

LEGISLATIVE COUNCIL BRIEF

District Councils Ordinance (No. 8 of 1999)

DISTRICT COUNCILS (ELECTION PETITION) RULES

INTRODUCTION

On 27 May 1999, the Chief Justice made the District Councils (Election Petition) Rules (“the Rules”) at the Annex.

BACKGROUND

2. According to the District Councils Ordinance (“the Ordinance”), an election to return an elected member of a District Council may be questioned only by an election petition (section 49 of the Ordinance). An election petition may be lodged by 10 or more electors entitled to vote in the relevant constituency or by a person claiming to have been a candidate in the relevant constituency within two months after the election result has been published in the Gazette (sections 50 and 53 of the Ordinance). It is triable in open court in the Court of First Instance of the High Court. The Chief Justice is empowered to make rules for regulating matters relating to the preparation, lodgement, service, trial, withdrawal and costs etc. of the petitions (section 52 of the Ordinance).

THE RULES

3. The Rules are modelled on the Legislative Council (Election Petition) Rules. They provide that subject to the provisions of the Ordinance and the Rules, the practice and procedure of the High Court would in general apply to an election petition as if it were an ordinary action within the jurisdiction of the High Court. The Rules further provide for the procedures for the preparation, lodgement, service, trial, withdrawal and costs etc. of an election petition. Details of the procedures are explained below.

Lodgement of an election petition

4. An election petition shall be in the form set out in the Schedule to the Rules and shall state the grounds for the petition (Rule 4). It shall be signed by all the petitioners and filed with the Registrar of the High Court (“the Registrar”). The Registrar shall display a copy of the petition in the High Court, send a certified copy of such petition to the Director of Home Affairs and publish a notice in the Gazette that such petition has been lodged with the Court (Rule 5).

Trial of an election petition

5. The petitioner shall, within 28 days of giving security for the petition, apply to a judge for fixing a time and place for the trial of the election petition. If the petitioner fails to do so, any respondent may, within 7 days of the expiry of the 28-day period, make a similar application to the Court. If no application is made by any party, the Registrar shall refer the matter to a judge for fixing the time and place for the trial (Rule 10). Where more than one petition relating to the same election is lodged, the Court may order the petitions to be consolidated as one or order them to be tried at the same time or one immediately after another (Rule 11).

Withdrawal of an election petition

6. A party must apply to the Court for withdrawing an election petition. Before approval is granted by the Court, all parties to the petition shall satisfy the Court that no agreement of any kind (except that which has been disclosed to the court) or no undertaking has been entered into in relation to the withdrawal (Rules 13, 14).

Costs of an election petition

7. All costs relating to an election petition shall be defrayed by the parties to the petition in such manner and in such proportions as the Court may determine (Rule 21).

PUBLIC CONSULTATION

8. Given the technical nature of the proposal, no public consultation is considered necessary.

BASIC LAW IMPLICATIONS

9. The Department of Justice has advised that the Rules do not conflict with the provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice has advised that the Rules are consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

11. The Rules have no additional financial or staffing implications. The staff and incidental costs in connection with the trial of election petitions will be absorbed within the global allocation of the Judiciary.

LEGISLATIVE TIMETABLE

12. The Rules will be published in the Gazette on 4 June 1999 and tabled in the Legislative Council on 9 June 1999 for negative vetting.

PUBLICITY

13. A press release will be issued today and a spokesman will be available for answering media enquiries.

Constitutional Affairs Bureau
3 June 1999

File Ref. : CAB C2/15

DISTRICT COUNCILS (ELECTION PETITION) RULES

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DISTRICT COUNCILS (ELECTION PETITION) RULES

(Made under section 52(3) of the District
Councils Ordinance (8 of 1999))

1. Interpretation

In these Rules, unless the context otherwise requires -
"Registrar" (司法常務官) means the Registrar of the High Court;
"respondent" (答辯人) means a respondent within the meaning of section 51 of the Ordinance.

2. General practice and procedure

Subject to Division 4 of Part V 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 an election petition as nearly as circumstances permit as if it were an ordinary action within the jurisdiction of the High Court.

