

CONTENTS

Introduction	577
SECTION 1 – RELEVANT CONSTITUTIONAL PROVISIONS	577
1.01 Qualification for Membership of Parliament	577
1.02 Conduct of Elections	578
1.03 Assistance to Election Commission	578
1.04 Federal Constituencies	578
1.05 Method of Challenging Elections	578
1.06 Qualification of Electors	579
SECTION 2 – ADMINISTRATION	579
2.01 Election Commission	579
2.02 Staff of the Election Commission	580
2.03 General Powers and Duties of the Election Commission	581
2.04 Powers of Officers	581
SECTION 3 – DELIMITATION OF CONSTITUENCY BOUNDARIES	582
3.01 The Role of the Election Commission	582
3.02 Provisions Relating to Delimitation of Constituencies – Thirteenth Schedule of the Constitution	582
3.03 Procedure for Delimitation of Constituencies	583
3.04 Polling Districts and Polling Stations	584
SECTION 4 – REGISTRATION OF ELECTORS	585
4.01 Appointment of Officers	585
4.02 Preparation of Electoral Rolls	586
4.03 Claims and Objections	587
4.04 Appeals	589

4.05 Certification of Electoral Roll	590
4.06 Revision of Electoral Roll	590
4.07 General Provisions Regarding Registration	593
SECTION 5 – POSTAL VOTING	594
5.01 Persons Entitled to Vote as Postal Voters	594
5.02 Form of Postal Ballot Papers	594
5.03 Persons Entitled to be Present at Issue of Postal Ballot Papers and Opening of Postal Voters’ Ballot Boxes	595
5.04 Notice of Issue of Postal Ballot Papers	595
5.05 Marking Postal Ballot Papers	595
5.06 Documents to be Sent to Postal Voters	596
5.07 Provisions and Procedures in Respect of Postal Voters’ Ballot Box	596
5.08 Procedure during and after Postal Voting	597
SECTION 6 – WRITS OF ELECTION	599
6.01 Role of Election Commission	599
6.02 Notice of Election	599
SECTION 7 – NOMINATION	600
7.01 Nomination Papers	600
7.02 Deposit by Candidate	601
7.03 Proceedings on Nomination Day	602
7.04 Objection to Nomination Papers	602
7.05 Persons Entitled to be Present at Nomination	603
7.06 Withdrawal of Candidature	603
7.07 Uncontested Elections	603
SECTION 8 – PREPARATIONS FOR POLLING	604
8.01 Contested Elections	604
8.02 Appointment of Presiding Officers, etc	605
8.03 Facilities to be Provided at Polling Station	606
8.04 Right of Registered Elector to Vote	606
8.05 Admittance to Polling Station	606
8.06 Marking of Polling Station Limits	607

8.07 Poll by Ballot and Ballot Papers	607
8.08 Ballot Boxes	607
8.09 Manner of Voting	608
8.10 Declarations by Voters	609
8.11 Spoilt Ballot Papers	609
8.12 Tendered Votes	609
8.13 Closing of Poll	609
8.14 Place of Counting the Votes	609
8.15 Procedure on Close of Poll	610
8.16 Counting of Votes by Presiding Officer	611
8.17 Safe Custody of Election Documents	614
8.18 Postponement or Adjournment of Counting of Votes	614
8.19 Counting of Postal Votes	615
8.20 Disposal of Ballot Papers	616
8.21 Court Order to Copy or Inspect Election Documents	616
SECTION 9 – ELECTION PETITIONS	617
9.01 Avoidance of Election on Election Petition	617
9.02 Appointment and Powers of Election Judge	617
9.03 Who May Present Petition	618
9.04 Relief Which May be Claimed	618
9.05 Certificate of Judge as to Validity of Election	618
9.06 Report of Judge as to Corrupt or Illegal Practice	618
9.07 Time for Presentation	619
9.08 Prohibition of Disclosure of Vote	620
9.09 Votes to be Struck Off at Scrutiny	620
9.10 Rejection of Ballot Paper by Returning Officer or Presiding Officer	620
9.11 Procedure and Practice on Election Petitions	621
SECTION 10 – ELECTION OFFENCES	621
10.01 Offences by any Person	621
10.02 Offences by Election Officers	622
10.03 Maintenance of Secrecy at Elections	622

10.04 Corrupt Practices	624
10.05 Election Agent, Election Expenses and Illegal Practices	626
10.06 Employers to Allow Employees Time to Vote	631
10.07 Limitation of Political Propaganda	632
10.08 Punishment for Conviction for Illegal Practice	632
10.09 Excuse for Corrupt or Illegal Practice	633
Notes	635

INTRODUCTION

Malaysia has a federal system of government whose legislative authority is vested in a Parliament which consists of the Yang di-Pertuan Agong (the King) and two Dewan (Houses of Parliament) known as the Dewan Negara (Senate) and the Dewan Rakyat (House of Representatives).

