

## CHAPTER 5

### ELECTION PETITIONS

#### **PART I : GROUNDS FOR LODGING AN ELECTION PETITION**

5.1 Pursuant to s 49(1) of the DCO, a DC election may be questioned only by an election petition made on the following grounds:

- (a) the ground that the person declared by the RO in accordance with regulations in force under the EACO to have been elected as a member at the election was not duly elected because:
  - (i) he/she was ineligible to be, or was disqualified from being, a candidate at the election;
  - (ii) corrupt or illegal conduct was engaged in by or in respect of that person at or in connection with the election;
  - (iii) corrupt or illegal conduct was generally prevalent at or in connection with the election; or
  - (iv) material irregularity occurred in relation to the election, or to the polling or counting of votes at the election; or
- (b) a ground specified in any other enactment that enables an election to be questioned.

*[Amended in September 2007, September 2019 and September 2023]*

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

5.2 An election petition may be lodged, in respect of an election for a DCC:

- (a) by three or more electors entitled to vote in the constituency; or
- (b) by a person claiming to have been a candidate in the constituency.

[S 50(1) of the DCO] *[Added in September 2023]*

5.3 An election petition may be lodged, in respect of an election for a DCGC:

- (a) by ten or more electors entitled to vote in the constituency; or
- (b) by a person claiming to have been a candidate in the constituency.

[S 50(2) of the DCO] *[Amended in September 2023]*

5.4 An election petition questioning an election may be lodged with the Court of First Instance (“CFI”) only during the period of two months following the date on which the RO has published the result of the election in the Gazette [ss 52(1) and 53(1) of the DCO]. If the office of the CFI is closed on the last day of the period for lodging election petitions, the deadline will be extended to the date that the office resumes operation [s 71(1A)(a) of the Interpretation and General Clauses Ordinance (Cap 1)]. *[Amended in September 2007, September 2011 and September 2023]*

5.5 An election petition is triable in open court and before a judge. At the end of the trial of an election petition, the CFI must determine questions of the validity of a nomination or whether the person was or was not duly elected, as appropriate. The CFI must announce its determination by means of a written judgment. [Ss 52(2) and 55(1), (2) and (3) of the DCO] *[Amended in September 2007 and September 2011]*

5.6 An appeal against the decision of the CFI may be lodged to the Court of Final Appeal (“CFA”) direct, subject to leave being granted by the Appeal Committee of the CFA. Notice of a motion for applying for leave to the CFA to appeal must be filed within 14 working days after the date on which the written judgment of the CFI to be appealed against is handed down, and the applicant must give the opposite party 3 days’ notice of his/her intended application at any time during the period of 14 working days. At the end of the hearing of an appeal against the determination of the CFI, the CFA must determine questions of the validity of a nomination or whether the person was or was not duly elected, as appropriate. The CFA must announce its determination by means of a written judgment. [Ss 53(2) and 58B of the DCO] *[Added in September 2011]*