

Legislative Council Panel on Constitutional Affairs

**Election Petition Mechanism under
the Legislative Council Ordinance
and related issues**

PURPOSE

A In a judgment¹ by the Court of Final Appeal (CFA) on 13 December 2010 (the judgment), the CFA declared that the finality provision contained in section 67(3) of the Legislative Council Ordinance (LCO) (Cap. 542) (**Annex A**) was unconstitutional and invalid. A finality provision in identical terms is contained in the District Councils Ordinance (DCO) (Cap. 547) and the Village Representative Election Ordinance (VREO) (Cap. 576). This paper seeks Members' view on the proposed election petition mechanism under these three ordinances.

BACKGROUND

Origin and Purpose of the Finality Provision

B&C 2. The relevant part of section 67(3) of the LCO, which is usually referred to as the "finality provision", provides that the determination of an election petition arising from a LegCo election by the Court of First Instance (CFI) is final. Identical finality provisions are contained in the DCO (section 55(3)) (**Annex B**) and the VREO (section 45(3)) (**Annex C**).

3. The finality provision under the LCO was first introduced into Hong Kong when the Urban Council Ordinance 1955 was enacted. It was subsequently adopted in the Electoral Provisions Ordinance and the Legislative Council (Electoral Provisions) Ordinance. These two ordinances were not adopted as the laws of the Hong Kong Special Administrative Region (HKSAR) upon its establishment. Subsequently, the finality provision was adopted in the LCO, which was passed by the Provisional Legislative Council (LegCo) in 1997.

¹ Mok Charles Peter v. Tam Wai Ho and Another, Secretary for Justice intervening (for and on behalf of the Secretary for Constitutional and Mainland Affairs) (FACV No. 8 of 2010).

4. The finality provision is intended to provide for speedy resolution of disputes in relation to the constitution of LegCo. Given the important power and functions of LegCo, it is of utmost importance that any challenge to an election to return a Member of LegCo should be determined speedily.

D
5. Moreover, under section 72 of the LCO (**Annex D**), if on the hearing of an election petition, the CFI determines that a person who was originally declared to have been elected as a Member at an election was not duly elected, and that no other person was duly elected, the person's office as a Member becomes vacant from the date of determination. With the finality provision, a by-election will be held to fill the vacancy in membership of LegCo². If the finality provision is not in place, the determination of the CFI might be subject to an appeal and the legal process would drag on. The whole process might take a significant portion of the four-year term of LegCo.

The Judgment

6. After the 2008 LegCo election, Mr Charles Mok lodged an election petition to the CFI in November 2008 in relation to the election of the Information Technology functional constituency (FC) which returned Mr Tam Wai Ho as a Member. The CFI dismissed the petition in April 2009 and declared that Mr Tam was duly elected. Mr Mok's appeal to the Court of Appeal (CA) was dismissed in December 2009 on the ground that the CA lacked jurisdiction as the finality provision barred any further appeal from the CFI on an election petition.

7. Mr Mok then appealed to the CFA and by the judgment handed down on 13 December 2010, the CFA allowed the appeal and held that section 67(3) of the LCO goes much further than is necessary to deal with the legitimate aim of a speedy determination in election petitions and has failed to satisfy the proportionality test insofar as the restriction on the function of final adjudication of the CFA is concerned. The CFA declared that the finality provision in section 67(3) of the LCO is unconstitutional and invalid as being inconsistent with Article 82 of the Basic Law (BL) which provides that the power of final adjudication of the HKSAR shall be vested in the CFA. The CFA also suggested that suitable changes can be made to the LCO to ensure that any restrictions or limitations on the right of appeal are indeed no more than necessary but such matter is for the Government and the Legislature to consider, taking into account those provisions in comparable

² Subject to the exception pursuant to section 36(2) of the LCO that a by-election need not be held within the four months preceding the end of LegCo's current term of office or if LegCo is dissolved by the Chief Executive (CE) in accordance with the BL.

legislation such as the Chief Executive Election Ordinance (CEEEO) (Cap. 569).

