

Village Representative (Election Petition) Rules
(Made under section 66 of the Village Representative
Election Ordinance (2 of 2003))

1. Interpretation

In these Rules, unless the context otherwise requires---

"election agent" (選舉代理人) means an election agent appointed under section 22 of the Electoral Procedure (Village Representative Election) Regulation (L.N. 82 of 2003);

"judge" (法官) means a judge of the Court of First Instance of the High Court;

"petitioner" (呈請人)---

(a) in relation to an election petition, means the person who lodges the petition;
or

(b) in relation to an application under section 13(5)(b), means the person who is substituted as a petitioner;

"Registrar" (司法常務官) means the Registrar of the High Court;

"respondent" (答辯人), in relation to an election petition, means the person named as the respondent in the petition.

2. General practice and procedure

Subject to Part 5 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, 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) A document required to be filed in proceedings relating to an election petition shall be filed in the Registry of the High Court.

(2) The High Court Fees Rules (Cap. 4 sub. leg. D) apply to proceedings relating to an election petition, with appropriate changes.

4. Form of election petition

An election petition shall be in the form set out in the Schedule.

5. Signature and lodgement of election petition

(1) An election petition shall be---

(a) signed by the petitioner or by each petitioner if there is more than one; and
(b) lodged in the Court together with 4 copies of it.

(2) The Registrar shall, as soon as possible after the election petition is lodged---

- (a) give a receipt for it;
- (b) send a certified copy of it to the Director and to the Electoral Affairs Commission;
- (c) display a certified copy of it in a conspicuous place in the High Court Building; and
- (d) publish a notice in the Gazette, stating that an election petition has been lodged and specifying the parties concerned.

(3) The Registrar shall display a list of the election petitions in a conspicuous place in the High Court Building.

(4) The Director shall, as soon as possible after receiving a copy of the election petition, display it on the notice board at the District Office that is appropriate having regard to the Rural Committee specified for the Village concerned in Schedule 1, 2 or 3 of the Ordinance.

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---

(a) the respondent; and

(b) the Secretary for Justice,

a notice of the lodgement of the election petition and a copy of the election petition.

(2) The notice shall state the nature of the security for costs which the petitioner proposes to give.

(3) The notice and the copy of the election petition shall be served in the manner in which a writ of summons is served. The petitioner shall file an affidavit of service as soon as possible after they are served.

7. Manner of application for directions in chambers

(1) The petitioner shall---

(a) at the time of lodging the election petition;

(b) within 2 days after lodging the election petition; or

(c) within such other period as the Court may direct,

apply to the Court for directions under section 44(2) of the Ordinance.

(2) The petitioner may, subject to section 44(2) of the Ordinance, specify in the application the amount of security that he proposes to give in respect of the election petition.

(3) Subject to subsection (5), the application under subsection (1) shall be made by summons to a judge in chambers.

(4) The return day of an application under subsection (1) shall be---

(a) not later than 5 days after lodging the election petition; or

(b) within the period directed by the Court for giving security for all costs under section 44(1) of the Ordinance.

(5) Where the petitioner proposes to give the maximum amount of security that may be directed under section 44(2) of the Ordinance, he may, by ex parte summons, apply for directions that the security be given in that maximum amount and by the deposit of money.

(6) Where the petitioner makes an application under subsection (5), the Registrar shall, by endorsement on the summons, order the petitioner to appear---

(a) on a date, which shall be not later than 5 days after the lodgement of the election petition; and

(b) at a time and a place, directed by the Registrar.

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

(1) If the petitioner proposes to give security wholly or partly by a recognizance entered into by a surety or sureties, the petitioner shall, together with the application referred to in section 7(1), file an affidavit sworn by the proposed surety or each proposed surety.

(2) The affidavit of a surety shall---

(a) specify the sum in which it is proposed the surety should be bound by a recognizance; and

(b) state that after payment of all his debts the value of all his assets is not less than that specified sum.

(3) The petitioner shall, immediately upon the affidavit being filed, serve on the respondent the summons issued under section 7(3), together with a copy of the affidavit.

9. Grounds of objection to recognizance

(1) The respondent may, at the hearing of the summons issued under section 7(3), object to any recognizance on the grounds that---

(a) the amount of any security is insufficient;

(b) a proposed surety is dead;

(c) a proposed surety cannot be found; or

(d) a proposed surety cannot be ascertained for want of a sufficient description in the notice served under section 6 or in the copy of the affidavit served under section 8(3).