3. Filing of documents

(1) Any document required to be filed in proceedings relating to any election petition shall be filed in the Registry of the High Court.

(2) The High Court Fees Rules (Cap. 4 sub. leg.) shall, subject to any necessary modifications, apply in respect of all proceedings relating to election petitions.

4. Form and substance of election petition

An election petition shall be in the form set out in the Schedule, or a form to the like effect with such variations as the circumstances may require, and shall state -

- (a) in which of the capacities mentioned in section 50 of the Ordinance the petitioner, or each of the petitioners, lodges the election petition;
- (b) the date of declaration of result of the election and the person declared to be elected by the Returning Officer -
 - (i) in the case of an election which was not contested, in a notice containing a declaration for the purposes of section 39(1) of the Ordinance published in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or
 - (ii) in the case of a contested election, in a notice of result of election published in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); and
- (c) the ground under section 49(1) of the Ordinance on which the election is questioned and on which relief is to be sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved,

and shall conclude with a request setting out the particulars of the relief sought.

5. Signature and lodgement of election petition

(1) An election petition shall be signed by the petitioner or by each petitioner if there is more than one and shall be lodged in the Court

by filing the election petition, together with 4 copies thereof, with the Registrar who shall give a receipt therefor, if required so to do.

- (2) The Registrar shall, immediately after the lodgement of the election petition -
 - (a) send a certified true copy thereof to the Director of Home Affairs, who shall, forthwith upon receipt thereof, cause that copy to be displayed in a conspicuous place on or near the outer door of any regular place of meetings of the District Council concerned and to the Secretary for Constitutional Affairs and to the Electoral Affairs Commission;
 - (b) cause a certified true copy thereof to be displayed in a conspicuous place in the High Court; and
 - (c) cause a notice, which shall state that such an election petition has been lodged and specify the parties thereto, to be published in the Gazette.

- (3) The Registrar shall cause a list of the election petitions to be displayed in a conspicuous place in the High Court.

6. Notice of lodgement of election petition

- (1) The petitioner shall, within 2 days of the lodgement of the election petition or such other period as the Court may direct, serve on the respondent and the Secretary for Justice, notice of the lodgement of the election petition and the nature of the security for costs which the petitioner proposes to give in accordance with section 54 of the Ordinance, together with a copy of the election petition.

- (2) Service shall be effected in the manner in which a writ of summons is served and an affidavit of service shall be filed as soon as possible after service has been effected.

7. Manner of application for directions in chambers

(1) Application to the Court for directions under section 54(2) of the Ordinance shall be made by the petitioner by summons to a judge in chambers at the time of lodging the election petition, or within 2 days thereafter or such other period as the Court may direct.

(2) The summons under subrule (1) shall be issued by the Registrar forthwith upon being filed.

(3) Subject to subrule (4), all applications under subrule (1) shall be made by inter partes summons, the return day of which shall be not later than 5 days after the lodgement of the election petition or the expiry of such other period as the Court may direct for giving security under section 54(1) of the Ordinance.

(4) Where the petitioner proposes to give the maximum amount of security that may be directed under section 54(2) of the Ordinance, and proposes to give such amount by the deposit of money to that extent, an application for directions that the security be given in such maximum amount and by the deposit of money, may be made by ex parte summons, and the Registrar shall, by endorsement on the summons, order the petitioner to appear at the time and place directed by the Registrar, being not later than 5 days after the lodgement of the election petition.

8. Affidavit of proposed surety to be filed and served on respondent

(1) Where the petitioner proposes to give security under section 54 of the Ordinance wholly or partly by recognizance entered into by a surety or sureties, the petitioner shall, together with the summons referred to in rule 7(1), file an affidavit sworn by the proposed surety or each proposed surety, which shall specify the sum in which it is proposed

the surety should be bound by a recognizance and shall state that after payment of all his debts the value of all his assets is not less than the sum so specified.

(2) The petitioner shall, forthwith upon the affidavit being filed in accordance with subrule (1), serve or cause to be served on the respondent the summons issued under rule 7(2), together with a copy of the affidavit.