PROPOSAL

8. In view of the judgment and the need for a speedy determination of election petitions, we propose:

- (a) to amend the LCO, DCO and VREO to institute a leap-frog appeal mechanism, which allows an appeal against the decision of the CFI in relation to an election petition arising from an election (including a by-election) under the LCO, DCO and VREO to be lodged to the CFA direct, subject to leave being granted by the Appeal Committee of the CFA;
- (b) to provide in the LCO, DCO and VREO that the period within which an application for leave to appeal to the CFA must be lodged should be within seven working days after the day on which the relevant CFI judgment is handed down; and
- (c) to keep the sections under the LCO, DCO and VREO dealing with “proceedings against persons on grounds of disqualification” unchanged so that an aggrieved party can appeal to the CA and to the CFA (if leave is granted) under the normal course of appeal.

JUSTIFICATIONS

Leap-Frog Appeal Mechanism in the CE Election

E 9. A leap-frog appeal mechanism is currently applicable to the CE election. Section 22(1)(c)(i) of the Hong Kong Court of Final Appeal Ordinance (HKCFAO) (Cap. 484) (**Annex E**) provides that an appeal against the decision of the CFI in relation to the CE election will be lodged to the CFA direct (instead of being lodged to the CA), subject to leave being granted by the Appeal Committee of the CFA.

F 10. Under section 34 of the CEEEO (**Annex F**), an election petition against the result of the CE election must be lodged with the CFI within seven working days from the declaration of the election result (in contrast to two months for the filing of LegCo election petitions as provided for in section 65 of the LCO). Any application for leave to appeal against the

CFI's decision must be lodged with the CFA within seven working days after the relevant CFI's judgment is handed down. It should be noted that pursuant to section 14(3)(g) of the High Court Ordinance (HCO) (Cap. 4) (**Annex G**), no appeal shall lie to the CA from the CFI's decision in relation to the CE election.

11. The leap-frog appeal mechanism for CE elections was introduced in view of the constitutional importance of the CE. The appointment of the CE is made by the Central People's Government (CPG). It is of paramount and constitutional importance that any question relating to the election of the CE is settled before the results of the election are submitted to the CPG and that the CE election must not be susceptible to any subsequent legal challenge in the HKSAR. Moreover, as stipulated in BL 43, the CE is the head of the HKSAR. He leads the Government and is responsible for the range of key roles and functions essential to the HKSAR as stated in BL 48. It is, therefore, justifiable for the final determination of questions relating to the CE election to be conducted by the highest court, namely the CFA, under a fast track mechanism.

Extending the Leap-Frog Appeal Mechanism to LegCo, District Council (DC) and Village Representative (VR) elections

12. In the light of the judgment, we recommend that section 67(3) of the LCO be amended to extend the leap-frog provisions to LegCo. Similar recommendations are also made to amend the finality provision in section 55(3) of the DCO and section 45(3) of the VREO respectively. The reasons are set out in the paragraphs below.

LegCo election

13. Under BL 73, LegCo exercises a range of important powers and functions, including powers to enact, amend or repeal laws, examine and approve budgets introduced by the Government, and approve taxation and public expenditure.

14. Given the importance of LegCo, it is necessary to ensure the certainty of a LegCo Members' office as soon as practicable. A Member whose election is challenged by an election petition may be a less effective representative of his constituents than a legislator who is able to concentrate on his duty as a legislator. Before an election petition is determined by the court, the constituents may feel uncertain about their representative. The service by the Member legitimately expected by the public may be affected.

15. Moreover, if a petitioner successfully challenges the election of a Member and the CFI determines that the Member was not duly elected, pursuant to section 72(1) of LCO, the Member will cease to be a Member and his office will become vacant. However, since the finality provision has now been struck down by the CFA, the Member concerned may appeal to the CA pursuant to section 14(1) of the HCO as of right. It is possible for the CA to reverse the CFI's determination and, if leave to appeal is granted, for the CFA to either confirm or reverse the CA's determination, as the case may be, and find that the Member was duly elected. Such legal proceedings may drag on for one to two years. When these legal proceedings are in progress, there will be uncertainty for the seat of the Member concerned.