(2) At any time during the trial of an election petition, the Court may---

(a) increase the amount of security directed on an application under section 7(1), subject to the maximum amount specified in section 44(2) of the Ordinance; and

(b) give directions as to the manner and form of giving the increased security.

10. Date, time and place for trial of election petition

(1) The petitioner shall, within 28 days of giving security, apply by summons to a judge in chambers for a date, time and place to be fixed for the trial of the election petition.

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

(3) If no application is made under subsection (1) or (2), the Registrar shall refer the matter to a judge, who shall fix a date, time and place for the trial.

(4) At least 7 days before the day fixed for the trial, the Registrar shall display a notice of the date, time and place of the trial in a conspicuous place in the High Court Building, and send a copy of that notice to---

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

(5) The Director shall, upon receiving the notice under subsection (4), display it in the same manner in which a copy of an election petition is required to be displayed under section 5(4).

11. Trial of election petition

(1) The trial of an election petition shall be proceeded with even if the respondent ceases to hold the office his election to which is questioned by the election petition.

(2) If more than one election petition is lodged in respect of the same election, the Court may, upon its own motion or application by a party to any of the election petitions, order the election petitions---

- (a) to be consolidated on such terms as it thinks fit; or
- (b) 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 corrupt or illegal conduct may be inquired into, and evidence relating to such a charge may be received, before any proof of agency on behalf of any candidate at the election in respect of the corrupt or illegal conduct has been received by the Court.

(4) Subject to section 12(4)(a), if the ground or one of the grounds for lodging an election petition is that the elected person was not duly elected and it is claimed that another person was duly elected in his place, at the trial of the election petition, the respondent may give evidence to prove that the other person was not duly elected, in the same manner as if he had lodged an election petition questioning the election of that other person.

12. List of objections in recriminatory case

(1) If the ground or one of the grounds for lodging an election petition is that a person ("elected person") was not duly elected and it is claimed that another person ("unsuccessful candidate") was duly elected in the elected person's place, and the respondent intends to give evidence under section 11(4) to prove that the unsuccessful candidate was not duly elected, the respondent shall---

(a) at least 7 days before the trial date, file a list of his objections to the election of the unsuccessful candidate on which he intends to rely; and

(b) serve a copy of the list on the petitioner and the Secretary for Justice.

(2) If it is claimed in an election petition that a candidate at an election, who was not declared to be duly elected, was entitled to have been so declared because the candidate had the number of valid votes that entitled him to be declared duly elected, every party shall---

(a) at least 7 days before the trial date---

(i) file a list of the votes which that party contends were wrongly admitted or wrongly rejected; and

(ii) state in respect of each such vote the grounds for his contention; and

(b) serve a copy of the list on every other party and the Secretary for Justice.

(3) Any party to an election petition may inspect, or obtain a copy of, a list filed under subsection (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 the unsuccessful candidate which is not specified in a list filed by him under subsection (1); or

(b) by a party against the admission or rejection of any vote, or as to any ground for contention, which is not specified in a list filed by him under subsection (2).

13. Application for leave to withdraw election petition

(1) The petitioner, or, if there is more than one petitioner, the petitioners jointly, may apply to the Court for leave to withdraw the election petition.

(2) An application under subsection (1) shall be made by way of motion, notice of which shall be filed with the Registrar.

(3) The Registrar shall, upon the filing of the motion, appoint a date, time and place for hearing the motion.

(4) At least 7 days before the day appointed for hearing the motion, the petitioner shall---

(a) serve a copy of the notice of motion on---

- (i) the respondent;
- (ii) the Secretary for Justice;
- (iii) the Electoral Affairs Commission;
- (iv) the Secretary; and
- (v) the Director; and

(b) publish the notice of motion in at least one Chinese language daily newspaper and one English language daily newspaper circulating in Hong Kong.

(5) The notice of motion shall---

(a) state the grounds on which the application to withdraw the election petition is made; and

(b) contain a statement to the effect that at the hearing of the application---

(i) any person who could have lodged an election petition in respect of the election; or

(ii) the Secretary for Justice,

may apply to the Court to be substituted as a petitioner.

