

Chapter:	541C	ELECTORAL AFFAIRS COMMISSION (NOMINATIONS ADVISORY COMMITTEES (LEGISLATIVE COUNCIL)) REGULATION	Gazette Number	Version Date
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		Empowering section	L.N. 115 of 1999	07/05/1999
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(Cap 541, section 7)

[16 January 1998]

(Originally L.N. 19 of 1998)

Part:	I	PRELIMINARY	L.N. 84 of 2004	16/07/2004
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Section:	1	Interpretation	L.N. 84 of 2004	16/07/2004
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- (1) In this Regulation, unless the context otherwise requires-
- "by-election" (補選) has the meaning assigned to it by section 3(1) of the Legislative Council Ordinance (Cap 542);
- "candidate" (候選人) means-
- in relation to a particular geographical constituency, a person who is nominated to be returned as a Member for that geographical constituency at a general election or by-election, including a person whose name is included as a candidate on a nomination list within the meaning of section 3(1) of the Legislative Council Ordinance (Cap 542); and (L.N. 84 of 2004)
  - in relation to a particular functional constituency, a person who is nominated to be returned as a Member for that functional constituency at a general election or by-election; (L.N. 84 of 2004)
  - (Repealed L.N. 84 of 2004)
  - (Repealed L.N. 209 of 2001)
- "Committee" (顧問委員會) means a Nominations Advisory Committee (Legislative Council) which for the time being stands appointed under section 2 and, where appropriate, includes a person appointed as the Committee under section 4(1); (L.N. 115 of 1999)
- "functional constituency" (功能界別) has the meaning assigned to it by section 3(1) of the Legislative Council Ordinance (Cap 542);
- "general election" (換屆選舉) has the meaning assigned to it by section 3(1) of the Legislative Council Ordinance (Cap 542);
- "geographical constituency" (地方選區) means an area declared to be a geographical constituency under section 18(2)(a) of the Legislative Council Ordinance (Cap 542);
- "Member" (議員) has the meaning assigned to it by section 3(1) of the Legislative Council Ordinance (Cap 542);
- "nomination form" (提名表格) means a form specified by the Commission under section 7(1)(i) of the Ordinance submitted for the purposes of-
- in relation to a geographical constituency, nominating a candidate or candidates by a nomination list within the meaning of section 3(1) of the Legislative Council Ordinance (Cap 542) to be returned as a Member for the geographical constituency;
  - in relation to a functional constituency, nominating a candidate to be returned as a Member for the functional constituency;
  - (Repealed L.N. 84 of 2004)
  - (d)-(e) (Repealed L.N. 209 of 2001)
- "nomination period" (提名期), in relation to a particular general election or by-election, means the period specified under any regulation providing for the procedure therefor as the period for submitting to the Returning Officer nomination forms relating to that general election or by-election, as the case may be; (L.N. 209 of 2001)
- "Returning Officer" (選舉主任) means, subject to section 6(6), the Returning Officer within the meaning of the Legislative Council Ordinance (Cap 542).

## (2) In this Regulation-

- (a) a reference to being eligible to be or disqualified from being nominated is to be construed, in relation to a general election or by-election held under the Legislative Council Ordinance (Cap 542), with reference to that Ordinance, but nothing in this Regulation is to be construed as empowering or requiring a Committee to advise on any matter relating to any requirements under section 40 of that Ordinance. (L.N. 209 of 2001)
- (b) (Repealed L.N. 209 of 2001)

Part:	II	THE COMMITTEE	L.N. 209 of 2001	23/11/2001
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Section:	2	Appointment of the Committee	L.N. 209 of 2001	23/11/2001
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(1) The Commission may appoint one or more committees each to be known as a Nominations Advisory Committee (Legislative Council) and consisting of one member who must be- (L.N. 115 of 1999)

- (a) a person who is admitted as a barrister or a solicitor under the Legal Practitioners Ordinance (Cap 159) or is qualified for such admission; or
- (b) a person with such other qualifications in the law, whether academic or professional, as the Commission considers appropriate.

(2) Notice of any appointment under subsection (1) must be published in the Gazette by the Commission as soon as reasonably practicable after the appointment.