16. As the term of office of LegCo is four years, a lengthy appellate process under the normal appeal procedures would not be conducive to the proper functioning of the Council. The application of a leap-frog appeal mechanism to LegCo election is justifiable.

DC election

17. As a result of the amendments to the electoral methods for the CE and LegCo elections in 2012, the constitutional importance of DC members will grow considerably. According to the Legislative Council (Amendment) Bill 2010, only elected DC members are eligible to nominate candidates and be nominated as candidates for the five new DC FC seats and the original DC FC seat of LegCo. According to the Chief Executive (Amendment) Bill 2010, elected DC members will return 117 out of the 1 200 members of the Election Committee (EC) which is responsible for electing the CE. As a result, elected DC members will provide almost one-tenth of the LegCo Members and EC members respectively.

18. In view of the growing constitutional importance of elected DC members, it is necessary to ensure that the election petition mechanism under the DCO can allow a speedy determination of appeals from such election petitions. This will minimise the uncertainty faced by individual DC members subject to election petitions in exercising their functions in the election of LegCo and EC members. A leap-frog appeal mechanism should, therefore, also be put in place for DC elections.

VR election

19. Under the VREO, resident representatives and indigenous resident representatives are elected amongst villagers on a one-person-one-vote basis to take up a four-year term of office to reflect views on the affairs of a village. Indigenous resident representatives are also responsible for dealing

with affairs relating to the lawful traditional rights and interests, as well as the traditional way of life of indigenous inhabitants. A VR, if elected among members of a Rural Committee (RC) to be the Chairman of that RC, is an ex-officio DC Member.

20. A VR may also be eligible to run for LegCo election and the EC subsector election. For LegCo election, a VR, if elected as the chairman or vice-chairman of a RC or elected as a Special Councillor of Heung Yee Kuk (HYK), is eligible for being nominated as a candidate for the LegCo HYK FC seat. For the EC subsector election, a VR, if elected as the chairman or vice-chairman of a RC or elected as a Special Councillor of HYK, is eligible for being nominated as a candidate for the 21 EC HYK subsector seats. Under the Chief Executive (Amendment) Bill 2010, the number will rise to 26 for election of the next-term CE.

21. As VRs play an important role in elections of constitutional significance, it is necessary for petitions questioning the VR elections to be resolved as quickly as possible for the benefit of not just the rural community, but also for VRs to participate in returning the relevant LegCo and EC subsector seats. A leap-frog appeal mechanism for the VR elections is therefore justified.

Limited Numbers of Election Petition

22. There may be concerns that having a leap-frog appeal mechanism for LegCo, DC and VR elections respectively will overburden the CFA. According to our file record, there were eight election petitions from the 1988 LegCo election to the 2008 LegCo election, 15 election petitions from the 1985 DC election to the 2007 DC election, and three election petitions from the last two VR Elections in 2003 and 2007 (earlier VR Elections were not statutory). In view of the relatively small number of election petitions, the concern should not be exaggerated.

Application for leave to appeal to the CFA must be lodged within seven working days

23. Section 34 of the CEEO provides that an election petition must be lodged to the CFI within seven working days after the election result is published in the Gazette and that an application for leave to appeal to the CFA must be filed within seven working days after the day on which the relevant judgment of the CFI is handed down.

24. The LCO (section 65), the DCO (section 53) and the VREO (section 43) specify that election petitions must be lodged to the CFI during the period of two months after the election result is published in the Gazette. As the judgment only dealt with the lack of appeal mechanism in relation to election petitions under the LCO, without touching upon this period, we propose that we should keep the existing provision concerning the duration of this period.

25. As for the period within which appeal against the CFI determination of election petitions must be lodged to the CFA, we propose that we should follow the practice of the CEEO. We should allow seven working days under the LCO, DCO and VREO for applying for leave to appeal to the CFA. This arrangement will facilitate the speedy determination of election petitions at the CFA and will minimise the uncertainty faced by individual LegCo members, DC members and VRs subject to election petitions in exercising their functions and duties.

