (the Committees) to-

- (a) provide an informal means for the prospective candidates to ascertain their likely eligibility for nomination well before an ordinary election; and
- (b) provide the ROs with legal advice on the validity of any nominations in which they have doubts.

THE REGULATION

4. The main provisions in the Regulation are set out in the following paragraphs.

The Appointment, Functions and Filling of Vacancies of the Committees (Sections 2 to 4 of the Regulation)

5. The Regulation provides for the appointment by the EAC of one or more committees each to be known as a Nominations Advisory Committee (District Councils) and consisting of one member with professional or academic qualifications in the law. The members will be appointed in relation to a particular ordinary election or ordinary elections, by-election or by-elections and for such periods as specified by the EAC. Notice of appointment will be published in the Gazette. They will be paid remuneration of an amount or at a rate to be determined by the EAC.

6. The functions of the Committees are to provide free legal advice to -
- (a) prospective candidates in respect of an ordinary election as to whether they are eligible to be or disqualified from being nominated in respect of that election, as may be appropriate; and
 - (b) ROs as to whether a candidate for an ordinary election or by-election who has submitted

a nomination form is eligible to be or disqualified from being nominated in respect of that election or by-election, as may be appropriate.

7. The advice mentioned in paragraph 6 above is to be given by the Committees to the applicants by certain specified date (for advice under subparagraph (a)) and within certain specified period (for advice under subparagraph (b)) to be stipulated by the EAC in a notice in the Gazette.

8. The member constituting a Committee may resign and the EAC may remove a member where it is of the opinion that he is unfit to perform his functions. The EAC may also replace a member who has died, resigned or has been removed or is not able to perform his functions. Notice of resignation or removal will be published in the Gazette. The Chief Electoral Officer is responsible for the allocation and redistribution of work or duty among the Committees.

Procedures of the Committees (Sections 5 to 8 of the Regulation)

9.

Applications by prospective candidates to the Committees must be made in a form specified by the EAC and sent to the Chief Electoral Officer (who will provide administrative support to the Committees). The Committees may, before giving their advice, call for further information, particulars or evidence from the applicants. The Committees may also request the applicants to present themselves to assist in the consideration of the applications. The applicants can make representations on their applications by themselves or through any other persons authorized in writing by them.

10. Applications by the ROs to the Committees for advice must be in writing and sent to the Chief Electoral Officer.

11. The prospective candidates and the ROs are required to submit their applications on or before a date to be specified by the EAC in a notice in the Gazette. The period for

application by the prospective candidates will be from the date when the notice of the DCs ordinary election is published in the Gazette to the day before commencement of the nomination period. The period for application by the ROs will be the nomination period itself plus an extra day immediately after the expiration of the nomination period.

12. The Committees are required to give their advice in writing (except at the meeting with the ROs as mentioned in paragraph 13 below during which the Committees may give oral advice) and to furnish to the EAC copy of any advice given by them. Where any prospective candidate fails to make available any information, particulars or evidence requested by the Committees, or fails to present himself or be represented before the Committees upon request, the Committees may refuse to consider the application or to give any advice on the application or may give only qualified advice on it. The Committees are required to notify the applicants in writing of such refusals.

13. At the close of the nomination period of an ordinary election, the EAC may request members constituting the Committees to attend a meeting with the ROs for the purpose of resolving and clearing all questions about the validity of the nominations received by the ROs, so that the validity of the nominations can be decided by the ROs as soon as possible. The Committees may give oral advice at the meeting.

B 14. A timetable showing the operation of the Committees in respect of 1999 DCs election is at Annex B.

**Advice of the Committees not to Preclude Seeking of
Nomination or Election Petition
(Section 9 of the Regulation)**

15. Any advice given by the Committees or a refusal to give such advice does not preclude a person from seeking nomination or proceeding with a nomination or presenting an election petition.

PUBLIC CONSULTATION

16. The proposal to establish the Committees was included in the “Proposed Guidelines on the Election-related Activities in respect of the 1999 District Councils election” which was issued by the EAC for public consultation from 12 April to 11 May 1999. So far, there was no specific comment made by the public on this part of the proposal.

BASIC LAW IMPLICATIONS

17. The Department of Justice advises that the Regulation does not conflict with the provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

18. The Department of Justice advises that the Regulation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

19. Additional expenditure is not expected to be significant. It is estimated that about HK\$300,000 for remuneration to members constituting the Committees will be incurred. This amount will be absorbed from within the existing resources of the Registration and Electoral Office.

