

L.N. 115 of 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))

PART 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-

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(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.

Justice WOO Kwok-hing

Chairman,

Electoral Affairs Commission

Norman LEUNG Nai-pang
Member,
Electoral Affairs Commission
Elizabeth S. C. SHING
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.).