The sections under the LCO, DCO and VREO dealing with “proceedings against persons on grounds of disqualification” to remain unchanged

26. Separate from the election petition proceedings, there are sections entitled “proceedings against persons on grounds of disqualification” in the LCO (section 73) (**Annex H**), the DCO (section 79) (**Annex I**) and the VREO (section 58) (**Annex J**). These sections provide that the Secretary for Justice (or an elector in the case of the LCO) may bring proceedings in the CFI against any person who is acting or claims to be entitled to act, as a LegCo Member, a DC member or as a VR, on the ground that the person is disqualified, within six months when the person concerned acted or claimed to be entitled to act as a LegCo Member, a DC member or as a VR.

27. The sections are different from the election petition procedures in that they do not have the finality provision. Given the absence of such a finality provision, an aggrieved party can appeal to the CA and the CFA (if leave is granted) under the normal course of appeal.

28. The CFA noted in the judgment that “whether under section 73 (of the LCO) or under the election petition procedure of the LCO, common to both may be a challenge to the qualification or eligibility of a member of the Legislative Council, whether to be elected to or remain in the Council. One would have thought the urgency in having to determine such issues ought to be the same under both procedures”. However, the CFA did not make any suggestion concerning section 73 of the LCO.

29. We propose that section 73 of the LCO, section 79 of the DCO and section 58 of the VREO should remain unchanged in view of the following considerations-

- (a) There are differences in the grounds for bringing an action under section 73 of the LCO and those for lodging an election petition. Election petitions under the LCO can only be lodged based on the grounds set out in section 61 of the LCO (identical grounds for election petitions for DC election and VR election are set out in section 49 of the DCO and section 39 of the VREO respectively). The grounds are-
- (i) the person 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;
 - (iv) material irregularity occurred in relation to the election, or to the polling or counting of votes at the election; or
 - (v) a ground specified in any other enactment that enables an election to be questioned.

Among the five grounds, only the first ground overlaps to some extent with the grounds based on which a proceeding under section 73 of the LCO can be brought. Moreover, section 73 of the LCO covers other grounds for bringing proceedings. For instance, a person who has not gone through the relevant election but claims that he is entitled to act as a LegCo Member. A Member who was validly nominated as a candidate for the election but has subsequently altered his nationality during his term of office is also caught under that section;

- (b) Section 73 allows proceedings to be brought within six months from the date on which the person concerned acted, or claimed to be entitled to act as a LegCo Member. This longer period of lodging legal proceedings as compared with two months under election petition proceedings suggests that proceedings under section 73 are less urgent; and

- (c) As a matter of principle, the relevant laws should provide for the normal course of appeal. In the absence of very strong justifications, we should not depart from that normal course of appeal by adopting the leap-frog appeal mechanism.

IMPLICATIONS OF THE PROPOSAL

30. The legislative proposal in paragraph 8(a) and (b) above is in conformity with the BL, including the provisions concerning human rights. It has no economic, sustainability, environmental or productivity implications.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

31. Whilst the proposal has no significant implications as set out above, it might have financial and civil service implications on the Judiciary. Whilst the Judiciary would endeavour to absorb any additional resources implications arising from the proposal within its existing resources, it may seek additional resources through the established funding mechanism where necessary.

