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**HONG KONG SPECIAL ADMINISTRATIVE REGION****ORDINANCE NO. 21 OF 2001**L.S.

Donald TSANG  
Acting Chief Executive  
19 July 2001

An Ordinance to provide for the election of the Chief Executive in accordance with Annex I to the Basic Law of the Hong Kong Special Administrative Region; to amend the Electoral Affairs Commission Ordinance to empower the Electoral Affairs Commission to supervise election of the Chief Executive; to amend the Legislative Council Ordinance to remove provisions concerning the constitution of the Election Committee and provide for by-election to return a Member of the Legislative Council by the Election Committee constituted under this Ordinance; to make necessary related amendments to the Elections (Corrupt and Illegal Conduct) Ordinance consequential upon the enactment of this Ordinance and to provide for matters related to or consequential upon such election.

[ ]

Enacted by the Legislative Council.

**PART 1****PRELIMINARY****1. Short title and commencement**

(1) This Ordinance may be cited as the Chief Executive Election Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Constitutional Affairs by notice published in the Gazette.

**2. Interpretation**

(1) In this Ordinance, unless the context otherwise requires—  
“Acting Chief Executive” (署理行政長官) means any public officer assuming the duties of the Chief Executive pursuant to Article 53 of the Basic Law;

- “candidate” (候選人) means a candidate who is determined to be validly nominated under section 17;
- “Chief Electoral Officer” (總選舉事務主任) means the Chief Electoral Officer appointed under section 9 of the Electoral Affairs Commission Ordinance (Cap. 541);
- “Chief Executive” (行政長官) means the Chief Executive of the Hong Kong Special Administrative Region;
- “Court” (原訟法庭) means the Court of First Instance;
- “EAC Regulations” (《選管會規例》) means regulations made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541);
- “election” (選舉) means an election held under section 6;
- “Election Committee” (選舉委員會) means the Election Committee constituted under section 8;
- “election petition” (選舉呈請、選舉呈請書) means an election petition lodged under section 33(1);
- “Electoral Affairs Commission” (選舉管理委員會) means the Electoral Affairs Commission established by section 3 of the Electoral Affairs Commission Ordinance (Cap. 541);
- “electoral officer” (選舉事務人員) means—
- (a) the Returning Officer;
  - (b) the Chief Electoral Officer;
  - (c) an Assistant Returning Officer appointed under section 41(3);
  - (d) the Electoral Registration Officer appointed under section 44 of the Schedule;
  - (e) an Assistant Electoral Registration Officer appointed under section 44 of the Schedule;
  - (f) a Revising Officer appointed under section 46 of the Schedule;
  - (g) a Returning Officer appointed under section 47 of the Schedule;
  - (h) an Assistant Returning Officer appointed under section 47 of the Schedule; or
  - (i) any other person who is appointed under this Ordinance or the Electoral Affairs Commission Ordinance (Cap. 541) to perform functions at or in connection with an election or a subsector election;
- “final register of members of the Election Committee” (選舉委員會正式委員登記冊) means the register compiled under section 40 of the Schedule;
- “function” (職能) includes a power and a duty;
- “member of the Election Committee” (選舉委員) means a person whose name appears in the final register of members of the Election Committee;
- “poll” (投票) means a poll conducted under section 24;
- “polling date” (投票日) means the date fixed in accordance with section 10 or 11 as the date of the poll at an election;



“prescribed public officer” (訂明公職人員) means any of the following—

- (a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap. 204);
- (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap. 397);
- (d) a member of the Electoral Affairs Commission;
- (e) the Chief Executive of the Hong Kong Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (f) the Privacy Commissioner for Personal Data and any person employed or engaged by him under the Personal Data (Privacy) Ordinance (Cap. 486);
- (g) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap. 480);
- (h) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau;

“Returning Officer” (選舉主任) means the Returning Officer appointed under section 41(1);

“Revising Officer” (審裁官) has the meaning assigned to it by section 1(1) of the Schedule;

“subsector election” (界別分組選舉) has the meaning assigned to it by section 1 of the Schedule;

“working day” (工作日) means any day other than—

- (a) a public holiday;
- (b) any day throughout or for part of which a black rainstorm warning is in force, and “black rainstorm warning” (黑色暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; and
- (c) any day throughout or for part of which a gale warning is in force, and “gale warning” (烈風警告) means a warning of the occurrence of a tropical cyclone in, or in the vicinity of, Hong Kong by the use of any of the tropical cyclone warning signals commonly referred to as No. 8NW, 8SW, 8NE, 8SE, 9 or 10.

(2) Any reference in this Ordinance to the performance of a function includes a reference to the exercise of a power or performance of a duty, as the case may be.

## PART 2

### TERM OF OFFICE AND ELECTION OF CHIEF EXECUTIVE

#### **3. Term of office of Chief Executive**

(1) The term of office of the Chief Executive shall—

(a) be 5 years; and

(b) commence on the date on which he assumes office being the date specified for this purpose by the Central People's Government in the instrument of appointment.

(2) No person shall hold the office of the Chief Executive for more than 2 consecutive terms.

(3) The date on which the term of office of the Chief Executive commences shall be published by notice in the Gazette.

#### **4. Vacancy in office**

The office of the Chief Executive becomes vacant—

(a) on the expiry of the term of office of the Chief Executive;

(b) if the Chief Executive dies; or

(c) if the Central People's Government removes the Chief Executive from office in accordance with the Basic Law.