The Senate consists of appointed members who hold office for not more than two terms either continuously or otherwise.

The House of Representatives consists of one hundred and ninety-two elected members.

In this compilation, the undermentioned election laws and rules, including relevant constitutional provisions, relating to elections to the House of Representatives are presented in outline.

The following laws are examined: the Elections Act 1958 (herein referred to as “the Act”); Election Offences Act 1954; Elections (Conduct of Elections) Regulations 1981; Election (Postal Voting) Regulations 1959; and Elections (Registration of Electors) Regulations 1971.

— Section 1 —

RELEVANT CONSTITUTIONAL PROVISIONS

1.01 Qualification for Membership of Parliament

Every citizen resident in the Federation is qualified to be a member –

- (a) of the Senate, if he is not less than thirty years old;
- (b) of the House of Representatives, if he is not less than twenty-one years old, unless he is disqualified for being a member by this Constitution or by any law made in pursuance of Article 48 (of the Constitution).

A person is disqualified for being a member of either House of Parliament if –

- (a) he is and has been found or declared to be of unsound mind; or
- (b) he is an undischarged bankrupt; or
- (c) he holds an office of profit; or
- (d) having been nominated for election to either House of Parliament or the Legislative Assembly of a State, or having acted as election agent to a person so nominated,

- he has failed to lodge any return of election expenses required by law within the time and in the manner so required; or
- (e) he has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand ringgit and has not received a free pardon; or
 - (f) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, any country outside the Federation or has made a declaration of allegiance of any country outside the Federation.¹

1.02 Conduct of Elections

The Constitution establishes an Election Commission which is responsible for the conduct of elections to the House of Representatives and the Legislative Assemblies of the States, review of the constituencies for the purpose of election of Parliament and State Legislative Assemblies and preparation and revision of electoral rolls for such elections (see Section 2 – Administration below).²

1.03 Assistance to Election Commission

The Election Commission may employ such number of persons, on such terms and conditions, as the Commission may with the approval of the Yang di-Pertuan Agong determine.

All authorities must on the request of the Commission give the Commission such assistance in the discharge of its duties as may be practicable; and in exercising its function of making recommendations for the delimitation of constituencies for the elections, the Commission is required to seek the advice of two officers of the Federal Government with special knowledge of the topography of, and the distribution of the population in, the unit of review for federal elections, and those officers must be selected for that purpose by the Yang di-Pertuan Agong.³

1.04 Federal Constituencies

For the election of members to the House of Representatives a unit of review must be divided into constituencies in accordance with the provisions contained in the Thirteenth Schedule.

The total number of constituencies must be equal to the number of members, so that one member is elected for each constituency, and of that total in the States of Malaysia a number determined in accordance with the provisions in Article 46 (Composition of the House of Representatives) and the Thirteenth Schedule must be allocated to each State.⁴

1.05 Method of Challenging Elections

No election to the House of Representatives shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.⁵

1.06 Qualification of Electors

Every citizen who –

- (a) has attained the age of twenty-one years on the qualifying date; and
- (b) is resident in a constituency on such qualifying date or, if not so resident, is an absent voter,

is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified, but no person is allowed in the same election to vote in more than one constituency.

A person is disqualified for being an elector in any election to the House of Representatives if –

- (a) on the qualifying date he is detained as a person of unsound mind or is serving a sentence of imprisonment; or
- (b) having before the qualifying date been convicted in any part of the Commonwealth of an offence and sentenced to death or imprisonment for a term exceeding twelve months, he remains liable on the qualifying date to suffer any punishment for that offence.

“Qualifying date” means the date by reference to which the electoral rolls are prepared or revised.⁶

— Section 2 —

ADMINISTRATION

2.01 Election Commission

The Election Commission is appointed by the Yang di-Pertuan Agong after consultation with the Conference of Rulers, and consists of a chairman, a deputy chairman and three other members.

In appointing members of the Election Commission, the Yang di-Pertuan Agong must have regard to the importance of securing an Election Commission which enjoys public confidence.