(3) An appointment under subsection (1) must be for such period as specified by the Commission in the notice under subsection (2).

(4) An appointment under subsection (1) may be in relation to such general election or by-election or, where appropriate, general elections or by-elections, as the Commission may determine. (L.N. 209 of 2001)

(5) The Commission must specify in any notice under subsection (2)-

- (a) the general election or general elections, or by-election or by-elections, in relation to which the Committee concerned is appointed, with reference to the year or date on which any such general election or by-election is, or general elections or by-elections are, to be held. (L.N. 209 of 2001)
- (b) (Repealed L.N. 209 of 2001)

(6) The member constituting a Committee may be paid remuneration of such amount or at such rate as the Commission may determine.

Section:	3	Functions	L.N. 84 of 2004	16/07/2004
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(1) Subject to subsection (2), the functions of a Committee are-

- (a) to advise, subject to section 5(14)-
  - (i) any prospective candidate for a general election as to whether he or she is eligible to be, or disqualified from being, nominated as a candidate in respect of a geographical constituency or a functional constituency, as the case may be; and
  - (ii)-(iii) (Repealed L.N. 209 of 2001)
- (b) to advise any Returning Officer as to whether-
  - (i) a particular candidate for a general election or by-election is eligible to be, or disqualified from being, nominated as a candidate in respect of a geographical constituency or a functional constituency. (L.N. 84 of 2004)
  - (ii) (Repealed L.N. 209 of 2001)

(2) A Committee must perform its functions under subsection (1) in respect of the general election or general elections, or by-election or by-elections, specified under section 2(5) in relation to its appointment.

(3) The Commission must specify by notice published in the Gazette the date by which a Committee must complete the performance of its functions under subsection (1)(a) as regards a general election in relation to which it is appointed, and where more than one Committee is appointed in relation to the same general election, the Commission must, for the purposes of this subsection, specify the same date in respect of each such Committee.

(4) As regards a particular general election or by-election, the Committee must perform its functions under subsection (1)(b) during the period specified by the Commission by notice published in the Gazette for the purpose of

this subsection.

(L.N. 209 of 2001)

Section:	4	Filling of vacancies and allocation of work to Committees	L.N. 115 of 1999	07/05/1999
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(1) Where the member constituting a Committee dies, resigns or is removed from office or becomes incapable of acting as a member due to ill-health or absence from Hong Kong, the Commission may, if it thinks fit, appoint another person to act as the Committee in his or her place.

(2) Notice of any appointment under subsection (1) must be published in the Gazette by the Commission as soon as reasonably practicable after the appointment.

(3) An appointment under subsection (1) must be for such period as specified by the Commission in the notice under subsection (2).

(4) Where there is any matter outstanding at the time of an appointment under subsection (1), it may be disposed of by the person appointed as the Committee under that subsection.

(5) The Chief Electoral Officer may by virtue of section 9 of the Ordinance-

(a) allocate to a Committee any work or duty which is relevant to the performance of its functions specified in section 3; and

(b) if more than one Committee is appointed, with the consent of a member of the Commission, redistribute the work or duty allocated under paragraph (a) among the Committees as the Chief Electoral Officer thinks fit.

(6) The member constituting a Committee-

(a) may resign by notice in writing addressed to the Commission; and

(b) may be removed by the Commission by notice in writing where it is of the opinion that he or she is unfit to perform the functions of his or her office.

(7) A resignation under subsection (6)(a) is effective on the date specified in the notice for the purpose or on receipt of the notice by the Commission, whichever is later, or where no date is specified in the notice, on receipt of the notice by the Commission.

(8) A removal under subsection (6)(b) is effective on the date specified for the purpose in the notice referred to in that subsection.

(9) Notice of any resignation under subsection (6)(a) or of any removal under subsection (6)(b) must be published in the Gazette by the Commission as soon as reasonably practicable after receiving the notice of resignation or after the removal, as the case may be.