#### **5. Declaration of vacancy**

(1) Where the office of the Chief Executive becomes vacant under section 4(b) or (c), the Acting Chief Executive shall, by notice published in the Gazette, declare the vacancy.

(2) A declaration under subsection (1) shall—

(a) be made within 21 days after the Acting Chief Executive becomes aware of the vacancy; and

(b) specify the date on which the office became vacant.

#### **6. Election to return candidate for appointment to fill vacancy in office**

An election shall be held in accordance with—

- (a) the Basic Law;
- (b) this Ordinance; and
- (c) any other enactment which applies to the election of the Chief Executive,

to return a candidate for appointment by the Central People's Government to fill the vacancy in the office of the Chief Executive—

- (d) that will arise under section 4(a); or
- (e) that arises under section 4(b) or (c).

## **7. Election by Election Committee**

The Chief Executive shall be elected by the Election Committee as prescribed in Annex I to the Basic Law.

## **PART 3**

### **ELECTION COMMITTEE**

## **8. Constitution of Election Committee**

(1) There shall be constituted a committee, to be known as the Election Committee, for the purposes of this Ordinance and such other purposes as may be prescribed by any other Ordinance.

(2) Subject to subsection (3), the Election Committee shall be constituted in accordance with the Schedule.

(3) The Election Committee constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) shall be continued and regarded as having been constituted as the first Election Committee under this Ordinance.

(4) The members of the Election Committee constituted on 14 July 2000 under the Legislative Council Ordinance (Cap. 542) shall, subject to the Schedule, be members of the first Election Committee constituted under this Ordinance.

## **9. Term of office of Election Committee**

The term of office of the Election Committee shall be 5 years commencing on the date on which it is constituted.

## PART 4

## DATE OF POLL AND NOMINATION

**10. Polling date**

(1) Subject to section 11, the date of the poll at an election to return a candidate for appointment to fill the vacancy in the office of the Chief Executive that will arise under section 4(a) shall, where the first day of the period of 95 days expiring at the beginning of the day on which the vacancy will arise—

(a) is a Sunday, be that Sunday; or

(b) is not a Sunday, be the Sunday immediately preceding the commencement of that period.

(2) Subject to section 11, the date of the poll at an election to return a candidate for appointment to fill the vacancy in the office of the Chief Executive that arises under section 4(b) or (c) shall, where the 120th day after the date on which the office becomes vacant as specified under section 5(2)(b)—

(a) is a Sunday, be that Sunday; or

(b) is not a Sunday, be the Sunday immediately following that day.

(3) Nothing in this section or section 11 prevents any round of voting from being conducted on a day after the polling date if the operation of section 27 so requires.

**11. Fixing new polling date under certain circumstances**

(1) Where—

(a) a polling date is fixed in accordance with this section or section 10; and

(b) no candidate is validly nominated under section 17 at the close of nominations,

the new polling date shall, where the 42nd day after the close of nominations—

(c) is a Sunday, be that Sunday; or

(d) is not a Sunday, be the Sunday immediately following that day.

(2) Where—

(a) a polling date is fixed in accordance with this section or section 10; and

(b) the proceedings for the election are terminated under section 22(1),

the new polling date shall, where the 42nd day after the termination of the proceedings for the election—

(c) is a Sunday, be that Sunday; or

(d) is not a Sunday, be the Sunday immediately following that day.

(3) If the candidate returned at an election for appointment to fill the vacancy in the office of the Chief Executive—

(a) that will arise under section 4(a) cannot assume the office of the Chief Executive on the day on which the vacancy arises, the new polling date shall, where the 120th day after the expiry of the term of office of the serving Chief Executive—

(i) is a Sunday, be that Sunday; or

(ii) is not a Sunday, be the Sunday immediately following that day;

(b) that has arisen under section 4(b) or (c) cannot assume the office of the Chief Executive before the expiry of 6 months commencing on the date on which the vacancy arose, the new polling date shall, where the 120th day after the expiry of those 6 months—

(i) is a Sunday, be that Sunday; or

(ii) is not a Sunday, be the Sunday immediately following that day.

(4) Where a new polling date is fixed in accordance with this section, the Chief Electoral Officer shall fix the nomination period accordingly.

## **12. Publication of polling date**

A polling date fixed in accordance with section 10 or 11 shall be published by notice in the Gazette.

## **13. Eligibility for nomination as candidate**

Subject to section 14, a person is eligible to be nominated as a candidate at an election if—

(a) he is a permanent resident of the Hong Kong Special Administrative Region;

(b) he is a Chinese citizen as defined by section 2 of the Hong Kong Special Administrative Region Passports Ordinance (Cap. 539);

(c) he has no right of abode in any foreign country; and

(d) he—

(i) in the case of an election to fill the vacancy in the office of the Chief Executive that will arise under section 4(a), will have—

- (A) reached 40 years of age on the day on which the vacancy is due to arise; and
  - (B) ordinarily resided in Hong Kong for a continuous period of not less than 20 years before the day on which the vacancy is due to arise;
- (ii) in the case of an election to fill the vacancy in the office of the Chief Executive that arises under section 4(b) or (c), will have—
- (A) reached 40 years of age on the polling date; and
  - (B) ordinarily resided in Hong Kong for a continuous period of not less than 20 years before the polling date.

