

LEGISLATIVE COUNCIL BRIEF

Legislative Council Ordinance (Chapter 542)

Chief Executive Election Ordinance (Chapter 569)

ELECTION COMMITTEE (APPEALS) REGULATION

LEGISLATIVE COUNCIL (FORMATION OF ELECTION COMMITTEE) (APPEALS) (REPEAL) REGULATION 2001

INTRODUCTION

At the meeting of the Executive Council on 25 September 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that –

- (a) the Election Committee (Appeals) Regulation should be made under section 46 of the Chief Executive Election Ordinance (Cap. 569); and
- (b) the Legislative Council (Formation of Election Committee) (Appeals) (Repeal) Regulation 2001 should be made under section 82 of the Legislative Council Ordinance (Cap. 542).

BACKGROUND AND ARGUMENT

General Background

2. The Chief Executive Election Ordinance (“the Ordinance”) provides that the Chief Executive is to be elected by the Election Committee (“EC”) to be constituted in accordance with the Schedule thereto. The Schedule provides that the EC is to be composed of three types of members: members returned by EC subsector elections; nominees nominated by designated bodies of the religious subsector

(“nominated members”); and ex-officio members. To ensure the integrity and transparency of our electoral system, section 39 of the Schedule provides that an appeal against the result of an EC subsector election may be lodged to a Revising Officer (“RO”). Section 48 of the Schedule provides that any person who is dissatisfied with the registration of a nominee as an EC member representing the religious subsector, after the process of nomination is completed, may make an appeal to a RO. Section 46 of the Ordinance empowers the Chief Executive in Council to make regulations to provide for the functions of, and appeals to, a RO who is responsible for handling these appeals.

3. The procedures for handling appeals against the results of EC subsector elections and the registration of nominated members are now provided for in a regulation made under the Legislative Council Ordinance, namely, the Legislative Council (Formation of Election Committee) (Appeals) Regulation (Cap. 542, sub. leg.). This regulation was approved by the Chief Executive in Council in 1998 and subsequently amended in 2000. With the removal of the relevant provisions on the constitution of the EC, including the power of making regulations relating to the RO, from the Legislative Council Ordinance to the Ordinance, we need to provide for the relevant appeal handling procedures in a new regulation to be made under section 46 of the Ordinance. As a direct result of the making of this new regulation, we need to repeal the Legislative Council (Formation of Election Committee) (Appeals) Regulation.

THE REGULATIONS

Election Committee (Appeals) Regulation

4. The provisions of the Election Committee (Appeals) Regulation are essentially drawn from the Legislative Council (Formation of Election Committee) (Appeal) Regulation, with necessary modifications to reflect new requirements. The new regulation provides for the functions and duties of a RO and the procedures to be followed by him in handling appeals against the results of EC subsector elections and the registration of nominated members. As the registration of ex-officio membership is based on the fact that a person is holding office either as a

member of the Legislative Council or Hong Kong deputy to the National People's Congress, the chance of dispute is minimal. We therefore do not consider that an appeal mechanism in respect of their registration is required.

5. **Clause 3** of the new regulation provides that any person claiming to be a candidate at an EC subsector election may lodge an appeal with the RO. As for nominated members, **clause 4** provides that any person who considers a nominated member is not eligible to be registered as an EC member representing the religious subsector may object to the registration of such member. Appeals may be lodged with a RO only on grounds specified in the new regulation. In the case of appeals against the election result, such grounds include the elected member being ineligible to be, or disqualified from being, a candidate at the election, or occurrence of material irregularity in relation to the election. As for registration of nominees of the religious subsector, the grounds for appeal may include the nominated member being ineligible to be, or disqualified from being, a nominee, or occurrence of material irregularity in relation to the nomination process. **Clause 5** provides that there will be a seven-day period for lodging an appeal and a period of 20 days is allowed for the RO to conduct hearings.

6. The RO is required under **clause 6** to make a ruling on each of the appeals after conducting a hearing. If he rules that an EC member who was declared elected at an EC subsector election was not duly elected, or that a nominated member should not have been so registered in the EC register, the Electoral Registration Officer should delete the particulars of the person concerned from the EC register in accordance with **clause 8** of the regulation. That person would cease to be an EC member.

Legislative Council (Formation of EC) (Appeals) (Repeal) Regulation 2001

7. The regulation is to repeal the Legislative Council (Formation of Election Committee) (Appeals) Regulation which currently sets out the appeal handling procedures in relation to the return of the

members of the EC constituted according to the Legislative Council Ordinance with the sole function of returning six Members to the second term Legislative Council.

LEGISLATIVE TIMETABLE

8. The two regulations will be published in the Gazette on 5 October 2001 and tabled in the Legislative Council on 10 October 2001 for negative vetting.

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the regulations do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice advises that the regulations are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

11. The regulations do not affect the current binding effect of the relevant ordinances.

FINANCIAL AND STAFFING IMPLICATIONS

12. The regulations have no additional financial or staffing implications.

PUBLIC CONSULTATION

13. Public consultation is considered unnecessary given the technical nature of the regulations.

PUBLICITY

14. A press release will be issued on 4 October 2001. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

15. Any enquiries on this brief should be addressed to Ms Doris Ho, Principal Assistant Secretary (Constitutional Affairs) 4, on 2810 2159.

Constitutional Affairs Bureau
4 October 2001

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