WAY FORWARD


32. Members are invited to note and comment on the proposal of a new election petition mechanism.

Constitutional and Mainland Affairs Bureau
January 2011

CL060a

Chapter:	542	Title:	LEGISLATIVE	Gazette	L.N. 130 of
			COUNCIL ORDINANCE	Number:	2007
Section:	67	Heading:	Court to determine election petition	Version Date:	01/07/2007

- (1) At the end of the trial of an election petition that relates to an election that was not contested, the Court must determine whether any decision of the Returning Officer as to the validity of a nomination was correct and, if not correct, determine whether the person declared by that Officer to have been elected in that election was or was not duly elected.
- (2) At the end of the trial of an election petition in relation to an election that was contested, the Court must determine whether the person whose election is questioned was or was not duly elected and, if not duly elected, determine whether some other person was duly elected instead.
- (3) At the end of the trial, the Court must certify the determination of the Court in writing. The judge must sign the certificate and ensure that the seal of the Court is applied to the certificate. The determination as certified is final as to the matters at issue concerning the election petition.
- (4) The Registrar of the High Court must arrange for a copy of the certificate of the Court to be delivered to the Secretary for Constitutional and Mainland Affairs, the Electoral Affairs Commission and the Clerk to the Legislative Council. (Amended L.N. 130 of 2007)
- (5) The Court may, on its own initiative, provide the Secretary for Constitutional and Mainland Affairs, or the Electoral Affairs Commission or the Clerk to the Legislative Council with a report on any matter arising in the course of the trial of an election petition if in its opinion the matter should be reported. (Amended L.N. 130 of 2007)
- (6) The Court must comply with any request made by the Secretary for Constitutional and Mainland Affairs or the Electoral Affairs Commission to provide a report on any specified matter arising from the trial of an election petition. (Amended L.N. 130 of 2007)
- (7) If, at the end of the trial of an election petition, it appears to the Court that a specified person may have engaged in corrupt or illegal conduct at or in connection with the election, the Court is required to provide the Director of Public Prosecutions with a report giving details of the conduct. (Added 10 of 2000 s. 47)

Chapter:	547	Title:	DISTRICT COUNCILS	Gazette	L.N. 130 of
			ORDINANCE	Number:	2007
Section:	55	Heading:	Court to determine election petition	Version Date:	01/07/2007

- (1) At the end of the trial of an election petition that relates to an election that was not contested, the Court must determine whether any decision of the Returning Officer as to the validity of a nomination was correct and, if not correct, determine whether the person declared by that Officer to have been elected in that election was or was not duly elected.
- (2) At the end of the trial of an election petition that relates to an election that was contested, the Court must determine whether the person whose election is questioned was or was not duly elected and, if not duly elected, determine whether some other person was duly elected instead.
- (3) At the end of the trial of an election petition, the Court must certify the determination of the Court in writing. The judge must sign the certificate and ensure that the seal of the Court is applied to the certificate. The determination as certified is final as to the matters at issue concerning the election petition.
- (4) The Registrar of the High Court must arrange for a copy of the certificate of the Court to be delivered to the Secretary for Constitutional and Mainland Affairs, the Electoral Affairs Commission and the Director of Home Affairs. (Amended L.N. 130 of 2007)
- (5) The Court may, on its own initiative, provide the Secretary for Constitutional and Mainland Affairs, the Electoral Affairs Commission or the Director of Home Affairs with a report on any matter arising in the course of the trial of an election petition if in its opinion the matter should be reported. (Amended L.N. 130 of 2007)
- (6) The Court must comply with any request made by the Secretary for Constitutional and Mainland Affairs, the Electoral Affairs Commission or the Director of Home Affairs to provide a report on any specified matter arising from the trial of an election petition. (Amended L.N. 130 of 2007)
- (7) If, at the end of the trial of an election petition, it appears to the Court that a specified person may have engaged in corrupt or illegal conduct at or in connection with the election, the Court is required to provide the Director of Public Prosecutions with a report giving details of the conduct. (Added 10 of 2000 s. 47)

Chapter:	576	Title:	VILLAGE REPRESENTATIVE ELECTION ORDINANCE	Gazette Number:	2 of 2003
Section:	45	Heading:	Court to determine election petition	Version Date:	14/02/2003

(1) At the end of the trial of an election petition questioning an election that was not contested, the Court shall determine whether any decision of the Returning Officer as to the validity of a nomination was correct and, if not correct, determine whether the person declared by the Officer to have been elected in that election was or was not duly elected.