#### **14. Disqualification from being nominated**

Without prejudice to section 13(1)(c) of the Electoral Affairs Commission Ordinance (Cap. 541), a person is disqualified from being nominated as a candidate if—

- (a) he is the Chief Executive and holds the office of the Chief Executive for the second consecutive term;
- (b) he is a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92);
- (c) he is a prescribed public officer;
- (d) he is adjudged bankrupt under the Bankruptcy Ordinance (Cap. 6) and has not been discharged under section 30A or 30B of that Ordinance;
- (e) he holds a passport or similar travel document other than—
  - (i) a Hong Kong Special Administrative Region Passport issued under the Hong Kong Special Administrative Region Passports Ordinance (Cap. 539);
  - (ii) a certificate of identity within the meaning of the Immigration Ordinance (Cap. 115); or
  - (iii) any entry permit issued by an authority in any part of the People's Republic of China which authorizes its holder to enter any part of the People's Republic of China;
- (f) he has, in Hong Kong or any other place, been sentenced to death and has not either—
  - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
  - (ii) received a free pardon;
- (g) he has been convicted of treason;

- (h) he has been convicted—
  - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;
  - (ii) of having engaged in corrupt conduct or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);
  - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
  - (iv) of any offence prescribed by the EAC Regulations made for the purposes of this paragraph, within the 5 years before the date of nomination; or
- (i) he is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs.

## 15. Nomination period

- (1) The nomination period for candidature at an election and the time at which the nomination period terminates shall be fixed by the Chief Electoral Officer.
- (2) The nomination period—
  - (a) shall not be less than 14 days; and
  - (b) shall terminate on a day earlier than the 21 days before the polling date.
- (3) The time at which the nomination period terminates shall for the purposes of this Ordinance be regarded as the close of nominations.

## 16. Manner of nomination

- (1) A nomination of a candidate shall be made in such form and manner as may be specified in the EAC Regulations made for the purposes of this section.
- (2) A nomination of a candidate shall be made—
  - (a) subject to subsections (4) and (5), by not less than 100 members of the Election Committee; and
  - (b) by delivering a duly completed nomination form to the Returning Officer before the close of nominations.
- (3) A nomination made by a member of the Election Committee—
  - (a) shall be signified by his signature on the nomination form; and
  - (b) shall not be withdrawn or revoked by the member.

(4) The signature of a member of the Election Committee on a nomination form nominating a person is invalid and shall be disregarded for the purposes of subsections (2) and (3) if, at the time of the delivery of the form to the Returning Officer—

- (a) a nomination form nominating a person other than the first-mentioned person for the same election and signed by the member has been delivered to the Returning Officer; and
- (b) the person nominated by virtue of the nomination form referred to in paragraph (a) has not withdrawn his candidature under section 19.

(5) If a member of the Election Committee—

- (a) resigns under section 3(3) of the Schedule;
- (b) is serving a sentence of imprisonment for the time being;
- (c) falls within paragraph (a), (b), (c), (f) or (g) of section 18 of the Schedule; or
- (d) is or has been convicted, within the 3 years before the polling date of an election, in the manner prescribed by subparagraph (i), (ii) or (iii) of section 18(e) of the Schedule,

he shall be disqualified from making nomination at the election.

(6) The disqualification of a member of the Election Committee from making nomination shall not affect a nomination made by him before such disqualification.

(7) A nomination of a candidate shall be accompanied by—

- (a) a declaration to the effect that—
  - (i) he stands for the election in an individual capacity; and
  - (ii) he will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region; and
- (b) a declaration as to his nationality and as to whether he has a right of abode in any foreign country.

(8) The declarations referred to in subsection (7) are not effective unless they are signed by the candidate concerned.

## **17. Determination of validity of nomination**

The Returning Officer shall, as soon as practicable after receiving a nomination form, determine whether or not the person nominated by virtue of the nomination form is validly nominated in accordance with this Ordinance as a candidate at the election.

## **18. Publication of nomination**

(1) The Returning Officer shall, by notice published in the Gazette, declare—



- (a) the names of all candidates who are validly nominated; and
- (b) together with the name of each of such candidates, the names of those members of the Election Committee nominating him.

(2) A notice under subsection (1) shall be published within 7 days after the date of the close of nominations.

(3) Copies of the nomination forms of all candidates shall be made available for inspection by the public free of charge during ordinary business hours at the office of the Returning Officer until the result of the election is declared under section 28.

## **19. Withdrawal of candidature**

(1) A candidate may withdraw his candidature at any time before the close of nominations.

(2) The withdrawal of a candidate's candidature is not effective unless it complies with the EAC Regulations made for the purposes of this section.

(3) A person who is nominated as a candidate shall cease to be regarded as such upon the withdrawal of his candidature.

## **PART 5**

### **ELECTION AND POLLING**

## **20. Disqualification from being elected**

(1) If, after the close of nominations but before the close of polling, proof is given to the satisfaction of the Returning Officer that—

- (a) a candidate does not satisfy the requirement in section 13(a), (b), (c) or (d);
- (b) a candidate falls within any paragraph (except paragraph (h)) of section 14;
- (c) a candidate is or has been convicted, within the 5 years before the polling date, in the manner prescribed by subparagraph (i), (ii), (iii) or (iv) of section 14(h); or
- (d) the nomination of a candidate does not comply with this Ordinance,

the Returning Officer shall, by a public declaration, disqualify the candidate from being elected at the election.

