

CHAPTER 6

ELECTION PETITION AND JUDICIAL REVIEW

PART I : GROUNDS FOR LODGING AN ELECTION PETITION

6.1 Under s 32(1) of the CEEO, the result of a CE election may be questioned only by an election petition. 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 Committee on National Security [s 9B of the CEEO]. Subject to the above requirement, an election petition to question a CE election can only be lodged on the following grounds:

- (a) the person declared as elected by the RO was not duly elected because:
 - (i) he/she was not eligible to be nominated as a candidate;
 - (ii) he/she was disqualified from being nominated as a candidate;
 - (iii) he/she should have been disqualified from being elected but he/she was not so disqualified;
 - (iv) he/she engaged in corrupt conduct or illegal conduct at the election;
 - (v) another person engaged in corrupt conduct or illegal conduct at the election in respect of him/her in connection with his/her candidature;

- (vi) corrupt or illegal conduct was generally prevalent at the election; or
 - (vii) material irregularity occurred in relation to the election, the poll at the election or the counting of votes in respect of the election; or
- (b) the only validly nominated candidate was not returned at the election because material irregularity occurred in relation to the election, the poll at the election or the counting of votes in respect of the election.

[Amended in January 2007 and January 2022]

PART II : WHO COULD, AND WHEN TO, LODGE ELECTION PETITIONS AND APPEALS

6.2 An election petition may be lodged:

- (a) by a candidate; or
- (b) by a person:
 - (i) who was determined to be not validly nominated by the CERC; or
 - (ii) who was disqualified from being elected after the end of the nomination period under s 20 of the CEEO,

provided that the election petition is supported by at least 10 EC members.

[S 33 of the CEEO] *[Amended in January 2007 and January 2022]*

6.3 An election petition must be lodged with the CFI within 7 working days from the declaration of the election result [s 34(1) of the CEEO]. If the office of the CFI is closed on the last day of the deadline for lodging election petitions, the relevant deadline will be extended to the date that the office resumes operation [s 71(1A)(a) of the Interpretation and General Clauses Ordinance]. Any application for leave to appeal against the decision of the CFI must be lodged with the CFA within 7 working days after the day on which the relevant judgment of the CFI is handed down, and the applicant shall give the opposite party 3 days' notice of his/her intended application at any time during the period of 7 working days [s 34(2) of the CEEO]. At the end of the trial of an election petition, the CFI shall announce its determination by means of a written judgment [s 37(2) of the CEEO]. *[Amended in November 2011 and January 2022]*

PART III : JUDICIAL REVIEW

6.4 An application for judicial review which puts in issue whether a candidate is duly determined to be not returned at an election or whether the candidate elected can lawfully assume the office of the CE must be made within 30 days after the publication of election result. This deadline may be extended only if:

- (a) the applicant has used his/her best endeavours to make the application or commence the proceedings within the 30 days; and

- (b) the Court considers that it would be in the interest of justice to do so.

[S 39 of the CEEO] *[Amended in January 2007]*