

CHAPTER 6

APPEALS

PART I : APPEALS AGAINST RESULT OF AN ELECTION

6.1 Any person claiming to be a candidate at an EC subsector election may appeal to a Revising Officer³⁸ against the result of that election (including the decision of the CERC) by lodging an appeal notice. However, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the National Security Committee. An appeal to question a subsector election may be lodged only on the ground that the person declared by the RO in accordance with the regulations in force under the EACO to have been elected as a member of the EC at that subsector election was not duly elected because:

- (a) the person was ineligible to be, or was disqualified from being, a candidate at the election; or
- (b) material irregularity occurred in relation to the election or to the polling or counting of votes at the election.

[S 9B of the CEEO and s 39 of the Schedule to the CEEO, and s 3 of the EC (Appeals) Reg]

6.2 The appeal notice may only reach the Revising Officer not later than seven days after the date on which the RO has published in the Gazette the

³⁸ The Revising Officer may be any magistrate, former magistrate, retired magistrate, or any legal officer as defined by s 2 of the Legal Officers Ordinance appointed by the Chief Justice. [S 46 of the Schedule to the CEEO]

result being appealed against. If the deadline for lodging appeal notices falls on an inclement weather warning day, it will be extended to the next working day which is not an inclement weather warning day. [S 39(2) of the Schedule to the CEEO and ss 2A and 3(4) of the EC (Appeals) Reg]

PART II : APPEALS IN RELATION TO DECLARATION AND REGISTRATION OF NOMINEES AS MEMBERS OF THE ELECTION COMMITTEE

6.3 Subject to s 9B of the CEEO³⁹, if any person considers that a nominee who has been declared as a member of the EC is not eligible to be declared and registered as a member of the EC on the ground that:

- (a) the nominee was ineligible to be selected as, or was disqualified from being, a nominee;
- (b) material irregularity occurred in relation to the process of nomination;
- (c) a processing error occurred in relation to the process of registration;
- (d) material irregularity occurred in relation to the determination of the CERC as to the validity of the nomination of the nominee; or
- (e) material irregularity occurred in relation to the determination of the RO under s 7(6) of the Schedule to the CEEO,

³⁹ No legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate for the membership of the EC pursuant to the opinion of the National Security Committee. [S 9B of the CEEO]

he may, by a written representation, object to the declaration and registration of the nominee as a member of the EC in the IR of members of the EC or the FR of members of the EC (as the case may be)⁴⁰. The above written representation must reach the Revising Officer not later than seven days after the date of the publication of the IR of members of the EC or the FR of members of the EC concerned. If the deadline for submitting written representations falls on an inclement weather warning day, it will be extended to the next working day which is not an inclement weather warning day. [Ss 2A and 4 of the EC (Appeals) Reg]

PART III : APPEALS IN RELATION TO REGISTRATION OF EX-OFFICIO MEMBERS AS MEMBERS OF THE ELECTION COMMITTEE

6.4 Subject to s 9B of the CEEO⁴¹, if any person considers that an ex-officio member is not eligible to be registered as a member of the EC on the ground that:

- (a) the ex-officio member was ineligible to be registered as, or was disqualified from being, a member of the EC;
- (b) a processing error occurred in relation to the process of registration; or
- (c) material irregularity occurred in relation to the determination of the CERC as to the validity of the registration of the ex-officio member,

he may, by a written representation, object to the registration of the ex-officio

⁴⁰ IR of members of the EC applies to subsector ordinary elections, and FR of members of the EC applies to subsector by-elections.

⁴¹ See footnote 39.

member as a member of the EC in the IR of members of the EC or the FR of members of the EC (as the case may be)⁴². [S 4A(1) of the EC (Appeals) Reg]

6.5 In addition, a person whose registration as an ex-officio member has been determined by the CERC to be invalid may, subject to s 9B of the CEEO, claim that he is eligible to be, and is not disqualified from being, registered as an ex-officio member by submitting a written representation. [S 4A(2) of the EC (Appeals) Reg]

6.6 The written representation mentioned in paras. 6.4 and 6.5 of this chapter must reach the Revising Officer not later than seven days after the relevant date, where “relevant date” means:

- (a) the date of publication of the IR of members of the EC concerned;
or
- (b) if the relevant determination of the CERC is made after the date of publication of the IR of members of the EC concerned,
 - (i) (if the registration is determined as valid) the date of publication of the relevant notice under s 41(4) of the Schedule to the CEEO; or
 - (ii) (if the registration is determined as invalid) the date of issuance of the notice informing the relevant person of the determination.

[S 4A(3) of the EC (Appeals) Reg]

⁴² See footnote 40.

If the deadline for submitting written representations falls on an inclement weather warning day, it will be extended to the next working day which is not an inclement weather warning day. [S 2A of the EC (Appeals) Reg]

PART IV : HEARING OF APPEALS AND RULING OF REVISING OFFICER

6.7 When the Revising Officer receives an appeal notice or a written representation (as the case may be), he shall arrange to hold a hearing as soon as practicable. At the hearing, the appellant, the person whose election is questioned, the nominee who has been declared as a member of the EC concerned or the ex-officio member concerned (as the case may be) may appear in person at the hearing and make representations to the Revising Officer, or be represented at the hearing and make representations by a legal practitioner, or by any other person authorised in writing by him. For cases in which a person whose election, declaration or registration as a member of the EC is questioned, the Revising Officer shall determine whether the person concerned was or was not duly elected or should have been registered as a member of the EC at the end of the hearing. The determination of the Revising Officer on an appeal shall be final. If necessary, the Revising Officer shall direct the ERO to incorporate his ruling in the IR of members of the EC or the FR of members of the EC (as the case may be)⁴³ after the hearing. Moreover, the Revising Officer may review any ruling made, and for that purpose may rehear or redetermine (as the case may be) the matter wholly or in part and reverse or confirm his previous ruling. [S 39 of the Schedule to the CEEO and ss 5, 6, 8 and 10 of the EC (Appeals) Reg]

⁴³ See footnote 40.