A member of the Election Commission ceases to hold office on attaining the age of sixty-five years or on becoming disqualified under clause (4) of the Constitution and may at any time resign his office by writing addressed to the Yang di-Pertuan Agong, but must not be removed from office except on the like grounds and in the like manner as a Judge of the Supreme Court.

The Yang di-Pertuan Agong must remove from office any member of the Election Commission if such member –

- (a) is an undischarged bankrupt; or
- (b) engages in any paid office or employment outside the duties of his office; or
- (c) is a member of either House of Parliament or of the Legislative Assembly of a State.

The Chairman of the Election Commission is disqualified from holding such office if after three months of his appointment to such office or at any time thereafter he is or becomes a member of any board of directors or board of management, or an officer or employee, or engages in the affairs or business, of any organisation or body, whether corporate or otherwise, or any commercial, industrial or other undertaking, whether or not he receives any remuneration, reward, profit or benefit from it: provided that such disqualification does not apply where such organisation or body carries out any welfare or voluntary work or objective beneficial to the community or any part thereof, or any other work or objective of a charitable or social nature, and the member does not receive any remuneration, reward, profit or benefit from it.

The remuneration of members of the Election Commission is charged on the Consolidated Fund. The remuneration and other terms of office of a member of the Election Commission must not be altered to his disadvantage after his appointment.

Where, during any period, the Chairman of the Election Commission has been granted leave of absence by the Yang di-Pertuan Agong or is unable, owing to his absence from the Federation, illness or any other cause, to discharge his functions, the Deputy Chairman is required to discharge the functions of the Chairman during that period, and if the Deputy Chairman is also absent or unable to discharge such functions, a member of the Election Commission may be appointed by the Yang di-Pertuan Agong to discharge the functions of the Chairman during that period.⁷

2.02 Staff of the Election Commission

It was mentioned above (sub-section 1.03) that the Election Commission, with the approval of the Yang di-Pertuan Agong, may employ such number of persons as the Election Commission may determine. Subject to the foregoing provision (Article 115 (1) of the Constitution), the Election Commission may appoint –

- (a) a Secretary and a Deputy Secretary and as many Assistant Secretaries to the Election Commission as the Commission may consider necessary;
- (b) a State Elections Officer and so many Deputy State Elections Officers for each State as the Commission may consider necessary; and
- (c) a returning officer and so many assistant returning officers for each constituency as the Commission may consider necessary.

The Secretary is the chief administrative officer of the Election Commission, subject at all times and in all matters to the supervision, direction and control of the Commission, and must –

- (a) implement the decisions of the Commission;
- (b) carry out the day-to-day administration of offices of the Commission, and exercise

- supervision, direction and control over all other election officers, and all other officers of the Commission;
- (c) carry out such functions as may be given to him by the Commission in or for the exercise of its powers or the performance of its duties in relation to the review or delimitation of constituencies, the registration of electors, the conduct of elections and other matters;
 - (d) have power to signify on behalf of the Commission all writs, notices and other documents of the Commission, all subsidiary legislation made by the Commission, and all other acts of the Commission; and
 - (e) have such other powers and duties as may be provided under the Act.

The Deputy Secretary has, subject to the direction and control of the Secretary, all the powers and may perform all the duties of the Secretary and in the absence of the Secretary, acts as the Secretary.

The Assistant Secretary must, subject to the direction and control of the Secretary and Deputy Secretary, assist the Secretary and Deputy Secretary in the exercise of their powers and the performance of their duties.⁸

2.03 General Powers and Duties of the Election Commission

The Election Commission shall –

- (a) exercise control and supervision over the review of constituencies, the conduct of elections and the registration of electors on the electoral rolls, and must enforce on the part of all election officers fairness, impartiality and compliance with the law;
- (b) have powers to issue to election officers such directions as may be deemed necessary by the Commission to ensure effective execution of the law;
- (c) have power to administer any oath required to be taken under the Act; and
- (d) execute and perform all other powers and duties which are conferred or imposed upon it by the Act.

The Election Commission may delegate, subject to such conditions and restrictions as the Commission may consider necessary, any of the powers and duties conferred or imposed upon the Commission by the Act, to such person or officer as it may think fit: provided that –

- (a) nothing in this sub-section applies to any power to make regulations under the Act; and
- (b) no such delegation must affect the exercise of such powers or the performance of such duties by the Commission.⁹

2.04 Powers of Officers

A State Elections Officer has, subject to the direction and control of the Election Commission, all the powers and may perform all the duties of the Commission in relation to the conduct of elections in the State for which he is appointed.

