

LN208E

Electoral Affairs Commission (Nominations
Advisory Committees (Election Committee)) Regulation
(Made by the Electoral Affairs Commission under section 7 of the
Electoral Affairs Commission Ordinance (Cap. 541))

PART 1

Preliminary

1. Commencement

This Regulation shall come into operation on 23 November 2001.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires---

"by-election" (補選) means a subsector by-election or a sub-subsector by-election;
"candidate" (候選人), in relation to a particular subsector or sub-subsector, means
a person who is nominated to be returned as a member of the Election Committee,
assigned to that subsector or sub-subsector, at a subsector ordinary election,
subsector by-election, sub-subsector ordinary election or sub-subsector by-election,
as the case may be;

"Committee" (顧問委員會) means a Nominations Advisory Committee (Election Committee)
which for the time being stands appointed under section 3 and, where appropriate,
includes a person appointed under section 5(1) to act as the Committee;

"designated body" (指定團體) means a body referred to in section 6(1) of the Schedule
to the Chief Executive Election Ordinance (Cap. 569);

"nomination for the religious subsector" (宗教界界別分組提名) means the nomination
of a person or persons by a designated body to be a member or members representing
the religious subsector on the Election Committee under section 7(1) of the Schedule
to the Chief Executive Election Ordinance (Cap. 569);

"nomination form" (提名表格) means a form specified by the Commission under section
7(1)(i) of the Ordinance submitted for the purposes of---

(a) in relation to a subsector or a sub-subsector, nominating a candidate for the
subsector ordinary election, subsector by-election, sub-subsector ordinary election
or sub-subsector by-election, as the case may be;

(b) in relation to the religious subsector---

(i) nomination for the religious subsector by setting out the nominees to
represent the religious subsector on the Election Committee; or

(ii) supplementary nomination for the religious subsector by setting out the
nominee or nominees, as the case may be, to represent the religious subsector on the
Election Committee;

"nomination period" (提名期), in relation to a particular ordinary election, by-election, nomination for the religious subsector or supplementary nomination for the religious subsector, means the period specified under any regulation providing for the procedure therefor as the period for submitting to the Returning Officer nomination forms relating to that ordinary election, by-election, nomination for the religious subsector or supplementary nomination for the religious subsector, as the case may be;

"nominee" (獲提名人) means a person nominated by a designated body to be a member representing the religious subsector on the Election Committee;

"ordinary election" (一般選舉) means a subsector ordinary election or a sub-subsector ordinary election;

"religious subsector" (宗枋界界別分組) means the religious subsector referred to in section 2 of the Schedule to the Chief Executive Election Ordinance (Cap. 569);

"Returning Officer" (選舉主任) means, subject to section 7(6), the Returning Officer as defined in section 1 of the Schedule to the Chief Executive Election Ordinance (Cap. 569);

"subsector" (界別分組) has the meaning assigned to it by section 1 of the Schedule to the Chief Executive Election Ordinance (Cap. 569), but does not include the religious subsector, the National People's Congress subsector and the Legislative Council subsector;

"subsector by-election" (界別分組補選) has the meaning assigned to it by section 1 of the Schedule to the Chief Executive Election Ordinance (Cap. 569);

"subsector ordinary election" (界別分組一般選舉) has the meaning assigned to it by section 1 of the Schedule to the Chief Executive Election Ordinance (Cap. 569);

"sub-subsector" (小組) means a sub-subsector referred to in section 2(9) of the Schedule to the Chief Executive Election Ordinance (Cap. 569);

"sub-subsector by-election" (小組補選) has the meaning assigned to it by section 1 of the Schedule to the Chief Executive Election Ordinance (Cap. 569);

"sub-subsector ordinary election" (小組一般選舉) has the meaning assigned to it by section 1 of the Schedule to the Chief Executive Election Ordinance (Cap. 569);

"supplementary nomination for the religious subsector" (宗枋界界別分組補充提名) means the nomination of a person or persons by a designated body to fill a vacancy or vacancies among the members representing the religious subsector on the Election Committee under section 7(2) of the Schedule to the Chief Executive Election Ordinance (Cap. 569).

(2) In this Regulation---

(a) a reference to being eligible to be or disqualified from being nominated is to be construed, in relation to an ordinary election or by-election held under the

Schedule to the Chief Executive Election Ordinance (Cap. 569), 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 19 of that Schedule;

(b) a reference to being eligible to be or disqualified from being a nominee is to be construed, in relation to a nomination for the religious subsector or supplementary nomination for the religious subsector under the Schedule to the Chief Executive Election Ordinance (Cap. 569), with reference to that Ordinance.

PART 2

The Committee

3. Appointment of the Committee

(1) The Commission may appoint one or more committees each to be known as a Nominations Advisory Committee (Election Committee) 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) must be for such period as specified by the Commission in the notice under subsection (2).