(2) At the end of the trial of an election petition questioning an election that was contested, the Court shall determine whether the person whose election is questioned was or was not duly elected and, if not duly elected, determine whether some other person was duly elected instead.

(3) At the end of the trial of an election petition, the Court shall certify the determination of the Court in writing. The judge shall sign the certificate and ensure that the seal of the Court is applied to the certificate. The determination as certified is final as to the matters at issue concerning the election petition.


(4) The Registrar of the High Court shall arrange for a copy of the certificate of the Court to be delivered to the Secretary, the Electoral Affairs Commission and the Director.

(5) The Court may, on its own initiative, provide the Secretary, the Electoral Affairs Commission or the Director with a report on any matter arising in the course of the trial of an election petition if in its opinion the matter should be reported.

(6) The Court shall comply with any request made by the Secretary, the Electoral Affairs Commission or the Director to provide a report on any specified matter arising in the course of the trial of an election petition.

(7) If, at the end of the trial of an election petition, it appears to the Court that a specified person may have engaged in corrupt or illegal conduct at or in connection with the election, the Court is required to provide the Director of Public Prosecutions with a report giving details of the conduct.

Annex D

Chapter:	542	Title:	LEGISLATIVE	Gazette	134 of 1997
			COUNCIL ORDINANCE	Number:	
Section:	72	Heading:	What is to happen if Member is determined not to have been duly elected	Version Date:	03/10/1997

(1) If, on the hearing of an election petition, the Court determines that a person who was originally declared to have been elected as a Member at an election was not duly elected, that person ceases to be a Member and, subject to subsection (2), that person's office as a Member becomes vacant from the date of the determination.

(2) If, on the hearing of an election petition, the Court determines that a person was duly elected as a Member in place of a person that the Court has determined not to have been duly elected at the election, the first-mentioned person becomes a Member from the date of the determination.

Chapter:	484	Title:	HONG KONG COURT	Gazette	L.N. 103 of
			OF FINAL APPEAL	Number:	2006
			ORDINANCE		
Section:	22	Heading:	Civil appeals	Version Date:	13/05/2006

**Division 2-Appeal from Court of Appeal to Court;
Appeal relating to Chief Executive Election**

(Added 11 of 2002 s. 3)

(1) An appeal shall lie to the Court- (Amended 21 of 2001 s. 52)

(a) as of right, from any final judgment of the Court of Appeal in any civil cause or matter, where the matter in dispute on the appeal amounts to or is of the value of \$1000000 or more, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$1000000 or more; (Amended 21 of 2001 s. 52)

(b) at the discretion of the Court of Appeal or the Court, from any other judgment of the Court of Appeal in any civil cause or matter, whether final or interlocutory, if, in the opinion of the Court of Appeal or the Court, as the case may be, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court for decision; and (Amended 21 of 2001 s. 52)

(c) at the discretion of the Court, from-

(i) a determination of the Court of First Instance under section 37(1) of the Chief Executive Election Ordinance (Cap 569); or

(ii) a judgment or order of the Court of First Instance in-

(A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or

(B) any other proceedings under that Ordinance, which put in issue whether the candidate is duly determined to be not returned at an election under section 26A(4) of the Chief Executive Election Ordinance (Cap 569) or whether the candidate declared under section 28 of that Ordinance as elected at an election can lawfully assume the

office of the Chief Executive. (Added 21 of 2001 s.
52. Amended 10 of 2006 s. 19)


(2) The Chief Executive in Council may by order published in the Gazette amend subsection (1) to vary the amounts specified. (Amended 120 of 1997 s. 4)

Annex F

Chapter:	569	Title:	CHIEF EXECUTIVE ELECTION ORDINANCE	Gazette Number:	L.N. 103 of 2006
Section:	34	Heading:	Period within which election petition and appeal must be lodged	Version Date:	13/05/2006

(1) An election petition questioning an election must be lodged within 7 working days after the day on which the result of the election is declared under section 22(1AB) or 28. (Amended 10 of 2006 s. 16)

(2) Notwithstanding section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap 484), a notice of a motion for the purposes of an application for leave to appeal to the Court of Final Appeal under section 22(1)(c) of that Ordinance shall be filed within 7 working days after the day on which the relevant judgment of the Court is handed down, and the applicant shall give the opposite party 3 days notice of his intended application at any time during the period of 7 working days.