(2) A declaration made under subsection (1) shall be published in the Gazette as soon as practicable after it is made.

## **21. Postponement or adjournment of polling or counting of votes**

(1) The Electoral Affairs Commission may direct the postponement of a poll or the counting of votes in respect of a poll if, before the commencement of polling or counting, as the case may be, the Commission is of the opinion that the polling or counting, as the case may be, is likely to be obstructed, disrupted, undermined or seriously affected by riot or open violence or any occurrence of public danger.

(2) The Electoral Affairs Commission may direct—

- (a) the adjournment of a poll if, during the polling, the Commission is of the opinion that the poll; or
- (b) the adjournment of the counting of votes in respect of a poll if, during the counting, the Commission is of the opinion that the counting,

is likely to be or is being obstructed, disrupted, undermined or seriously affected by riot or open violence or any occurrence of public danger.

(3) A member of the Election Committee who has cast a vote at a poll adjourned under subsection (2) is not entitled and shall not be allowed to cast a vote again at the resumed polling.

(4) Subsection (3) ceases to apply if the poll proceeds to another round of voting.

## **22. Termination of election proceedings**

(1) Where—

- (a) at the close of nominations 2 or more candidates are validly nominated; and
- (b) proof is given to the satisfaction of the Returning Officer that any candidate dies or is disqualified under section 20(1) from being elected at any time after the close of nominations but before the declaration of the result of the election,

the Returning Officer shall, by a public declaration, terminate the proceedings for the election.

(2) If a candidate is eliminated at any round of voting under section 27(3)(c) or (4)(c), he shall cease to be regarded as a candidate for the purposes of subsection (1)(b).

## **23. The only candidate shall be returned**

If at the close of nominations only one candidate is validly nominated, the Returning Officer shall publicly declare the candidate to be returned at the election.

**24. A poll shall be conducted in contested election**

Where there are 2 or more candidates in an election, a poll shall be conducted in accordance with the EAC Regulations under the supervision of the Returning Officer.

**25. Voting by members of Election Committee**

(1) Subject to section 26, only the members of the Election Committee whose names appear on the final register of members of the Election Committee can vote at a poll.

(2) The votes at a poll shall be cast by secret ballot.

(3) At a poll each member of the Election Committee is entitled to cast a single vote in each round of voting.

**26. Disqualification from voting**

If a member of the Election Committee whose name appears on the final register of members of the Election Committee—

(a) resigns under section 3(3) of the Schedule;

(b) is serving a sentence of imprisonment on the polling date of an election;

(c) falls within paragraph (a), (b), (c), (f) or (g) of section 18 of the Schedule; or

(d) is or has been convicted, within the 3 years before the polling date of an election, in the manner prescribed by subparagraph (i), (ii) or (iii) of section 18(e) of the Schedule,

he shall be disqualified from voting at the poll.

**27. System of voting**

(1) If a candidate obtains more than half of the total number of valid votes cast in any round of voting, he shall be returned at the election.

(2) Where—

(a) there are 2 candidates in the election; or

(b) 2 candidates remain after the elimination of all other candidates under subsection (3)(c) or (4)(c),

as many rounds of voting as may be necessary shall be conducted for the 2 candidates until one of them is returned under subsection (1).

(3) Where—

(a) there are 3 or more candidates in the election; and

(b) after the first round of voting—

- (i) only 2 candidates obtain the highest and the same number of valid votes cast; or
- (ii) (A) only one candidate obtains the highest number of valid votes cast but he does not obtain more than half of the total number of valid votes cast; and
- (B) only one candidate obtains the next highest number of valid votes cast,

then—

- (c) all candidates other than the 2 candidates referred to in paragraph (b)(i) or (ii) shall be eliminated; and
  - (d) subsection (2) applies in relation to those 2 candidates.
- (4) Where—
- (a) there are 3 or more candidates in the election; and
  - (b) after the first round of voting—
    - (i) 3 or more candidates obtain the highest and the same number of valid votes cast; or
    - (ii) (A) only one candidate obtains the highest number of valid votes cast but he does not obtain more than half of the total number of valid votes cast; and
    - (B) 2 or more candidates obtain the next highest and the same number of valid votes cast,

then—

- (c) all candidates (if any) other than the candidates referred to in paragraph (b)(i) or (ii) shall be eliminated;
- (d) as many rounds of voting as may be necessary shall be conducted for the candidates referred to in paragraph (b)(i) or (ii) until—
  - (i) one of them is returned under subsection (1); or
  - (ii) subsection (2) applies in relation to any 2 of them; and
- (e) the foregoing provisions of this subsection apply in relation to any such round of voting as they apply in relation to the first round of voting.

## **28. Declaration and publication of result**

As soon as practicable after determining which candidate is returned at an election, the Returning Officer shall—

- (a) publicly declare as elected the candidate who is returned at the election; and
- (b) publish the result of the election in the Gazette.

**29. Winning candidate presumed to be duly elected**

A person declared under section 28 as elected at an election is presumed to be duly elected until he is ruled by the Court or the Court of Final Appeal pursuant to the determination of an election petition or otherwise as not duly elected.

**30. Member of Legislative Council deemed to have resigned if appointed to be Chief Executive**

If a Member of the Legislative Council is appointed to be the Chief Executive following his being returned at an election, he is deemed to have signed and given a notice of resignation from office as such Member under section 14 of the Legislative Council Ordinance (Cap. 542) specifying the date of the instrument appointing him to be the Chief Executive as the date on which the notice takes effect.