(4) An appointment under subsection (1) may be in relation to such ordinary election or ordinary elections, by-election or by-elections, nomination for the religious subsector or supplementary nomination for the religious subsector, as the Commission may determine.

(5) The Commission must specify in any notice under subsection (2)---

(a) the ordinary election or ordinary elections, or by-election or by-elections, in relation to which the Committee concerned is appointed, with reference to the year or date on which any such ordinary election or by-election is, or ordinary elections or by-elections are, to be held;

(b) the nomination for the religious subsector in relation to which the Committee concerned is appointed, with reference to the period during which nomination forms relating thereto are to be submitted to the Returning Officer by the designated bodies; or

(c) the supplementary nomination for the religious subsector in relation to which the Committee concerned is appointed, with reference to the period during which a nomination form or forms relating thereto is or are to be submitted to the Returning

Officer by the designated body or designated bodies,
as the case may be.

(6) The member constituting a Committee may be paid remuneration of such amount or at such rate as the Commission may determine.

4. Functions

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

(a) to advise, subject to section 6(14)---

(i) 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 in respect of a subsector or a sub-subsector, as the case may be;

(ii) any prospective nominee for nomination for the religious subsector as to whether he or she is eligible to be, or disqualified from being, a nominee;

(iii) any designated body selecting a nominee for nomination for the religious subsector as to whether a person proposed to be nominated by that body to be a member representing the religious subsector on the Election Committee is eligible to be, or disqualified from being, a nominee; and

(b) to advise any Returning Officer as to whether---

(i) a particular candidate for an ordinary election or by-election is eligible to be, or disqualified from being, nominated as a candidate in respect of a subsector or a sub-subsector, as the case may be;

(ii) a particular nominee for nomination for the religious subsector is eligible to be, or disqualified from being, such a nominee;

(iii) a particular nominee for supplementary nomination for the religious subsector is eligible to be, or disqualified from being, such a nominee.

(2) A Committee must perform its functions under subsection (1) in respect of the ordinary election or ordinary elections, by-election or by-elections, nomination for the religious subsector or supplementary nomination for the religious subsector, specified under section 3(5) 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 functions under subsection (1)(a) as regards an ordinary election or nomination for the religious subsector in relation to which it is appointed, and where more than one Committee is appointed in relation to the same ordinary election or nomination for the religious subsector, as the case may be, the Commission must, for the purposes of this subsection, specify the same date in respect of each such Committee.

(4) As regards a particular ordinary election, by-election, nomination for the religious subsector or supplementary nomination for the religious subsector, the Committee must perform its functions under subsection (1)(b) during the period

specified by the Commission by notice published in the Gazette.

5. 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 the Committee 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) must be 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 to act 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 4; 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 under 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 3

Procedure of the Committee and Miscellaneous Provisions

6. Procedure relating to applications by prospective candidates, prospective nominees or designated bodies

(1) A prospective candidate for an ordinary election may apply in accordance with subsection (4) for the advice of a Committee as to whether he or she is eligible to be, or disqualified from being, nominated as a candidate---

(a) in the case of a subsector ordinary election, in respect of a particular subsector; or

(b) in the case of a sub-subsector ordinary election, in respect of a particular sub-subsector.

(2) A prospective nominee for nomination for the religious subsector may apply in accordance with subsection (4) for the advice of a Committee as to whether he or she is eligible to be, or disqualified from being, a nominee.

(3) A designated body selecting a nominee for nomination for the religious subsector may apply in accordance with subsection (4) for the advice of a Committee as to whether the person proposed to be nominated by that body to be a member representing the religious subsector on the Election Committee is eligible to be, or disqualified from being, a nominee.

(4) An application under subsection (1), (2) or (3)---

(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.

(5) Subject to subsection (4)(b), an application under subsection (1), (2) or (3) may be made on or after the date on which the period specified in the notice under section 3(2) commences.

(6) A prospective candidate may---

(a) under subsection (1)(a), make only one application in respect of a particular subsector; and

(b) under subsection (1)(b), make only one application in respect of a particular sub-subsector.

(7) A prospective nominee may, under subsection (2), make only one application in respect of his or her nomination for the religious subsector.

(8) A designated body may, under subsection (3), make only one application in respect of a particular person proposed to be nominated by that body to be a member representing the religious subsector on the Election Committee.

(9) For the avoidance of doubt, it is declared that a prospective candidate may---

(a) under subsection (1)(a), but subject to subsection (6)(a), apply for advice in respect of more than one subsector; and

(b) under subsection (1)(b), but subject to subsection (6)(b), apply for advice in respect of more than one sub-subsector.

(10) As soon as reasonably practicable after receiving an application under subsection (4), the Chief Electoral Officer must refer it to a Committee appointed in relation to the ordinary election or nomination for the religious subsector, to which the application relates, for its consideration.