A Deputy State Elections Officer has, subject to the direction and control of the State Elections Officer, all the powers and may perform all the duties of the State Elections Officer in the State for which he is appointed.

A returning officer is in common with other election officers, subject to the control, supervision and direction of the Election Commission.

An assistant returning officer has, subject to the direction and control of the returning officer whom he is appointed to assist, all the powers and may perform all the duties of the returning officer.

If any returning officer is by sickness or other cause prevented or disabled from performing any of his duties under the Act and there is no time for any other person to be appointed by the Election Commission, the returning officer may appoint a deputy to act for him. Every such appointment must be reported as soon as possible to the Election Commission and may be revoked by the Commission but without prejudice to the validity of anything already done by any deputy so appointed.¹⁰

—Section 3—

DELIMITATION OF CONSTITUENCY BOUNDARIES

3.01 The Role of the Election Commission

The Election Commission is required to review from time to time, the division of the Federation and the States into constituencies and recommend such changes therein as it may think necessary in order to comply with the provisions contained in the Thirteenth Schedule of the Constitution.

There must be an interval of not less than eight years between the date of completion of one review, and the date of commencement of the next review. A review must be completed within a period of not more than two years from the date of its commencement.

Where the number of elected members of the House of Representatives is altered in consequence of any amendment to Article 46 of the Constitution (Composition of the House of Representatives), or the number of elected members of the Legislative Assembly of a State is altered in consequence of a law enacted by the Legislature of a State, the Election Commission must undertake a review of the division into federal or State constituencies, as the case may be, of the area which is affected by the alteration, and such review must be completed within a period of not more than two years from the date of the coming into force of the law making the alteration.¹¹

3.02 Provisions Relating to Delimitation of Constituencies – Thirteenth Schedule of the Constitution

The following principles must as far as possible be taken into account in dividing any unit

of review into constituencies pursuant to the provisions of Articles 116 and 117 of the Constitution –

- (a) while having regard to the desirability of giving all electors reasonably convenient opportunities of going to the polls, constituencies ought to be delimited so that they do not cross State boundaries and regard ought to be had to the inconveniences of State constituencies crossing the boundaries of federal constituencies;
- (b) regard ought to be had to the administrative facilities available within the constituencies for the establishment of the necessary registration and polling machinery;
- (c) the number of electors within each constituency in a State ought to be approximately equal except that, having regard to the greater difficulty of reaching electors in the country districts and the other disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies;
- (d) regard ought to be had to the inconveniences attendant on alterations of constituencies, and to the maintenance of local ties.

The number of electors is to be taken to be as shown on the current electoral rolls.¹²

3.03 Procedure for Delimitation of Constituencies

Where the Election Commission has provisionally determined to make recommendations affecting any constituency, it must inform the Speaker of the House of Representatives and the Prime Minister accordingly, and must publish in the Gazette and in at least one newspaper circulating in the constituency a notice stating –

- (a) the effect of its proposed recommendations, and (except in a case where it proposes to recommend that no alteration be made in respect of the constituency) that a copy of its recommendations is open to inspection at a specified place within the constituency; and
- (b) that representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of such notice, and the Commission must take into consideration any representations duly made in accordance with any such notice.

Where, on the publication of the notice afore-mentioned of a proposed recommendation of the Election Commission for the alteration of any constituencies, the Commission receives any representation objecting to the proposed recommendation from –

- (a) the State Government or any local authority whose area is wholly or partly comprised in the constituencies affected by the recommendation; or
 - (b) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question,
- the Commission must cause a local enquiry to be held in respect of those constituencies.

The Election Commission has, in relation to any enquiry, all the powers conferred on Commissioners by the Commissions of Enquiry Act 1950.

Where the Election Commission revises any proposed recommendations after publishing a notice thereof, the Commission must comply again with that section in relation to the revised recommendations, as if no earlier notice had been published.

Provided it shall not be necessary to hold more than two local enquiries in respect of any such recommendations.

The Election Commission must, having completed the procedure prescribed, submit to the Prime Minister a report on constituencies showing –

- (a) the constituencies into which it recommends that each unit of review should be divided in order to give effect to the principles set out in sub-section 3.02 above; and
- (b) the names by which it recommends that those constituencies will be known, or stating that in its opinion no alteration is required to be made in order to give effect to the said principles.