**31. Winning candidate to declare he is not a member of political party**

(1) A person declared under section 28 as elected at an election shall, within 7 working days after the declaration—

- (a) publicly make a statutory declaration to the effect that he is not a member of any political party; and
- (b) lodge with the Returning Officer a written undertaking to the effect that he will not, if appointed as the Chief Executive—
  - (i) become a member of any political party; or
  - (ii) do any act that has the effect of subjecting himself to the discipline of any political party,during his term of office as the Chief Executive.

(2) In this section—

“political party” (政黨) means—

- (a) a political body or organization (whether operating in Hong Kong or elsewhere) which purports to be a political party; or
- (b) a body or organization the principal function or main object of which is to promote or prepare a candidate for election as a member of the Legislative Council or any District Council.

## PART 6

## ELECTION PETITIONS

**32. Election may be questioned only by election petition made on specified grounds**

(1) An election may be questioned only by an election petition on the ground that the person declared by the Returning Officer under section 28 as elected was not duly elected because—

- (a) he was not eligible to be nominated as a candidate under section 13;
- (b) he was disqualified under section 14 from being nominated as a candidate;
- (c) he should have been disqualified under section 20(1) from being elected but was not so disqualified;
- (d) he engaged in corrupt conduct or illegal conduct at the election;
- (e) another person engaged in corrupt conduct or illegal conduct in respect of him at the election in connection with his candidature;
- (f) corrupt conduct or illegal conduct was generally prevalent at the election; or
- (g) material irregularity occurred in relation to—
  - (i) the election;
  - (ii) the poll at the election; or
  - (iii) the counting of votes in respect of the election.

(2) In this section—

“corrupt conduct” (舞弊行為) means corrupt conduct within the meaning of Part 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

“election” (選舉) includes nomination proceedings and the decisions of the Returning Officer or any Assistant Returning Officer;

“illegal conduct” (非法行為) means illegal conduct within the meaning of Part 3 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

**33. Who may lodge election petition**

(1) An election petition—

- (a) may be lodged by any candidate in the election; or
- (b) may be lodged by—
  - (i) a person who was determined under section 17 to be not validly nominated;
  - (ii) a person the nomination of whom was not accepted by the Returning Officer; or

(iii) a person who was disqualified under section 20(1) from being elected,

provided that the election petition is, subject to subsection (4), subscribed to by not less than 10 members of the Election Committee in the manner specified in subsection (2).

(2) An election petition shall set out the names and addresses of and be signed by the members of the Election Committee subscribing to it.

(3) A subscription by a member of the Election Committee to an election petition shall not be withdrawn or revoked by the member.

(4) If a member of the Election Committee is disqualified—

(a) under section 16(5) from making nomination at an election; or

(b) under section 26 from voting at the poll at an election,

he shall be disqualified from subscribing to an election petition questioning the election.

#### **34. Period within which election petition and appeal must be lodged**

(1) An election petition questioning an election must be lodged within 7 working days after the day on which the result of the election is declared under section 28.

(2) Notwithstanding section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), a notice of a motion for the purposes of an application for leave to appeal to the Court of Final Appeal under section 22(1)(c) of that Ordinance shall be filed within 7 working days after the day on which the relevant judgment of the Court is handed down, and the applicant shall give the opposite party 3 days notice of his intended application at any time during the period of 7 working days.

#### **35. Respondent to election petition**

The—

(a) person whose election is questioned by an election petition; and

(b) Returning Officer,

may be made a respondent to the petition.

#### **36. Court to have jurisdiction to determine election petition**

(1) The Court has the same jurisdiction and the same functions in respect of an election petition as it has in respect of an ordinary cause of action within its jurisdiction.

(2) An election petition shall be tried in open court and, unless the Chief Justice otherwise directs, before one judge.

### **37. Determination of election petition**

(1) The Court shall determine—

(a) an election petition questioning an election in which the only candidate or remaining candidate, as the case may be, was declared as elected by ruling that—

(i) the candidate was duly elected; or

(ii) the candidate was not duly elected because his being the only candidate or remaining candidate, as the case may be, was the result of a wrongful determination of the Returning Officer;

(b) an election petition questioning a contested election by ruling that—

(i) the candidate declared as elected at an election was duly elected; or

(ii) the candidate declared as elected at an election was not duly elected.

(2) At the end of the trial of an election petition, the Court shall announce its determination by means of a written judgment.

### **38. Acts of person not invalid if ruled not to be elected**

A—

(a) determination of the Court under section 37(1); or

(b) ruling by the Court or the Court of Final Appeal,

that a person who was originally declared as elected at an election was not duly elected does not invalidate acts purporting to have been done by the person as the Chief Executive before the determination or ruling, as the case may be.

### **39. Time limit for legal challenges**

(1) Notwithstanding any provision in the High Court Ordinance (Cap. 4), no—

(a) application for leave to apply for judicial review under section 21K of that Ordinance; or

(b) other proceedings,



which put in issue whether the candidate declared under section 28 as elected at an election can lawfully assume the office of the Chief Executive shall be made or commenced more than 30 days after the publication of the result of the election under section 28 unless the leave of the Court has been obtained.