(11) A Committee to which an application is referred under subsection (10) must consider the application and advise the applicant as soon as reasonably practicable but not later than the date specified under section 4(3), and subject to subsections (12), (13) and (14), as to whether, in the opinion of that Committee---

- (a) in the case that the applicant is a prospective candidate, the applicant is eligible to be, or disqualified from being, nominated as a candidate in respect of the subsector or the sub-subsector, as the case may be;
- (b) in the case that the applicant is a prospective nominee, the applicant is eligible to be, or disqualified from being, such a nominee; and
- (c) in the case that the applicant is a designated body, the person proposed to be nominated by that body to be a member representing the religious subsector on the Election Committee is eligible to be, or disqualified from being, such a nominee.

(12) A Committee may, where it considers appropriate, before forming an opinion for the purposes of subsection (11)---

(a) in the case that the applicant is a prospective candidate or prospective nominee---

(i) 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 or nomination for the religious subsector, as the case may be, as that Committee considers relevant to the forming of an opinion for the purposes of subsection (11)(a) or (b); and

(ii) 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 (11)(a) or (b); and

(b) in the case that the applicant is a designated body---

(i) request that designated body to make available to that Committee, within such period as specified by that Committee in the particular case, information, particulars and evidence relating to the intended nomination of the person proposed by that body as that Committee considers relevant to the forming of an opinion for the purposes of subsection (11)(c); and

(ii) request that designated body to present itself by a representative

authorized by that body in writing for the purpose 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 that Committee to form an opinion for the purposes of subsection (11)(c).

(13) An applicant of whom a request is made under subsection (12)(a)(ii) may, at the time and place specified under that subsection, make representations relating to his or her intended candidature or nomination for the religious subsector, as the case may be, to the Committee concerned---

(a) either in person; or

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

(14) 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 (12)(a)(i) or (b)(i) or does not comply with a request under subsection (12)(a)(ii) or (b)(ii), a Committee may--

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

(b) advise the applicant on the application and qualify such advice 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 (being a prospective candidate or prospective nominee) to present himself or herself before that Committee or the failure of the applicant (being a designated body) to present itself by its representative before that Committee.

(15) Where a Committee refuses to consider an application or give advice under subsection (14)(a), it must notify the applicant in writing not later than the date specified under section 4(3).

(16) A Committee must not consider any application which is not received under subsection (4) on or before the date specified under that subsection.

(17) An advice given under subsection (11) or (14)(b) must be in writing.

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

7. Procedure relating to applications by Returning Officers

(1) A Returning Officer may, as regards an ordinary election or by-election in relation to which a Committee is appointed, apply in accordance with subsection (3) to that Committee for advice as to whether a particular candidate who has submitted a nomination form to that Officer under any relevant regulation made under the

Ordinance---

(a) in the case of a subsector ordinary election or subsector by-election, in respect of a subsector; or

(b) in the case of a sub-subsector ordinary election or sub-subsector by-election, in respect of a sub-subsector,

is eligible to be, or disqualified from being, nominated as a candidate in respect of that subsector or that sub-subsector, as the case may be.

(2) A Returning Officer may, as regards a nomination for the religious subsector, or a supplementary nomination for the religious subsector, in relation to which a Committee is appointed, apply in accordance with subsection (3) to that Committee for advice as to whether a particular nominee whose name has been set out in a nomination form submitted to that Officer by a designated body under any relevant regulation made under the Ordinance is eligible to be, or disqualified from being, such a nominee.

(3) An application under subsection (1) or (2) 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.

(4) A Committee to which an application is made under subsection (1) or (2) must consider the application and advise the Returning Officer concerned as soon as reasonably practicable but before the expiry of the period specified under section 4(4) as to whether, in the opinion of that Committee---

(a) where the application relates to a particular candidate, that candidate concerned is eligible to be, or disqualified from being, nominated as a candidate in respect of the subsector or the sub-subsector, as the case may be;

(b) where the application relates to a particular nominee, that nominee concerned is eligible to be, or disqualified from being, such a nominee.

(5) In making a decision under the relevant regulations made under the Ordinance as to whether---

(a) a particular candidate is validly nominated in respect of a subsector or a sub-subsector, as the case may be; or

(b) a particular nominee is validly nominated by a designated body to be a member representing the religious subsector on the Election Committee,

the Returning Officer must have regard to any advice given under section 6 or 9 or subsection (4) as regards that candidate or nominee.

(6) In this section, references to Returning Officer are to be construed as--

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(a) in the case of an ordinary election or by-election, references to the Returning Officer appointed for the subsector or the sub-subsector, as the case may be, in

respect of which the candidate concerned has submitted a nomination form; and
(b) in the case of a nomination for the religious subsector or supplementary nomination for the religious subsector, references to the Returning Officer appointed for the nomination for the religious subsector or supplementary nomination for the religious subsector, as the case may be, in respect of which the designated body concerned has submitted a nomination form.