9. Grounds of objection to recognizance

(1) The respondent to an election petition may, at the hearing of the summons issued under rule 7(2), object to any recognizance on the grounds -

- (a) that the amount of any security is insufficient;
- (b) that any surety is dead;
- (c) that any surety cannot be found; or
- (d) that any surety cannot be ascertained for want of a sufficient description in the notice served under rule 6 or in the copy of the affidavit served under rule 8(2).

(2) The Court may, at any time during the hearing of an election petition, increase the amount of security ordered on an application under rule 7(1), subject to the maximum amount specified in section 54(2) of the Ordinance, and give directions as to the manner and form of giving such increased security.

10. Time and place for trial of election petition

(1) The petitioner shall, within 28 days of giving security in accordance with section 54 of the Ordinance and these Rules, apply by summons to a judge for a time and place to be fixed for the trial of the election petition.

(2) If the petitioner fails to make an application under subrule (1) within the period specified under that subrule, any respondent may, within 7 days of the expiry of such period, apply by summons to a judge for a time and place to be fixed for the trial of the election petition.

(3) If no application to fix the time and place for the trial of the election petition is made in accordance with subrule (1) or (2), the Registrar shall refer the matter to a judge, who shall thereupon fix such a time and place.

(4) Not less than 7 days before the day so fixed the Registrar shall cause a notice of the time and place of the trial to be displayed in a conspicuous place in the High Court, and cause a copy of that notice to be sent -

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

(5) The Director of Home Affairs shall, forthwith upon receipt of the notice under subrule (4), cause it to be displayed in the same manner as provided under rule 5(2) (a) in respect of a copy of an election petition.

11. Trial of election petition

(1) The trial of an election petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the election petition.

(2) Where more election petitions than one are lodged relating to the same election, the Court may, upon its own motion or application by a party to any such election petition, order those election petitions to

be consolidated on such terms as it thinks fit or order them to be tried at the same time or one immediately after another.

(3) On the trial of an election petition, unless the Court otherwise directs, any charge of a corrupt practice or an illegal practice may be inquired into, and evidence in relation thereto may be received, before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or the illegal practice.

(4) Subject to rule 12(4) (a), on the trial of an election petition complaining that a person was not duly elected and claiming the office for some other person, the respondent may give evidence to prove that that other person was not duly elected in his place, in the same manner as if he had lodged an election petition questioning the election of that person.

12. Lists of objections in recriminatory case

(1) Where on the trial of an election petition complaining that a person was not duly elected and claiming the office for some other person, the respondent intends to give evidence in accordance with rule 11(4) to prove that that other person was not duly elected in his place, the respondent shall, not less than 7 days before the day fixed for the trial of the election petition, file a list of his objections to the election of that other person on which he intends to rely and serve a copy of the list on the petitioner and the Secretary for Justice.

(2) Where the election petition claims the office for an unsuccessful candidate on the ground that that person who is a candidate at an election had the number of valid votes that entitled him to claim the office, every party shall, not less than 7 days before the day fixed for the trial of the election petition, file a list of the votes which that party contends were wrongly admitted or wrongly rejected, stating

in respect of each such vote the grounds for his contention, and serve a copy of the list on every other party and the Secretary for Justice.

(3) Any party to an election petition may inspect and obtain a copy of any list filed in accordance with subrule (1) or (2).

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

- (a) by a respondent of any objection to the election of any person which is not specified in a list filed by him in accordance with subrule (1); or
- (b) by a party against the admission or rejection of any vote, or as to any ground of contention, which is not specified in a list filed by him in accordance with subrule (2).

13. Application for leave to withdraw election petition

(1) An application for leave to withdraw or abandon or cease to prosecute an election petition shall be made by motion to the Court at such time and place as the Court may appoint.

(2) Not less than 7 days before the day so appointed, the petitioner shall -

- (a) serve a notice of the intended motion on the respondent, the Secretary for Justice, the Secretary for Constitutional Affairs, the Electoral Affairs Commission and the Director of Home Affairs, and file a copy with the Registrar; and
- (b) publish a notice of the intended motion in at least 2 newspapers circulating in Hong Kong, one being published in English and the other one being published in Chinese.