(2) The Court may upon application grant the leave to make an application for leave to apply for judicial review or commence proceedings after the expiry of the 30 days referred to in subsection (1) if it is satisfied that—

- (a) the person making the first-mentioned application has used his best endeavours to make the second-mentioned application or commence the proceedings within the 30 days; and
- (b) granting the leave applied for is in the interest of justice.

#### **40. Chief Justice may make rules**

The Chief Justice may make rules to provide for—

- (a) the preparation, lodgement, service, trial and withdrawal of election petitions;
- (b) costs in respect of those petitions and provision of security for costs;
- (c) the practice and procedure concerning the trial of those petitions;
- (d) circumstances in which an election petition is regarded as having been withdrawn;
- (e) applications under section 39(2); and
- (f) any other matters for the better carrying out of the objects and purposes of this Part.

## PART 7

### MISCELLANEOUS

#### **41. Appointment of Returning Officers and assistants**

(1) The Electoral Affairs Commission shall appoint—

- (a) a permanent judge or non-permanent judge of the Court of Final Appeal within the meaning of the Hong Kong Court of Final Appeal Ordinance (Cap. 484);
- (b) a Justice of Appeal within the meaning of the High Court Ordinance (Cap. 4); or
- (c) a judge of the Court of First Instance (other than a recorder or a deputy judge of the Court of First Instance),

to be the Returning Officer.

(2) The Returning Officer has such functions as are conferred or imposed on him by or under this Ordinance.

(3) The Electoral Affairs Commission shall appoint such number of Assistant Returning Officers as appears to the Commission to be necessary to enable an election to be held smoothly.

(4) An Assistant Returning Officer may, with the authority of the Returning Officer, perform the functions of the Returning Officer.

(5) An appointment under subsection (1) or (3) shall be published in the Gazette.

(6) Expenses properly incurred by the Returning Officer in the performance of his functions under this Ordinance shall be a charge on and payable from the general revenue.

#### **42. Offence to obstruct or hinder electoral officers**

A person who, without reasonable excuse, obstructs or hinders, or interferes with, an electoral officer in the performance of a function conferred or imposed on him by or under this Ordinance commits an offence and is liable on conviction to a fine at level 2.

#### **43. Electoral Affairs Commission may give direction to electoral officers**

(1) The Electoral Affairs Commission may give any direction, either generally or in any particular case, with respect to the performance by an electoral officer of any of his functions under this Ordinance with respect to the holding or conduct of—

(a) an election;

(b) the nomination and election of a person or persons to be a member or members of the Election Committee under Parts 3 and 4 of the Schedule; or

(c) a subsector election.

(2) A direction given under subsection (1) has no effect to the extent that it is inconsistent with this Ordinance or the Electoral Affairs Commission Ordinance (Cap. 541).

(3) An electoral officer shall, when performing a function under this Ordinance, comply with any direction given under subsection (1) with respect to the performance of the function.

**44. Death or incapacity of electoral officer not to terminate authority**

Death or incapacity of an electoral officer does not terminate any authority conferred by the officer for the purposes of this Ordinance.

**45. Candidates entitled to send letters to members of Election Committee free of postage**

(1) Two letters addressed to each member of the Election Committee may be sent free of postage by or on behalf of a candidate.

(2) The cost to the Postmaster General of enabling an entitlement under subsection (1) to be exercised shall be a charge on and payable from the general revenue.

**46. Regulation**

(1) The Chief Executive in Council may make regulation for the better carrying out of the purposes of this Ordinance.

(2) In particular, the regulation made under subsection (1) may provide for all or any of the following—

- (a) the number or qualifications of subscribers required to complete a nomination paper for a candidate at a subsector election;
- (b) the amount that a candidate at a subsector election is required to lodge as a deposit at the election;
- (c) the forfeiture of the deposit if the candidate at a subsector election fails to obtain a prescribed proportion of the votes cast at the election and for the return of the deposit if he obtains that proportion of votes at the election;
- (d) the functions of a Revising Officer;
- (e) appeals to a Revising Officer.

(3) A provision of the regulation made under subsection (1) may make it an offence, punishable by a fine not exceeding level 2, for a person to contravene a provision of the regulation.

(4) A provision of the regulation made under subsection (1) may—

- (a) make different provisions for different circumstances and provide for a particular case or class of cases;
- (b) be made so as to apply only in specified circumstances; and
- (c) prescribe fees for the purposes of the regulation.

**47. Amendment of Schedule**

The Chief Executive in Council may, with the approval of the Legislative Council, amend the Schedule by order published in the Gazette.

## PART 8

## CONSEQUENTIAL AMENDMENTS

**High Court Ordinance****48. Appeals in civil matters**

Section 14(3) of the High Court Ordinance (Cap. 4) is amended—

- (a) in paragraph (f), in the proviso, by repealing the full stop and substituting a semicolon;
- (b) by adding—
  - “(g) from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484).”.