Chapter:	4		Title:	HIGH COURT ORDINANCE	Gazette Number:	L.N. 18 of 2009
Section:	14		Heading:	Appeals in civil matters	Version Date:	02/04/2009

(1) Subject to subsection (3) and section 14AA, an appeal shall lie as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil cause or matter. (Amended 25 of 1998 s. 2; 3 of 2008 s. 24)

(2) (Repealed 52 of 1987 s. 10)

(3) No appeal shall lie-

(a) from an order of the Court of First Instance allowing an extension of time for appealing from a judgment or order; (Amended 25 of 1998 s. 2) [cf. 1925 c. 49 s. 31 U.K.]

(b) (Repealed 52 of 1987 s. 10)

(c) from a judgment or order of the Court of First Instance, where it is provided by any Ordinance or by rules of court that the same is to be final; (Amended 25 of 1998 s. 2)

(d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;

(e) without the leave of the court or tribunal in question or of the Court of Appeal, from an order of the Court of First Instance or any other court or tribunal made with the consent of the parties or relating only to costs which are by law left to the discretion of the court or tribunal; (Replaced 52 of 1987 s. 10. Amended 25 of 1998 s. 2) [cf. 1981 c. 54 s. 18 U.K.]

(ea) except as provided by the Arbitration Ordinance (Cap 341), from any decision of the Court of First Instance- (Amended 25 of 1998 s. 2)

(i) on an appeal under section 23 of that Ordinance on a question of law arising out of an arbitration award; or

(ii) under section 23A of that Ordinance on a question of law arising in the course of a reference; (Added 52 of 1987 s. 10)

(eb) from a decision of the Court of First Instance in respect of which a certificate is granted under section 27C of the Hong Kong

Court of Final Appeal Ordinance (Cap 484) and leave to appeal is granted under section 27D of that Ordinance in any proceedings; (Added 11 of 2002 s. 6)


(f) without the leave of the Court of First Instance or the Court of Appeal, from a judgment or order of the Court of First Instance given or made in summarily determining under rules of court any question at issue in interpleader proceedings: (Amended 25 of 1998 s. 2)

Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury; (Amended 21 of 2001 s. 48)

(g) from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap 484). (Added 21 of 2001 s. 48)

(4) Rules of court made under section 54 may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interlocutory. (Added 52 of 1987 s. 10) [cf. 1981 c. 54 s. 60 U.K.]

(5) No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that court, final or interlocutory. (Added 52 of 1987 s. 10)

Chapter:	542	Title:	LEGISLATIVE	Gazette	134 of 1997
			COUNCIL ORDINANCE	Number:	
Section:	73	Heading:	Proceedings against persons on grounds of disqualification	Version Date:	03/10/1997

PART VIII

OTHER LEGAL PROCEEDINGS

- (1) An elector, or the Secretary for Justice, may bring proceedings in the Court against any person who is acting, claims to be entitled to act, as a Member on the ground that the person is disqualified from acting as such.
- (2) Proceedings under this section may not be brought after 6 months from the date on which the person concerned acted, or claimed to be entitled to act, as a Member.
- (3) If, in proceedings brought under this section, it is proved that the defendant acted as a Member while disqualified from acting in that office, the Court may-
 - (a) make a declaration to that effect; and
 - (b) grant an injunction restraining the defendant from so acting; and
 - (c) order the defendant to pay to the Government such sum as the Court thinks appropriate, not exceeding \$5000 for each occasion on which the person so acted while disqualified.
- (4) If, in proceedings brought under this section, it is proved that the defendant claimed to be entitled to act as a Member while disqualified from acting in that office, the Court may-
 - (a) make a declaration to that effect; and
 - (b) grant an injunction restraining the defendant from so acting.
- (5) Proceedings brought under this section by a person other than the Secretary for Justice are to be stayed until the person has given security for all costs that the person may be ordered to pay to any witness giving evidence in the proceedings on that person's behalf or to a defendant.
- (6) The amount of security to be given under this section-
 - (a) is to be determined by the Court, but must not exceed \$20000; and
 - (b) is to be in such manner and form as the Court directs.