Part:	III	PROCEDURE OF THE COMMITTEE AND MISCELLANEOUS PROVISIONS	L.N. 209 of 2001	23/11/2001
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Section:	5	Procedure relating to applications by prospective candidates	L.N. 209 of 2001	23/11/2001
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(1) A prospective candidate for a general election may apply in accordance with subsection (4) for the advice of a Committee as to whether he or she is eligible to be, or disqualified from being, nominated as a candidate- (L.N. 209 of 2001)

(a) in respect of- (L.N. 209 of 2001)

(i) a geographical constituency; or (L.N. 209 of 2001)

(ii) a particular functional constituency. (L.N. 209 of 2001)

(iii) (Repealed L.N. 209 of 2001)

(b)-(c) (Repealed L.N. 209 of 2001)

(2)-(3) (Repealed L.N. 209 of 2001)

(4) An application under subsection (1)- (L.N. 209 of 2001)

(a) must be in a form specified by the Commission; and

(b) must be-

(i) sent to the Chief Electoral Officer by post or facsimile transmission so as to be received by that Officer; or

(ii) served on the Chief Electoral Officer personally,

on or before a date specified by the Commission by notice published in the Gazette for the purpose of

this subsection.

(5) Subject to subsection (4)(b), an application under subsection (1) may be made on or after the date on which the period specified under section 2(3) by the Commission by notice in the Gazette as referred to in section 2(2) commences. (L.N. 209 of 2001)

(6) A prospective candidate may-

(a) under subsection (1)(a), make-

(i) only one application in respect of the geographical constituencies; and (L.N. 209 of 2001)

(ii) only one application in respect of a particular functional constituency. (L.N. 209 of 2001)

(iii) (Repealed L.N. 209 of 2001)

(b)-(c) (Repealed L.N. 209 of 2001)

(7)-(8) (Repealed L.N. 209 of 2001)

(9) For the avoidance of doubt, it is declared that a prospective candidate may-

(a) under subsection (1)(a)(ii), but subject to subsection (6)(a)(ii), apply for advice in respect of more than one functional constituency. (L.N. 209 of 2001)

(b)-(c) (Repealed L.N. 209 of 2001)

(10) As soon as reasonably practicable after receiving an application under subsection (4), the Chief Electoral Officer must refer it to a Committee appointed in relation to the general election, to which the application relates, for its consideration. (L.N. 209 of 2001)

(11) A Committee to which an application is referred under subsection (10) must consider the application and advise the applicant as soon as reasonably practicable but not later than the specified date, and subject to subsections (12), (13) and (14), as to whether, in the opinion of that Committee-

(a) the applicant is eligible to be, or disqualified from being, nominated as a candidate in respect of the geographical constituency or the functional constituency, as the case may be. (L.N. 209 of 2001)

(b)-(c) (Repealed L.N. 209 of 2001)

(12) A Committee may, where it considers appropriate, before forming an opinion for the purposes of subsection (11)-

(a) (i) request the applicant to make available to that Committee, within such period as specified by that Committee in the particular case, information, particulars and evidence relating to his or her intended candidature as that Committee considers relevant to form an opinion for the purposes of subsection (11)(a); and

(ii) request the applicant to present himself or herself before that Committee at a time and place specified by that Committee for the purpose of giving such assistance as that Committee considers necessary to enable it to form an opinion for the purposes of subsection (11)(a). (L.N. 209 of 2001)

(b) (Repealed L.N. 209 of 2001)

(13) An applicant of whom a request is made under subsection (12)(a)(ii) may, at the time and place specified under that subsection, make representations to the Committee concerned relating to his or her intended candidature- (L.N. 209 of 2001)

(a) either in person; or

(b) through any person authorized by him or her in writing for the purpose.

(14) Without affecting the generality of the power of a Committee to give any advice which is qualified, where an applicant does not make available any information, particulars or evidence requested under subsection (12)(a)(i) or does not comply with a request under subsection (12)(a)(ii), a Committee may- (L.N. 209 of 2001)

(a) refuse to consider the application any further or to give any advice in relation thereto; or

(b) advise the applicant on the application, which advice may be qualified having regard to either or both of the following, as may be appropriate-

(i) the fact that any information, particulars or evidence, or where appropriate, all of them, were not available to it;

(ii) the failure of the applicant to present himself or herself before that Committee. (L.N. 209 of 2001)

(15) Where the Committee decides under subsection (14)(a) to refuse to consider an application or give advice, it must notify the applicant in writing not later than the specified date.