(3) The notice of the intended motion shall state the grounds on which the application is made to withdraw or abandon or cease to prosecute the election petition, and shall contain a statement to the effect that at the hearing of the application any person who could have lodged an election petition in respect of the election or the Secretary for Justice may apply to the Court to be substituted as a petitioner.

(4) The Director of Home Affairs shall, forthwith upon receipt of the notice under subrule (2) (a), cause it to be displayed in the same manner as provided under rule 5(2) (a) in respect of a copy of an election petition.

14. Evidence required for withdrawal of election petition

(1) Before leave to withdraw or abandon or cease to prosecute an election petition is granted, there shall be produced affidavits by all parties to the election 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 so to do.

(2) Each affidavit shall state that, to the best of the knowledge and belief of the deponent, no agreement of any kind whatsoever has been made, and no undertaking has been entered into, in relation to withdrawing or abandoning or ceasing to prosecute the election petition, but if any agreement has been made with respect to withdrawing or abandoning or ceasing to prosecute the election petition, the affidavit shall set forth that agreement and shall make the foregoing statement subject to what appears from the affidavit.

(3) The affidavits of the applicant and his solicitor (if any) shall further state the grounds on which the election petition is sought to be withdrawn or abandoned or no longer prosecuted.

(4) Copies of the affidavits shall be delivered to the Secretary for Justice not less than 7 days before the day appointed for the hearing of the application for leave to withdraw or abandon or cease to prosecute the election petition, and the Court may hear the Secretary for Justice or his representative in opposition to the application for leave to withdraw or abandon or cease to prosecute the election petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Secretary for Justice or his representative may consider material.

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

15. Application to stay or dismiss election petition

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

(2) Not less than 7 days before the day so appointed, the respondent shall serve a notice of the intended motion, stating the grounds thereof, on the petitioner, any other respondent, the Secretary for Justice, the Secretary for Constitutional Affairs, the Electoral Affairs Commission and the Director of Home Affairs, and file a copy with the Registrar.

16. Notice of termination of election petition

(1) If an election petition is lodged by one petitioner and the election petition is terminated by the death of that petitioner, the solicitor acting for him in the proceedings at the date of his death or, if he had no such solicitor, any respondent learning of his death, shall file a notice to that effect with the Registrar.

(2) If an election petition is lodged by 2 or more petitioners and the election petition is terminated because the last remaining petitioner dies, the solicitor acting for such petitioner in the proceedings at the date of his death or, if he had no such solicitor, any respondent learning of his death shall file a notice to that effect with the Registrar.

17. Notice of death, etc. of respondent

On the happening of any event mentioned in section 58(1) (a) of the Ordinance, the respondent concerned, or, in the case of the death of a respondent, the solicitor acting for him in the proceedings at the date of his death or, if he had no such solicitor, any petitioner learning of his death shall file a notice to that effect with the Registrar.

18. 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.

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

(1) A solicitor appointed to act for a respondent in proceedings on an election petition shall forthwith give notice of his appointment to the petitioner and file a copy of the notice with the Registrar.

(2) Subject to rule 6(2), any notice required to be served on a respondent to an election petition may be served -

- (a) by delivering or sending it by post to any solicitor who has given notice under subrule (1) that he is acting for the respondent; or
- (b) if no notice under subrule (1) has been given, by delivering it to the respondent or by leaving it at, or

sending it by post or by recorded delivery or by a registered letter to, his last known place of abode in Hong Kong, or, if the proceedings are before the Court, in such manner as the Court may direct.

(3) Subject to rule 6(2), any notice required to be served on the Secretary for Justice, the Secretary for Constitutional Affairs, the Electoral Affairs Commission and the Director of Home Affairs in proceedings on any election petition may be served by delivering or sending it by post to that person.

20. Witnesses' expenses

The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election 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, may be allowed to him by a certificate of the Court or of the Registrar, and shall be deemed to be costs of the election petition.