**Post Office Regulations****49. Regulation amended**

Regulation 6 of the Post Office Regulations (Cap. 98 sub. leg.) is amended—

- (a) in subregulation (1)(d)—
  - (i) in subparagraph (ii), by repealing the full stop at the end and substituting “; and”;
  - (ii) by adding—
    - “(iii) two letters posted in Hong Kong from each candidate at an election within the meaning of the Chief Executive Election Ordinance (21 of 2001) addressed to each member of the Election Committee which comply with the requirements in regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541).”;
- (b) in subregulation (2)(b)—
  - (i) in the definition of “Election Committee”, by repealing “established under the Legislative Council Ordinance (Cap. 542)” and substituting “within the meaning of the Chief Executive Election Ordinance (21 of 2001)”;

- (ii) in the definition of “Election Committee subsector election”, by repealing “has the meaning assigned to it by the Legislative Council Ordinance (Cap. 542)” and substituting “means a subsector election within the meaning of the Chief Executive Election Ordinance (21 of 2001)”;
- (iii) in the definition of “subsector”, by repealing “Legislative Council Ordinance (Cap. 542)” and substituting “Chief Executive Election Ordinance (21 of 2001)”;
- (iv) in the definition of “subsector final register”, by repealing “final register compiled for subsectors under the Legislative Council Ordinance (Cap. 542)” and substituting “subsector final register within the meaning of the Chief Executive Election Ordinance (21 of 2001)”;
- (v) in the definition of “voter”, by repealing “Legislative Council Ordinance (Cap. 542)” and substituting “Chief Executive Election Ordinance (21 of 2001)”.

### **Maximum Scale of Election Expenses (Legislative Council) Order**

#### **50. Title amended**

The title to the Maximum Scale of Election Expenses (Legislative Council) Order (Cap. 288 sub. leg.) is amended by adding “(ELECTION COMMITTEE)” before “**ORDER**”.

#### **51. Interpretation**

Section 1 is amended—

- (a) in the definition of “election”, by repealing paragraph (b) and substituting—
  - “(b) a subsector election within the meaning of section 1 of the Schedule to the Chief Executive Election Ordinance (21 of 2001);”;
- (b) in the definition of “Election Committee”, by repealing “section 3(1) of the Legislative Council Ordinance (Cap. 542)” and substituting “section 2(1) of the Chief Executive Election Ordinance (21 of 2001)”;
- (c) in the definition of “registered”—
  - (i) in paragraph (a), by repealing “, a functional constituency or the Election Committee” and substituting “or a functional constituency”;

- (ii) in paragraph (b), by repealing “referred to in section 7(1) of Schedule 2 to the Legislative Council Ordinance (Cap. 542)” and substituting “within the meaning of section 11(1) of the Schedule to the Chief Executive Election Ordinance (21 of 2001)”;
- (d) in the definition of “sub-subsectors”, by repealing “section 1(13)(a) of Schedule 2 to the Legislative Council Ordinance (Cap. 542)” and substituting “section 2(9)(a) of the Schedule to the Chief Executive Election Ordinance (21 of 2001)”;
- (e) in the definition of “subsector”, by repealing “section 1(12) of Schedule 2 to the Legislative Council Ordinance (Cap. 542)” and substituting “section 1(1) of the Schedule to the Chief Executive Election Ordinance (21 of 2001)”.

### **Hong Kong Court of Final Appeal Ordinance**

#### **52. Civil appeals**

Section 22(1) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is amended—

- (a) by repealing “in any civil cause or matter”;
- (b) in paragraph (a)—
  - (i) by adding “in any civil cause or matter” after “Appeal”;
  - (ii) by repealing “and”;
- (c) in paragraph (b)—
  - (i) by adding “in any civil cause or matter” before “, whether”;
  - (ii) by repealing the full stop and substituting “; and”;
- (d) by adding—
  - “(c) at the discretion of the Court, from—
    - (i) a determination of the Court of First Instance under section 37(1) of the Chief Executive Election Ordinance (21 of 2001); or
    - (ii) a judgment or order of the Court of First Instance in—
      - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap. 4); or
      - (B) any other proceedings under that Ordinance,

which put in issue whether the candidate declared under section 28 of the Chief Executive Election Ordinance (21 of 2001) as elected at an election can lawfully assume the office of the Chief Executive.”.

### 53. Applications for leave to appeal

Section 24(3) is amended by adding “or in the case of an appeal from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c)” after “Appeal”.

## Electoral Affairs Commission Ordinance

### 54. Interpretation

Section 2 of the Electoral Affairs Commission Ordinance (Cap. 541) is amended—

(a) in subsection (1)—

(i) by repealing the definition of “by-election” and substituting—

““by-election” (補選) means—

(a) a by-election within the meaning of section 3(1) of the Legislative Council Ordinance (Cap. 542);

(b) a by-election within the meaning of section 2 of the District Councils Ordinance (Cap. 547); or

(c) a subsector by-election within the meaning of section 1 of the Schedule to the Chief Executive Election Ordinance (21 of 2001);”;

(ii) in the definition of “election”—

(A) by adding before paragraph (a)—

“(aa) electing the Chief Executive;”;

(B) in paragraph (b), by repealing “election committee” and substituting “Election Committee”;

(iii) by repealing the definition of “election committee” and substituting—

““Election Committee” (選舉委員會) has the meaning assigned to it by the Chief Executive Election Ordinance (21 of 2001);”;

- (iv) in the definition of “electoral law”—
  - (A) by adding before paragraph (a)—
    - “(aa) the Chief Executive;”;
  - (B) in paragraph (b), by repealing “election committee” and substituting “Election Committee”;
- (b) in subsection (2), by repealing ““election” within the meaning of paragraph (a) of the definition of it” and substituting “an election”.