PUBLICITY

20. A press release will be issued to tie in with the publication of the Regulation in the Gazette.

LEGISLATIVE TIMETABLE

21. The legislative timetable is as follows –

Publication in the Gazette	7 May 1999
Tabling at Legislative Council	12 May 1999

Registration and Electoral Office
May 1999

**ELECTORAL AFFAIRS COMMISSION (NOMINATIONS ADVISORY
COMMITTEES (DISTRICT COUNCILS)) REGULATION**

(Made by the Electoral Affairs Commission under section 7 of the Electoral Affairs
Commission Ordinance (Cap. 541))

**BART I
PRELIMINARY**

1. Interpretation

- (1) In this Regulation, unless the context otherwise requires -
- "by-election" (補選) has the meaning assigned to it by section 2 of the District Councils Ordinance (8 of 1999);
- "candidate" (候選人) has the meaning assigned to it by section 2 of the District Councils Ordinance (8 of 1999);
- "Committee" (顧問委員會) means a Nominations Advisory Committee (District Councils) which for the time being stands appointed under section 2 and, where appropriate, includes a person appointed as the Committee under section 4 (1);
- "constituency" (選區) has the meaning assigned to it by section 2 of the District Councils Ordinance (8 of 1999);
- "elected member" (民選議員) has the meaning assigned to it by section 2 of the District Councils Ordinance (8 of 1999);
- "election" (選舉) means an ordinary election or a by-election;

"nomination form" (提名表格) means a form specified by the Commission under section 7 (1) (i) of the Ordinance to be submitted for the purpose of nominating a person as a candidate for election as an elected member;

"nomination period" (提名期), in relation to a particular election, means the period specified under any regulation providing the procedure therefor as the period for submitting to the Returning Officer nomination forms relating to that election;

"ordinary election" (一般選舉) has the meaning assigned to it by section 2 of the District Councils Ordinance (8 of 1999);

"Returning Officer" (選舉主任) means, subject to section 6 (5), the Returning Officer within the meaning of the District Councils Ordinance (8 of 1999).

(2) In this Regulation, a reference to being eligible to be or disqualified from being nominated is to be construed, in relation to an election held under the District Councils Ordinance (8 of 1999), with reference to that Ordinance, but nothing in this Regulation is to be construed as empowering or requiring a Committee to advise on any matter relating to any requirements under section 34 of that Ordinance.

PART II

THE COMMITTEE

2. Appointment of the Committee

(1) The Commission may appoint one or more committees each

to be known as a Nominations Advisory Committee (District Councils) and consisting of one member who must be -

- (a) a person who is admitted as a barrister or a solicitor under the Legal Practitioners Ordinance (Cap. 159) or is qualified for such admission; or
 - (b) a person with such other qualifications in the law, whether academic or professional, as the Commission considers appropriate.
- (2) Notice of any appointment under subsection (1) must be published in the Gazette by the Commission as soon as reasonably practicable after the appointment.
- (3) An appointment under subsection (1) is -
- (a) for such period as specified by the Commission in the notice under subsection (2); and
 - (b) in relation to such election or elections as the Commission may determine.
- (4) The Commission must specify in any notice under subsection (2) the election or elections, in relation to which the Committee concerned is appointed, with reference to the year or date on which any such election is, or elections are, to be held.
- (5) The member constituting a Committee may be paid remuneration of such amount or at such rate as the Commission may determine.

3. Functions

- (1) Subject to subsection (2), the functions of a Committee are -

- (a) to advise, subject to section 5(9), any prospective candidate for an ordinary election as to whether he or she is eligible to be, or disqualified from being, nominated as a candidate at that ordinary election;
- (b) to advise any Returning Officer as to whether a particular candidate for an election is eligible to be, or disqualified from being, nominated as a candidate at that election.

(2) A Committee must perform its functions under subsection (1) in respect of the election or elections specified under section 2 (4) in relation to its appointment.

(3) The Commission must specify by notice published in the Gazette the date by which a Committee must complete the performance of its function under subsection (1) (a) as regards an ordinary election in relation to which it is appointed. If more than one Committee is appointed in relation to the same ordinary election, the Commission must, for the purposes of this subsection, specify the same date in respect of each such Committee.