(6) The Director shall, upon receiving the notice under subsection (4)(a), display it in the same manner in which a copy of an election petition is required to be displayed under section 5(4).

(7) In this section and section 14, any reference to withdrawing an election petition includes a reference to abandoning or ceasing to prosecute an election petition.

14. Evidence required for withdrawal of election petition

(1) The application for leave to withdraw an election petition shall be accompanied by affidavits---

(a) by all parties to the election petition and their solicitors (if any); and

(b) by the election agents (if any) of all the parties who were candidates at the election.

(2) The Court may dispense with the affidavit of any particular person if it appears to the Court to be just to do so.

(3) Each affidavit shall state that, to the best of the knowledge and belief of the deponent---

(a) no agreement of any kind whatsoever has been made; and

(b) no undertaking has been entered into,
with respect to withdrawing the election petition.

(4) Notwithstanding subsection (3), if an agreement has been made with respect to withdrawing the election petition, the affidavit shall---

(a) set forth that agreement; and

(b) make the statement referred to in subsection (3) subject to the facts deposed under paragraph (a).

(5) 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.

(6) Copies of the affidavits shall be served on the Secretary for Justice at least 7 days before the day appointed for hearing the application for leave to withdraw the election petition.

(7) At the hearing of the application, the Court may---

(a) hear the Secretary for Justice or his representative in opposition to the application; and

(b) receive the evidence on oath of any person whose evidence the Secretary for Justice or his representative may consider material.

(8) Where more than one solicitor acts 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) A respondent may apply to the Court to stay or dismiss an election petition before the day fixed for the trial of that election petition.

(2) An application under subsection (1) shall be made by way of motion, notice of which shall be filed with the Registrar.

(3) The notice of motion shall state the grounds for the application.

(4) The Registrar shall, upon the filing of the motion, appoint a date, time and place for hearing the motion.

(5) At least 7 days before the day appointed for hearing the motion, the respondent shall serve a copy of the notice of motion on---

(a) the petitioner;

(b) any other respondent;

(c) the Secretary for Justice;

(d) the Electoral Affairs Commission;

(e) the Secretary; and

(f) the Director.

(6) The Court may, upon an application under subsection (1), stay or dismiss (as

the case may be) an election petition.

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---

- (a) the solicitor acting for him in the proceedings at the date of his death; or
- (b) if no solicitor acts for him, 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 by the death of the last remaining petitioner---

- (a) the solicitor acting for that petitioner in the proceedings at the date of his death; or
- (b) if no solicitor acts for that petitioner, 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 an event mentioned in section 48(1)(a) of the Ordinance-

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- (a) the respondent concerned;
- (b) in the case of the death of a respondent, the solicitor acting for him in the proceedings at the date of his death; or
- (c) if no solicitor acts for the respondent, 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 relating to an election petition shall give notice of his appointment to---

- (a) the petitioner;
- (b) the Secretary for Justice;
- (c) the Electoral Affairs Commission;
- (d) the Secretary; and
- (e) the Director,

and file a copy of the notice with the Registrar.

(2) Subject to section 6(3), 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 the solicitor acting for the respondent; or

(b) if no solicitor acts for the respondent---

(i) by delivering it to the respondent;

(ii) by leaving it at, or sending it by post or by recorded delivery or by a registered letter to, his last known address in Hong Kong; or

(iii) if the proceedings are before the Court, in such manner as the Court may direct.

(3) Subject to section 6(3), any notice required to be served under these Rules on---

(a) the Secretary for Justice;

(b) the Electoral Affairs Commission;

(c) the Secretary; or

(d) the Director,

may be served by delivering or sending it by post to the person required to be served.

20. Witnesses' expenses

The reasonable expenses incurred by a person who gives 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---

(a) may be allowed to him by a certificate of the Court or of the Registrar; and

(b) 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 and the proceedings for an election petition shall be borne by the parties to the election petition in such manner and in such proportion as the Court may determine.

(2) Without limiting subsection (1), if it appears to the Court that---

(a) any costs have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent; or

(b) any needless expenses have been incurred or caused on the part either of the petitioner or of the respondent,

the Court may order such costs or expenses to be borne by the parties by whom those costs or expenses have been incurred or caused whether or not those parties are on the whole successful in the proceedings for the election petition.