(7) Proceedings against a person on the ground that the person has, while disqualified from acting as, or claimed to have been entitled to act, as a Member may be brought only in accordance with this section.

(8) For the purposes of this section, a person is disqualified from acting as a Member if the person-

(a) is not qualified to be, or is disqualified from being, a Member;

or

(b) has ceased to hold office as a Member.

Chapter:	547	Title:	DISTRICT COUNCILS	Gazette	L.N. 77 of
			ORDINANCE	Number:	1999
Section:	79	Heading:	Proceedings against persons on grounds of disqualification	Version Date:	19/03/1999

PART VIII

LEGAL PROCEEDINGS

(1) The Secretary for Justice may bring proceedings in the Court against any person who is acting or claims to be entitled to act, as a member on the ground that the person is disqualified from acting as such.

(2) Proceedings under this section may not be brought after 6 months from the date on which the person concerned acted or claimed to be entitled to act as a member.

(3) If, in proceedings brought under this section, it is proved that the defendant acted as a member while disqualified from acting in that office, the Court may-

- (a) make a declaration to that effect; and
- (b) grant an injunction restraining the defendant from so acting; and
- (c) order the defendant to pay to the Government such sum as the Court thinks appropriate, not exceeding \$5000 for each occasion on which the person so acted while disqualified.


(4) If, in proceedings brought under this section, it is proved that the defendant claimed to be entitled to act as a member while disqualified from acting in that office, the Court may-

- (a) make a declaration to that effect; and
- (b) grant an injunction restraining the defendant from so acting.

(5) Proceedings against a person on the ground that the person has acted, while disqualified from acting, or claimed to have been entitled to act, as a member may be brought only in accordance with this section and by the Secretary for Justice.

(6) For the purposes of this section, a person is disqualified from acting as a member if the person-

- (a) is not qualified to be, or is disqualified from being, a member; or
- (b) has ceased to hold office as a member.

Chapter:	576	Title:	VILLAGE REPRESENTATIVE ELECTION ORDINANCE	Gazette Number:	2 of 2003
					
Section:	58	Heading:	Proceedings against persons on grounds of disqualification	Version Date:	14/02/2003

PART 7

LEGAL PROCEEDINGS

(1) The Secretary for Justice may bring proceedings in the Court against any person who is acting, or claims to be entitled to act, as a Village Representative on the ground that the person is disqualified from acting as a Village Representative.

(2) Proceedings under this section may not be brought after 6 months after the date on which the person concerned acted, or claimed to be entitled to act, as a Village Representative.

(3) If, in proceedings brought under this section, it is proved that the defendant acted as a Village Representative while disqualified from acting as a Village Representative, the Court may-

- (a) make a declaration to that effect;
- (b) grant an injunction restraining the defendant from so acting;
- and
- (c) order the defendant to pay to the Government such sum as the Court thinks appropriate, not exceeding \$5000 for each occasion on which the person so acted while disqualified.

(4) If, in proceedings brought under this section, it is proved that the defendant claimed to be entitled to act as a Village Representative while disqualified from acting as a Village Representative, the Court may-

- (a) make a declaration to that effect; and
- (b) grant an injunction restraining the defendant from so acting.

(5) Proceedings against a person on the ground that the person has acted, or claimed to have been entitled to act, as a Village Representative while disqualified from acting as a Village Representative may be brought only in accordance with this section and by the Secretary for Justice.

(6) For the purposes of this section, a person is disqualified from acting as a Village Representative if the person-

(a) is not qualified to be, or is disqualified from being, a Village Representative; or

(b) has ceased to hold the office of village representative for a Village.