(4) As regards a particular election, the Committee must perform its function under subsection (1) (b) during the period specified by the Commission by notice published in the Gazette for the purposes of this subsection.

4. Filling of vacancies and allocation of work to Committees

- (1) Where the member constituting a Committee dies, resigns

or is removed from office or becomes incapable of acting as a member due to ill-health or absence from Hong Kong, the Commission may, if it thinks fit, appoint another person to act as the Committee in his or her place.

(2) Notice of any appointment under subsection (1) must be published in the Gazette by the Commission as soon as reasonably practicable after the appointment.

(3) An appointment under subsection (1) is for such period as specified by the Commission in the notice under subsection (2).

(4) Where there is any matter outstanding at the time of an appointment under subsection (1), it may be disposed of by the person appointed as the Committee under that subsection.

(5) The Chief Electoral Officer may by virtue of section 9 of the Ordinance -

- (a) allocate to a Committee any work or duty which is relevant to the performance of its functions specified in section 3; and
- (b) if more than one Committee is appointed, with the consent of a member of the Commission, redistribute the work or duty allocated under paragraph (a) among the Committees as the Chief Electoral Officer thinks fit.

(6) The member constituting a Committee -

- (a) may resign by notice in writing addressed to the Commission; and
- (b) may be removed by the Commission by notice in writing where it is of the opinion that he or she

is unfit to perform the functions of his or her office.

(7) A resignation under subsection (6) (a) is effective on the date specified in the notice for the purpose or on receipt of the notice by the Commission, whichever is later, or where no date is specified in the notice, on receipt of the notice by the Commission.

(8) A removal under subsection (6) (b) is effective on the date specified for the purpose in the notice referred to in that subsection.

(9) Notice of any resignation under subsection (6) (a) or of any removal under subsection (6) (b) must be published in the Gazette by the Commission as soon as reasonably practicable after receiving the notice of resignation or after the removal, as the case may be.

PART III

PROCEDURE OF THE COMMITTEE AND MISCELLANEOUS PROVISIONS

5. Procedure relating to applications by prospective candidates

(1) A prospective candidate for an ordinary election may apply in accordance with subsection (2) for the advice of a Committee as to whether he or she is eligible to be, or disqualified from being, nominated as a candidate at that ordinary election.

(2) An application under subsection (1) -

(a) must be in a form specified by the Commission; and

- (b) must be -
 - (i) sent to the Chief Electoral Officer by post or facsimile transmission so as to be received by that Officer; or
 - (ii) served on the Chief Electoral Officer personally, on or before a date specified by the Commission by notice published in the Gazette for the purposes of this subsection.

(3) Subject to subsection (2) (b), an application under subsection (1) may be made on or after the date on which the period specified under section 2 (3) (a) commences.

(4) A prospective candidate may, under subsection (1), make only one application.

(5) As soon as reasonably practicable after receiving an application under subsection (2), the Chief Electoral Officer must refer it to a Committee appointed in relation to the ordinary election, to which the application relates, for its consideration.

(6) A Committee to which an application is referred under subsection (5) must consider the application and advise the applicant as soon as reasonably practicable but not later than the specified date, and subject to subsections (7), (8) and (9), as to whether, in the opinion of that Committee, the applicant is eligible to be, or disqualified from being, nominated as a candidate at the ordinary election concerned.

(7) A Committee may, where it considers appropriate, before forming an opinion for the purposes of subsection (6) -

- (a) request the applicant to make available to that Committee, within such period as specified by that Committee in the particular case, information, particulars and evidence relating to his or her intended candidature as that Committee considers relevant to form an opinion for the purposes of subsection (6); and
- (b) request the applicant to present himself or herself before that Committee at a time and place specified by that Committee for the purpose of giving such assistance as that Committee considers necessary to enable it to form an opinion for the purposes of subsection (6).

(8) An applicant of whom a request is made under subsection (7) (b) may, at the time and place specified under that subsection, make representations to the Committee concerned relating to his or her intended candidature -

- (a) either in person; or
- (b) through any person authorized by him or her in writing for the purpose.