(7) An advice given under subsection (4) must be in writing.

8. 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 6 or 7 as soon as reasonably practicable after it is given;

(b) any information, particulars and evidence made available under section 6(12) as soon as reasonably practicable after they are made available to the Committee; and

(c) any notification under section 6(15) as soon as reasonably practicable after it is sent to the applicant.

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

(1) Without prejudice to section 7, 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 ordinary election, by-election, nomination for the religious subsector or supplementary nomination for the religious subsector, as the case may be; and

(b) as far as reasonably practicable, give advice at the meeting to any Returning Officer present on any matter referred to in section 7(1) or (2) regarding that ordinary election, by-election, nomination for the religious subsector or supplementary nomination for the religious subsector, as the case may be, on 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.

10. Advice not to preclude seeking of nomination, etc.

(1) For the avoidance of doubt, it is declared that any advice given under this Regulation or a refusal under section 6(14)(a) does not preclude---

(a) a person from seeking nomination as a candidate or proceeding with a nomination as a candidate, or from seeking nomination as a nominee, under the relevant regulations made under the Ordinance;

(b) a designated body from proceeding with a nomination for the religious subsector or a supplementary nomination for the religious subsector under the relevant regulations made under the Ordinance;

(c) a person from appealing under the Election Committee (Appeals) Regulation (L.N. 196 of 2001) against the result of an ordinary election or by-election; or

(d) a person from objecting under the Election Committee (Appeals) Regulation (L.N. 196 of 2001) to the registration in the final register of a nominee as a member of the Election Committee.

(2) For the purposes of this section, "final register" (正式委員登記冊) means a final register of members of the Election Committee.

Made this 27th day of September 2001.

WOO Kwok-hing, J.A.

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 (Election Committee) ("Committee") to advise---

(a) prospective candidates in respect of an Election Committee subsector ordinary election or an Election Committee sub-subsector ordinary election as to whether they are eligible to be or disqualified from being nominated in respect of an Election Committee subsector or an Election Committee sub-subsector, as may be appropriate; (b) prospective nominees for nomination for the religious subsector of the Election Committee, and designated bodies selecting nominees for nomination for the religious subsector, as to whether the prospective nominees are eligible to be or disqualified from being nominated as members representing the religious subsector on the Election Committee; and

(c) Returning Officers as to whether---

(i) a candidate for an Election Committee subsector ordinary election, Election Committee subsector by-election, Election Committee sub-subsector ordinary election or Election Committee sub-subsector by-election who has submitted a nomination form is eligible to be or disqualified from being nominated in respect of an Election Committee subsector or an Election Committee sub-subsector, as may be appropriate; and

(ii) a nominee who has been nominated for the religious subsector of the Election Committee by a designated body by submitting a nomination form is eligible to be or disqualified from being nominated as a member representing the religious

subsector on the Election Committee.

(Similar provisions were found in the Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap. 541 sub. leg.), but in view of the enactment of the Chief Executive Election Ordinance (Cap. 569), it is considered appropriate to have a new Regulation providing for the appointment of a Committee for the purposes mentioned in subparagraphs (a) to (c).)

2. Section 2 contains the definitions with reference to which the Regulation is to be interpreted.

3. Section 3 provides that a Committee is to be appointed by the Commission, has one member and may be appointed in relation to an ordinary election or elections in respect of an Election Committee subsector or sub-subsector, by-election or by-elections in respect of such subsector or sub-subsector, nomination for the religious subsector or supplementary nomination for the religious subsector, 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 4---

(a) specifies the functions of a Committee;

(b) states that the Commission must specify the date by which the performance of the function of the Committee of advising prospective candidates and prospective nominees and designated bodies should be completed; and

(c) provides for the period during which its function of advising Returning Officers should be performed.

5. Section 5 enables the Commission to replace a member constituting a Committee who has died, resigned or been removed from office 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 6 sets out the procedure for a prospective candidate or prospective nominee or designated body 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 7 specifies the procedure for a Returning Officer to seek advice from a Committee as to whether a candidate or nominee is eligible to be or disqualified from being nominated and requires the Returning Officer to have regard to that advice.
8. Section 8 requires a Committee to furnish to the Commission a copy of any advice given by the Committee under section 6 or 7, any information, particulars and evidence made available to the Committee and any notification refusing to give advice.
9. Section 9 requires a Committee to attend meetings called by the Commission to give advice.
10. Section 10 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, a designated body from proceeding with a nomination for the religious subsector or a supplementary nomination for the religious subsector, a person from appealing against the result of an ordinary election or by-election, and a person from objecting to the registration in the final register of members of the Election Committee of a nominee as a member of the Election Committee.