(3) If it appears to the Court that---

(a) corrupt conduct has not been proved to have been engaged in, in relation to the election, by or with the knowledge and consent of the respondent to the election petition;

(b) the respondent has taken all reasonable steps to prevent corrupt conduct being engaged in on his behalf; and

(c) another person or persons have been proved to have been extensively engaged in corrupt conduct, or to have encouraged or promoted extensive corrupt conduct in relation to the election, whether by providing money or otherwise, the Court may make an order under subsection (4).

(4) The Court may order---

(a) the whole or part of the costs to be paid by the person or persons referred to in subsection (3)(c) or any one of those persons; or

(b) if the Court is satisfied that the costs cannot be, or are unlikely to be, recovered from one or more of those persons that they shall be borne by any other person out of those persons or by the petitioner or the respondent.

(5) Before making an order under subsection (4), the Court shall give that person or those persons an opportunity to show cause why such an order should not be made.

22. Forfeiture of recognizance

(1) Every person who entered into a recognizance relating to an election petition shall be held to have made default in the recognizance, if---

(a) the petitioner concerned neglects or refuses, for 3 months after demand, to pay---

(i) any sum due to any person called as a witness on his behalf or the respondent; or

(ii) the costs of that person or the respondent; and

(b) the neglect or refusal is proved to the Court within 1 year after the demand.

(2) The Court may enforce the sum due under a recognizance forfeited by it in the same manner as a judgment for the payment of money.

Schedule [s. 4]

Election Petition

IN THE COURT OF FIRST INSTANCE OF

THE HIGH COURT OF HONG KONG

ORIGINAL JURISDICTION

In the Matter of the Village Representative Election Ordinance (2 of 2003)
and

In the Matter of an election for (Resident Representative/Indigenous Inhabitant Representative) for (name of Village) *held on (date of election)/which was not contested.

*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 5 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/(name of each candidate) were candidates at the election,

and on (date on which that candidate was declared elected or those candidates were declared elected) the Returning Officer for the above-mentioned Village declared, for the purposes of section 36 of the Ordinance, *that candidate/those candidates to be elected for the above-mentioned Village in a notice published in the Gazette on (date of publication in Gazette of that notice) in accordance with the Electoral Procedure (Village Representative Election) Regulation (L.N. 82 of 2003); and (or) *(b) in a contested election, that a poll was taken 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 or the successful candidates were declared elected) the Returning Officer for the above-mentioned Village declared (name of successful candidate or names of successful candidates) to be elected for the above-mentioned Village in a notice of result of election prepared in accordance with the Electoral Procedure (Village Representative Election) Regulation (L.N. 82 of 2003), and that that notice was published in the Gazette on (date of publication in Gazette of notice of result of election) in accordance with the Regulation; and (c) that (ground under section 39(1) of the Ordinance on which the election is questioned 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)/some other candidates (to be named) declared by the Returning Officer for the above-mentioned Village to be elected in the notice *was/were duly elected;

(b) if the Court determines that *that person/those persons *was/were not duly elected, whether *the Petitioner/another candidate (to be named)/some other candidates (to be named) *was/were duly elected in *his/their place; and

(c) any further or other relief as may be just.

(or) *2. The Petitioners therefore request the Court to determine---

(a) whether *the candidate (to be named)/some other candidates (to be named) declared by the Returning Officer for the above-mentioned Village to be elected in the notice *was/were duly elected;

(b) if the Court determines that *that person/those persons *was/were not duly elected, whether *another candidate (to be named)/some other candidates (to be named) *was/were duly elected in *his/their place; and

(c) any further or other relief as may be just.

Dated this day of 20.....

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.

Andrew LI

Chief Justice

29 May 2003

Explanatory Note

These Rules provide for matters relating to election petitions lodged in relation to an election under the Village Representative Election Ordinance (2 of 2003) including---

- (a) the lodgement and service of election petitions (sections 5 and 6);
- (b) the security for costs to be given in respect of election petitions (sections 7 and 8);
- (c) the trial of election petitions (sections 10, 11 and 12);
- (d) the withdrawal of election petitions (sections 13 and 14);
- (e) the stay, dismissal and termination of election petitions (sections 15 and 16);
- (f) the costs of election petitions (section 21); and
- (g) the form of election petitions (the Schedule).