As soon as may be after the Election Commission has submitted its report to the Prime Minister, he must lay the report before the House of Representatives, together (except in a case where the report states that no alteration is required to be made) with the draft of an Order to be made for giving effect, with or without modifications, to the recommendations contained in the report.

If any draft Order is approved by the House of Representatives by resolution supported by the votes of not less than one-half of the total number of members of that House, the Prime Minister must submit the draft Order to the Yang di-Pertuan Agong.

If a motion for the approval of any draft Order is rejected by the House of Representatives, or withdrawn by leave of the House, or is not supported by the votes of not less than one-half of the total number of members of the House, the Prime Minister may, after such consultation with the Election Commission as he may consider necessary, amend the draft and lay the amended draft before the House of Representatives; and if the draft as so amended is approved by the House by a resolution supported by the votes of not less than one-half of the total number of members of the House, the Prime Minister is required to submit the amended draft to the Yang di-Pertuan Agong.

Where the draft of an Order is submitted to the Yang di-Pertuan Agong, the Yang di-Pertuan Agong must make an Order in the terms of the draft submitted to him, and the Order shall come into force on such date as may be specified therein.

The coming into force of any such Order must not affect any election to the House of Representatives or a Legislative Assembly until the next dissolution of Parliament or the Assembly, as the case may be, occurring on or after the date.¹³

3.04 Polling Districts and Polling Stations

As soon as may be after the delimitation of a constituency, and thereafter when any

constituency is altered or a new constituency is created, the Election Commission must –

- (a) divide each constituency into polling districts;
- (b) assign to each polling district a distinguishing letter or letters or number or both;
- (c) appoint a place or places at which a polling station or stations for the district is or are to be established; and
- (d) publish in the Gazette a notice specifying –
 - (i) the polling districts into which the constituency has been divided;
 - (ii) the distinguishing letter or letters or number or both assigned to each polling district;
 - (iii) the place or places appointed for the establishment of a polling station or stations for each polling district.

The division of a constituency into polling districts may be altered by the Election Commission as occasion may require, and upon such alteration being made, the Commission is required to publish in the Gazette a notice specifying in relation to that constituency the particulars stipulated, and any such alteration takes effect at the next revision of the electoral roll for that constituency and not earlier.

Unless the Election Commission considers it necessary or expedient in the special circumstances of any case to provide otherwise there must be, for each polling district, one polling station.¹⁴

— Section 4 —

REGISTRATION OF ELECTORS

4.01 Appointment of Officers

The Election Commission may appoint a Chief Registering Officer for Malaysia, a Deputy Chief Registering Officer for each State, a registering officer and a revising officer for each constituency, and in addition thereto, if necessary, a deputy registering officer for each constituency.

The Chief Registering Officer exercises, subject to the direction and control of the Election Commission, control and supervision over all matters relating to the registration of electors.

The Deputy Chief Registering Officer exercises, subject to the direction and supervision of the Chief Registering Officer, all the powers of the Chief Registering Officer in the State for which he is appointed.

A registering officer is, in common with other election officers, subject to the control, supervision and direction of the Election Commission. A deputy registering officer exercises, subject to the direction and supervision of the registering officer, all the powers of the registering officer in the constituency for which he is appointed.¹⁵

4.02 Preparation of Electoral Rolls

Each registering officer must prepare, publish and revise in the prescribed manner an electoral roll for the constituency for which he is appointed. Unless the Election Commission otherwise directs, the electoral rolls for Parliamentary electors and State electors must be combined in a single register.

Each Parliamentary constituency constitutes a registration area and each Parliamentary polling district constitutes a separate registration unit in a registration area. However, where a Parliamentary polling district lies partly in one and partly in another State constituency, each part of the Parliamentary polling district contained in a single State constituency constitutes a separate registration unit.

The electoral roll must be framed in separate parts for each registration unit in the registration area.

The names in the electoral roll for each registration unit must be arranged in order of localities and within such localities in such manner as the registering officer determines, and must be numbered in accordance with the directions of the Chief Registering Officer.

The names of such persons as are entitled under the provision of any law to vote at any election as a postal voter and are –

- (a) absent voters; or
 - (b) members of any police force established by any written law in force in Malaysia, other than members of the Police Volunteer Reserve,
- must be shown separately in a list of postal voters at the end of each part of the electoral roll in respect of the registration unit in which such persons are qualified to be registered as electors.

Where in any year prior to the certification of electoral rolls, the boundaries of any constituency are altered by the Commission, the electoral roll of the registration area comprised in such constituency last revised and certified remains valid until the next certification of the electoral roll.