(9) Without affecting the generality of the power of a Committee to give any advice which is qualified, where an applicant does not make available any information, particulars or evidence requested under subsection (7) (a) or does not comply with a request under subsection (7) (b), a Committee may -

- (a) refuse to consider the application any further or to give any advice in relation thereto; or

- (b) advise the applicant on the application, which advice may be qualified having regard to either or both of the following, as may be appropriate -
 - (i) the fact that any information, particulars or evidence, or where appropriate, all of them, were not available to it;
 - (ii) the failure of the applicant to present himself or herself before that Committee.

(10) Where the Committee decides under subsection (9) (a) to refuse to consider an application or give advice, it must notify the applicant in writing not later than the specified date.

(11) A Committee must not consider any application for advice which is not received under subsection (2) on or before the date specified under that subsection.

(12) Any advice given under subsection (6) or (9) (b) must be in writing.

(13) Subject to this section, a Committee may determine its own procedure for the purpose of advising an applicant under this section.

(14) In this section, "specified date" (指明日期) means the date specified under section 3 (3).

6. Procedure relating to applications by Returning Officers

(1) A Returning Officer may, as regards an election in relation to which a Committee is appointed, apply in accordance

with subsection (3) to that Committee for advice as to whether a candidate who has submitted a nomination form to that Officer under any relevant regulation made under the Ordinance is eligible to be, or disqualified from being, nominated as a candidate at that election.

(2) An application under subsection (1) must be in writing and made so as to be received by the Chief Electoral Officer on or before a date specified by the Commission by notice published in the Gazette for the purposes of this subsection.

(3) A Committee to which an application is made under subsection (1) must consider the application and advise the Returning Officer concerned as soon as reasonably practicable but before the expiry of the relevant period, as to whether, in the opinion of that Committee, the candidate concerned is eligible to be, or disqualified from being, nominated as a candidate at the election concerned.

(4) In making a decision under the relevant regulations made under the Ordinance as to whether a particular candidate is validly nominated, the Returning Officer must have regard to any advice given under section 5 or 8 or subsection (3) as regards that candidate.

(5) In this section, references to Returning Officer are to be construed as references to the Returning Officer appointed for the constituency, in respect of which the candidate concerned has submitted a nomination form.

(6) Any advice given under this section must be in writing.

(7) In this section, "relevant period" (有關限期) means the

period specified under section 3 (4) as the period during which a Committee must perform its function under section 3 (1) (b).

7. Committee to furnish copy of advice to the Commission

A Committee must furnish to the Commission a copy of -

- (a) any advice given under section 5 or 6 as soon as reasonably practicable after it is given;
- (b) any information, particulars and evidence made available under section 5 (7) as soon as reasonably practicable after they are made available to the Committee; and
- (c) any notification under section 5 (10) as soon as reasonably practicable after it is sent to the applicant.

8. Committee to attend and give advice at the meeting called by the Commission

(1) Without prejudice to section 6, a Committee must -

- (a) at the request of the Commission, attend such meeting as may be called by the Commission at the close of the nomination period for a particular election; and
- (b) as far as reasonably practicable, give advice at the meeting to any Returning Officer present on any matter referred to in section 6 (1) regarding that election, which the Returning Officer may wish to seek advice from the Committee.

(2) An advice given under subsection (1) (b) may be either oral or in writing.

9. Advice not to preclude seeking of nomination or election petition

For the avoidance of doubt, it is declared that any advice given under this Regulation or a refusal under section 5 (9) (a) does not preclude -

- (a) a person from seeking nomination as a candidate or proceeding with a nomination as a candidate under the relevant regulations made under the Ordinance; or
- (b) the presentation of an election petition under the District Councils Ordinance (8 of 1999).

Consequential Amendments

**Electoral Affairs Commission (Nominations
Advisory Committees) Regulation**

10. Title amended

The title to the Electoral Affairs Commission (Nominations Advisory Committees) Regulation (Cap. 541 sub. leg.) is amended by adding "**(LEGISLATIVE COUNCIL)**" after "**(NOMINATIONS ADVISORY COMMITTEES)**".

11. Interpretation

Section 1 (1) is amended, in the definition of "Committee", by adding "(Legislative Council)" after "Nominations Advisory

Committee".

12. Appointment of the Committee

Section 2 (1) is amended by adding "(Legislative Council)" after "Nominations Advisory Committee".

**Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) Regulation**

13. Interpretation

Section 2 (1) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg.) is amended, in the definition of "Nominations Advisory Committee", by adding "(Legislative Council)" after "(Nominations Advisory Committees)".

