

CHAPTER 6

APPEALS

PART I : APPEALS AGAINST RESULT OF AN ELECTION

6.1 Pursuant to s 39 of the Schedule to the CEEO and s 3 of the EC (Appeals) Reg, a 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 made by the CERC) by lodging an appeal in the form of 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 Committee on National Security [s 9B of the CEEO]. An appeal to question an EC subsector election may be lodged 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 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 procedures at the election.

6.2 The appeal notice can only be lodged during the period of 7 days following the date on which the RO has published in the Gazette the result being appealed against, and must reach the Revising Officer on a date not later than the last day of such period. [S 39 of the Schedule to the CEEO and s 3 of

³⁸ The Revising Officer may be any magistrate, former magistrate, retired magistrate or any legal officer as defined by the Legal Officers Ordinance (Cap 87), appointed by the Chief Justice [s 46(5) of the Schedule to the CEEO].

the EC (Appeals) Reg] 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 2A of the EC (Appeals) Reg].
[Amended in July 2021]

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

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

- (a) the nominee who has been declared as a member of the EC 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 who has been declared as a member of the EC; or

³⁹ According to s 9B of the CEEO, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate for member of the EC, a candidate for the office of Chief Executive or a candidate for Member of the Legislative Council pursuant to the opinion of the Committee on National Security.

- (e) material irregularity occurred in relation to the determination of the RO under s 7(6) of the Schedule to the CEEO,

he/she may, by submitting a written representation, object to the declaration and registration of the nominee as a member of the EC in the IR or the FR (subject to the election)⁴⁰. The written representation must be submitted to the Revising Officer during the period of 7 days after the date of the publication of the IR or the FR concerned and must reach the Revising Officer on a date not later than the last day of such period. [S 4 of the EC (Appeals) Reg] 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]. *[Amended in September 2006 and July 2021]*

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

6.4 Subject to s 9B of the CEEO⁴¹, if a 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 who has been registered as an EC 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

⁴⁰ IR in the case of a subsector ordinary election, and FR in the case of a subsector by-election.

⁴¹ According to s 9B of the CEEO, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate for member of the EC, a candidate for the office of Chief Executive or a candidate for Member of the Legislative Council pursuant to the opinion of the Committee on National Security.

- (c) material irregularity occurred in relation to the determination of the CERC as to the validity of the registration of the ex-officio member who has been registered as an EC member,

he/she may, by submitting a written representation, object to the registration of the ex-officio member as a member of the EC in the IR or the FR (subject to the election)⁴². [S 4A of the EC (Appeals) Reg] *[Added in July 2021]*

6.5 In addition, a person whose registration has been determined by the CERC to be invalid may, subject to s 9B of the CEEO, claim that he/she is eligible to be, and is not disqualified from being, registered as an ex-officio member by submitting a written representation. [S 4A of the EC (Appeals) Reg] *[Added in July 2021]*

6.6 The above written representation must reach the Revising Officer not later than 7 days after the following relevant dates:

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

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

⁴² IR in the case of a subsector ordinary election; FR in the case of a subsector by-election.

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]. *[Added in July 2021]*

PART IV : HEARING OF APPEAL 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/she will arrange to hold a hearing as soon as practicable. At the hearing, the appellant is entitled to appear in person and to be represented by a legal practitioner or any other person authorised by the appellant. At the end of the hearing, the Revising Officer shall determine whether the person whose election is questioned was or was not duly elected or whether the person whose declaration or registration as an EC member is questioned should have been registered as a member of the EC. The determination of the Revising Officer on an appeal shall be final. Moreover, the Revising Officer may review any ruling made and for that purpose, may rehear the matter wholly or in part and reverse or confirm his/her previous ruling. If necessary, the Revising Officer, will direct the ERO to amend the IR or the FR (subject to the election)⁴³ after the hearings. [S 39 of the Schedule to the CEEO and ss 3 to 10 of the EC (Appeals) Reg] *[Amended in September 2006 and July 2021]*

⁴³ Ditto.