(16) A Committee must not consider any application for advice which is not received under subsection (4) on or before the date specified under that subsection.

(17) Any advice given under subsection (11) or (14)(b) must be in writing.

(18) Subject to this section, a Committee may determine its own procedure for the purpose of advising an applicant under this section.

(19) In this section, "specified date" (指明日期) means the date specified under section 3(3).

Section:	6	Procedure relating to applications by Returning Officers	L.N. 84 of 2004	16/07/2004
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(1) A Returning Officer may, as regards a general election or by-election in relation to which a Committee is appointed, apply in accordance with subsection (3) to that Committee for advice as to whether a candidate who has submitted a nomination form to that Officer under any relevant regulation made under the Ordinance in respect of a geographical constituency or a functional constituency is eligible to be, or disqualified from being, nominated as a candidate in respect of that geographical constituency or functional constituency. (L.N. 209 of 2001; L.N. 84 of 2004)

(2) (Repealed L.N. 209 of 2001)

(3) An application under subsection (1) must be in writing and made so as to be received by the Chief Electoral Officer on or before a date specified by the Commission by notice published in the Gazette for the purpose of this subsection. (L.N. 209 of 2001)

(4) A Committee to which an application is made under subsection (1) must consider the application and advise the Returning Officer concerned as soon as reasonably practicable but before the expiry of the relevant period, as to whether, in the opinion of that Committee the candidate concerned is eligible to be, or disqualified from being, nominated as a candidate in respect of that geographical constituency or functional constituency. (L.N. 84 of 2004)

(5) In making a decision under the relevant regulations made under the Ordinance as to whether a particular candidate is validly nominated in respect of a geographical constituency or a functional constituency, the Returning Officer must have regard to any advice given under section 5 or 8 or subsection (4) as regards that candidate. (L.N. 209 of 2001; L.N. 84 of 2004)

(6) In this section, references to Returning Officer are to be construed as references to the Returning Officer appointed for the geographical constituency or the functional constituency in respect of which the candidate concerned has submitted a nomination form. (L.N. 209 of 2001; L.N. 84 of 2004)

(7) Any advice given under this section must be in writing.

(8) In this section, "relevant period" (有關限期) means the period specified in section 3(4) as the period during which a Committee must perform its functions under section 3(1)(b).

Section:	7	Committee to furnish copy of advice to the Commission	L.N. 115 of 1999	07/05/1999
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A Committee must furnish to the Commission a copy of-

- (a) any advice given under section 5 or 6 as soon as reasonably practicable after it is given;
- (b) any information, particulars and evidence made available under section 5(12) as soon as reasonably practicable after they are made available to the Committee; and
- (c) any notification under section 5(15) as soon as reasonably practicable after it is sent to the applicant.

Section:	8	Committee to attend and give advice at the meeting called by the Commission	L.N. 209 of 2001	23/11/2001
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(1) Without prejudice to section 6, a Committee must-

- (a) at the request of the Commission, attend such meeting as may be called by the Commission at the close of the nomination period for a particular general election or by-election, as the case may be; and
- (b) as far as reasonably practicable, give advice at the meeting to any Returning Officer present on any matter referred to in section 6(1) regarding that general election or by-election, as the case may be, on which the Returning Officer may wish to seek advice from the Committee. (L.N. 209 of 2001)

(2) An advice given under subsection (1)(b) may be either oral or in writing.

Section:	9	Advice not to preclude seeking of nomination or election petition	L.N. 209 of 2001	23/11/2001
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For the avoidance of doubt, it is declared that any advice given under this Regulation or a refusal under section 5(14)(a) does not preclude-

- (a) a person from seeking nomination as a candidate or proceeding with a nomination as a candidate under the relevant regulations made under the Ordinance; or (L.N. 209 of 2001)
- (b) (Repealed L.N. 209 of 2001)
- (c) the presentation of an election petition under the Legislative Council Ordinance (Cap 542).