21. Costs of election petition

(1) All costs of, or incidental to, the lodgement of an election petition and the proceedings consequent thereon, except such as are otherwise provided for under subrule (3), shall be defrayed by the parties to the election petition in such manner and in such proportions as the Court may determine.

(2) Any costs which in the opinion of the Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent, and any needless expenses incurred or caused on the part either of the petitioner or of the respondent, may be ordered to be defrayed by the parties by whom those

costs or expenses have been incurred or caused whether or not those parties are on the whole successful.

- (3) Where upon the trial of an election petition it appears to the Court that -
- (a) a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the election petition; and
 - (b) the respondent took all reasonable means to prevent corrupt practices being committed on his behalf; but
 - (c) any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices, in reference to the election,

the Court may, after giving that person or those persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why an order should not be made, order -

- (i) the whole or part of the costs to be paid by that person or those persons or any of them; but
- (ii) if the costs cannot be, or are unlikely to be, so recovered from one or more of those persons, that they shall be paid by some other of those persons or by the petitioner or petitioners or the respondent or respondents.

22. Forfeiture of recognizance

If a petitioner neglects or refuses for 3 months after demand to pay to any person summoned as a witness on his behalf or to the respondent any sum due to him or his costs, and the neglect or refusal is, within

1 year after the demand, proved to the satisfaction of the Court, every person who under these Rules entered into a recognizance relating to the election petition shall be held to have made default in the recognizance, and the Court shall thereupon certify the recognizance to be forfeited.

SCHEDULE
ELECTION PETITION

[r. 4]

IN THE HIGH COURT OF HONG KONG

ORIGINAL JURISDICTION

In the Matter of the District Councils Ordinance (8 of 1999)
and

In the Matter of a District Council election for the (*name of constituency*) Constituency held on (*date of election*).

- *1. The Election Petition of (*name of Petitioner*) states -
 - (a) that the Petitioner was a candidate at the above election;
- (or) *1. The Election Petition of (*names of 10 or more Petitioners*) states -
 - (a) that the Petitioners are electors who were entitled to vote at the above election;
 - * (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 for the above-mentioned Constituency declared, for the purposes of section 39(1) of the Ordinance, that candidate to be elected for the above-

mentioned Constituency in a notice published in the Gazette on (*date of publication in Gazette of that notice*) in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); and

- (or) * (b) in a contested election, that the poll was held on the above day, that (*name of each candidate*) were candidates at the election, and on (*date on which the successful candidate was declared elected*) the Returning Officer for the above-mentioned Constituency declared (*name of successful candidate*) to be elected for the above-mentioned Constituency in a notice of result of election prepared in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541), and that that notice was published in the Gazette on (*date of publication in Gazette of notice of result of election*) in accordance with regulations in force under that Ordinance; and
- (c) that (*ground under section 49(1) of the Ordinance on which the election is questioned and on which relief is to be sought and the facts on which the Petitioner relies or the Petitioners rely*).
- *2. The Petitioner therefore requests the Court to determine -
- (a) whether the candidate (*to be named*) declared by the Returning Officer for the above-mentioned Constituency to be elected in the notice was duly elected;
- (b) if the Court determines that that person was not duly elected, whether the Petitioner or another candidate (*to be named*) was duly elected in his place; and

- (or) *2. (c) any further or other relief as may be just.
- The Petitioners therefore request the Court to determine -
- (a) whether the candidate (*to be named*) declared by the Returning Officer for the above-mentioned Constituency to be elected in the notice was duly elected;
 - (b) if the Court determines that that person was not duly elected, whether another candidate (*to be named*) was duly elected in his place; and
 - (c) any further or other relief as may be just.

Dated this day of

Signed

*Petitioner/Petitioners
(or) *Solicitors

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

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

It is proposed to serve a copy of this Election Petition on (*name of Respondent or names of Respondents*) and on the Secretary for Justice.

* Delete whichever is inapplicable.

Chief Justice

27 May 1999

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 a person to a District Council.