## 55. Establishment and membership

Section 3(5) is amended—

- (a) in paragraph (a), by repealing “for election as” and substituting “in an election of the”;
- (b) in paragraph (c), by repealing “referred to in Annex I to the Basic Law”;
- (c) in paragraph (k)—
  - (i) by repealing subparagraph (i);
  - (ii) in subparagraph (iii), by repealing “referred to in Annex I to the Basic Law”;
  - (iii) in subparagraph (x), by adding “that was constituted for the purpose of returning persons as members of the Legislative Council for the first term of office of that Council” after “committee”.

## 56. Functions of Commission

Section 4(c) and (f) is amended by repealing “the election committee” and substituting “, and for filling vacancies in the membership of, the Election Committee”.

## 57. General powers of Commission

Section 5(e) is amended by repealing “or process for the formation of the election committee” and substituting “, or a process for the formation of, or for filling vacancies in the membership of, the Election Committee”.

## 58. Commission to issue guidelines

Section 6(1)(a)(iii) is amended by repealing “the election committee” and substituting “, or the filling of vacancies in the membership of, the Election Committee”.



## 59. Regulations

Section 7 is amended—

(a) in subsection (1)—

- (i) in paragraph (a)(ii)(B), by repealing “election committee” and substituting “Election Committee”;
- (ii) in paragraph (c), by repealing “the election committee” and substituting “, or the filling of vacancies in the membership of, the Election Committee”;

(b) by adding—

“(1A) The Commission may by regulation—

- (a) prescribe offences for the purposes of section 14(h) of the Chief Executive Election Ordinance (21 of 2001);
- (b) specify the form and manner of nomination of a candidate for the purposes of section 16(1) of the Chief Executive Election Ordinance (21 of 2001);
- (c) provide for withdrawal of candidature for the purposes of section 19(2) of the Chief Executive Election Ordinance (21 of 2001);
- (d) provide for the postponement or adjournment of a poll or the counting of votes in respect of a poll under section 21 of the Chief Executive Election Ordinance (21 of 2001) and the appointment of a new date for the poll or the count.”.

## 60. Report on elections

Section 8 is amended—

(a) in subsection (1), by repealing “subsection (5)” and substituting “subsections (5) and (6)”;

(b) by repealing subsection (5) and substituting—

“(5) A report under subsection (1) must include—

(a) where the election supervised by the Commission is an election of the Chief Executive, a report on the following as appropriate—

- (i) the formation of the Election Committee; or
- (ii) the subsector by-election, if any, that precedes the election of the Chief Executive;

(b) where the election supervised by the Commission is a by-election to fill a vacancy among the members of the Legislative Council returned by the Election Committee, a report on the subsector by-election, if any, that precedes the first mentioned by-election, unless such a report has already been included in another report previously made under subsection (1).

(6) The period within which the report referred to in subsection (5)(a) or (b) is to be made shall begin only on the conclusion of the election of the Chief Executive or the by-election to fill a vacancy among the members of the Legislative Council returned by the Election Committee.

(7) In this section, “subsector by-election” (界別分組補選) has the meaning assigned to it by the Chief Executive Election Ordinance (21 of 2001).”.

## 61. Members disqualified from nomination

Section 13(1) is amended—

- (a) in paragraph (a)—
  - (i) by repealing subparagraph (i);
  - (ii) in subparagraph (ii), by repealing “referred to in Annex I to the Basic Law”;
- (b) by repealing paragraph (b)(ii);
- (c) in paragraph (c)—
  - (i) by repealing subparagraph (i);
  - (ii) in subparagraph (ii), by repealing “referred to in Annex I to the Basic Law”;
  - (iii) in subparagraph (vi), by adding “or” at the end;
  - (iv) in subparagraph (vii), by repealing “; or” and substituting a full stop;
  - (v) by repealing subparagraph (viii).

## Legislative Council Ordinance

## 62. Interpretation

Section 3 of the Legislative Council Ordinance (Cap. 542) is amended—

- (a) in subsection (1)—

- (i) in the definition of “election”, by repealing “, but, except in section 82 and Schedule 2, does not include an Election Committee subsector election”;
- (ii) in the definition of “Election Committee”, by repealing “the Election Committee constituted in accordance with Part IV” and substituting “, subject to the Schedule to the Chief Executive Election Ordinance (21 of 2001), the first Election Committee referred to in section 8(3) of that Ordinance”;
- (iii) in the definition of “Election Committee subsector”, by repealing “section 1(4) of Schedule 2” and substituting “section 2(4) of the Schedule to the Chief Executive Election Ordinance (21 of 2001)”;
- (iv) in the definition of “elector”, by repealing everything after “registered” where it first appears and substituting—
  - “—
  - (a) in accordance with this Ordinance, in a final register; or
  - (b) in accordance with the Schedule to the Chief Executive Election Ordinance (21 of 2001), in a final register of members of the Election Committee that is compiled and published, and in effect, under that Schedule, and who is not disqualified from being registered or from voting at an election;”;
- (v) in the definition of “ex-officio member”, by repealing “section 1(8) of Schedule 2” and substituting “section 2(7)(c) of the Schedule to the Chief Executive Election Ordinance (21 of 2001)”;
- (vi) in the definition of “final register”, by repealing paragraph (b);
- (b) in subsection (2)—
  - (i) in paragraph (b)(ii), by repealing “; and” and substituting a full stop;
  - (ii) by repealing paragraph (c);
- (c) in subsection (3), by repealing “, or the results of Election Committee subsector elections,”.

### **63. Establishment of Election Committee**

Section 22(2) is repealed.