14. Returning Officer to have regard to advice of Nominations Advisory Committee

Section 17 (a) is amended by adding "(Legislative Council)" after "(Nominations Advisory Committees)".

15. Procedure for nominations for the religious subsector and subsector elections

Schedule 1 is amended -

- (a) in section 1 (1), in the definition of "Nominations Advisory Committee", by adding "(Legislative Council)" after "Nominations Advisory Committees";
- (b) in section 13 (a), by adding "(Legislative Council)" after "(Nominations Advisory Committees)".

Made this 5th day of May 1999

Chairman,
Electoral Affairs Commission

Member,
Electoral Affairs Commission

Member,
Electoral Affairs Commission

Explanatory Note

The purpose of this Regulation is to provide for the appointment by the Electoral Affairs Commission ("the Commission") of one or more committees each to be known as a Nominations Advisory Committee (District Councils) ("Committee") to advise -

- (a) prospective candidates for an ordinary election as to whether they are eligible to be or disqualified from being nominated at that ordinary election; and

- (b) Returning Officers as to whether a candidate for an ordinary election or by-election who has submitted a nomination form is eligible to be or disqualified from being nominated at that ordinary election or by-election.
- 2. Section 1 contains the definitions with reference to which the Regulation is to be interpreted.
- 3. Section 2 provides that a Committee is to be appointed by the Commission, has one member and is in relation to an ordinary election or ordinary elections, or by-election or by-elections, as specified in the notice of appointment which has to be published in the Gazette. It also enables the payment of remuneration to the member constituting a Committee.
- 4. Section 3 -
 - (a) specifies the functions of a Committee;
 - (b) states that the Commission must specify the date by which the function of the Committee of advising prospective candidates should be completed; and
 - (c) provides for the period during which its function of advising Returning Officers should be performed.
- 5. Section 4 enables the Commission to replace a member constituting a Committee who has died, resigned or been removed or is not able to perform his or her functions, and enables -
 - (a) the Chief Electoral Officer to allocate and redistribute work or duty to Committees;
 - (b) the Commission to remove a member constituting a Committee; and

(c) a member constituting a Committee to resign.

6. Section 5 sets out the procedure for a prospective candidate to seek advice from a Committee. The application has to be in a form specified by the Commission and must be made so as to be received by the Chief Electoral Officer on or before a date specified by the Commission by notice published in the Gazette. A Committee may call for further information, particulars or evidence from the applicant before advising on the application. A Committee may also request the applicant to attend before it to assist it in the consideration of the application where the applicant can make representations on the application personally or through any other person authorized in writing by the applicant.

7. Section 6 specifies the procedure for a Returning Officer to seek advice from a Committee as to whether a candidate is eligible to be or disqualified from being nominated and requires the Returning Officer to have regard to that advice.

8. Section 7 requires a Committee to furnish to the Commission a copy of any advice given by the Committee under section 5 or 6, any information, particulars and evidence made available to the Committee and any notification refusing to give advice.

9. Section 8 requires a Committee to attend meetings called by the Commission to give advice.

10. Section 9 declares that any advice given by a Committee under the Regulation or a refusal to give such advice does not preclude a person from seeking nomination or proceeding with a nomination or the presentation of an election petition.

11. Sections 10 to 15 are consequential amendments to the Electoral Affairs Commission (Nominations Advisory Committees) Regulation (Cap. 541 sub. leg.) and the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg.).

Timetable for the Operation
for the Nominations Advisory Committees (the Committees)
for the 1999 District Councils Ordinary Election

	Issue	Date
1.	Prospective candidates to apply to the Committees for advice	from the date when the notice of the District Councils ordinary election is published in the gazette to the day before commencement of the nomination period
2.	Deadline for the Committees to give advice to prospective candidates	the third day of the nomination period
3.	Nomination period	4 to 6 weeks before election
4.	ROs to seek the Committee's service	during the nomination period plus an extra day immediately after the expiration of the nomination period ¹
5.	Deadline for the Committees to give advice to ROs	three days after the expiration of the nomination period

¹ A meeting will be held in the evening of the closing day of the nomination period between each committee and ROs who are assigned to that committee, for the purpose of resolving and clearing all questions about the validity of all nominations received by the ROs, so that the validity of nominations can be decided by the ROs as soon as possible.