The Election Commission may at such time as it determines by notice published in the Gazette call upon:

- (a) every person who is qualified and desires to be registered as a Parliamentary elector in any State; and
- (b) every person who is qualified and desires to be registered as a State elector in such State,

to forward his application to the registering officer of the registration area or to the assistant registering officer of the registration unit in which he is qualified as an elector so as to reach such registering officer or assistant registering officer on or after the first day and not later than the last day of the period prescribed by such notice. Such period must not be less than thirty days nor more than sixty days.

As soon as possible after the expiration of the period prescribed, the registering officer in each registration area must prepare an electoral roll in accordance with the Regulations.

In preparing the electoral roll, the registering officer must include therein the name of every person from whom an application has been received and who appears to him to be qualified for registration as an elector in the category or categories of electors in which he has applied to be registered.

For the purpose of satisfying himself as to the qualification of any applicant to be registered a registering officer may require such further information from the applicant and may make such enquiry as he may deem necessary.

On the completion of the electoral roll for any registration area, the registering officer must give notice in the Gazette that such electoral roll has been completed and that such electoral roll or a copy thereof is open for inspection at such hours as may be stated in such notice at the office of such registering officer and that such part of the electoral roll or a copy thereof as relates to any registration unit in such registration area is open for inspection at such hours as may be stated in such notice at such place or places in that registration unit as may be specified in such notice.

Such notice may be given –

- (a) by the Chief Registering Officer to apply to the electoral roll of more than one registration area;
- (b) by the Chief Registering Officer or the registering officer to apply to parts of the electoral roll relating to any registration unit or units forming part of a registration area.¹⁶

4.03 Claims and Objections

Any person who has applied to be registered in the electoral roll for any constituency and is qualified to be so registered may, if his name has been omitted from such electoral roll, submit a claim to the registering officer to whom he applied to have his name entered therein.

Every claim must be made in a prescribed form and declared to the registering officer within fourteen days from the date of the publication in the Gazette of the notice specified in the Regulations. Within seven days after the expiration of the period of fourteen days, the registering officer must exhibit in a conspicuous place in his office a notice containing the names and addresses of claimants.

Any person whose name appears in the electoral roll for any registration area may object to the inclusion in such electoral roll of his own name or the name of any other person appearing therein, or may object to the insertion in the electoral roll of the name of any claimant.

Every objection is required to be made in a prescribed form and be delivered to the

registering officer of the registration area in which the name of the person in regard to whom the objection is made is registered within fourteen days from the date of publication in the Gazette of the notice of completion of the electoral roll given in accordance with the Regulations, or, in the case of an objection to the insertion in the electoral roll of the name of a claimant, within seven days from the date on which the notice containing the names of claimants is first exhibited.

The registering officer must, as soon as practicable after receiving an objection to the inclusion or insertion of any name in the electoral roll, send notice of the objection to the person in regard to whom objection has been made.

The registering officer must, as soon as practicable after the last date for delivering of objections, hold a public inquiry into all claims and objections which have been duly made, giving not less than ten clear days' notice to each claimant, objector, and person in regard to whom objection has been made. At such public inquiry the claimant, the objector, the person in regard to whom objection has been made and any persons appearing to the registering officer to be interested in or affected by the inquiry may appear and be heard either in person or by any other person duly authorised by him or them in writing in that behalf.

If the registering officer is of opinion –

- (a) that the particulars given in a claim or objection are insufficient, he may ask for further information and take no further action unless such information is supplied within such days of giving or despatch of the request therefor;
- (b) that a claim may be allowed without a hearing, he may allow the claim, provided that no objection is made thereto, and shall so inform the person making the claim;
- (c) that the objector is not entitled to object, he may disallow the objection and must so inform the objector;
- (d) that a claim or objection cannot be allowed because –
 - (i) the matter has been concluded by the decision of a court; or
 - (ii) the particulars given in a claim or objection do not entitle the claimant or objector to succeed,

he may send to the person making the claim or objection a notice stating his opinion and the grounds thereof and that he intends to disallow the claim or objection unless the person gives the registering officer notice within seven days from the date of the first mentioned notice that he requires the claim or objection to be heard, and, if he receives no such notice within the said time, he may disallow the claim or objection.

Where an objection is made to the inclusion or insertion of any name in the electoral roll the registering officer must at such public inquiry call upon the objector, or a person authorised in writing in that behalf by the objector, to give prima facie proof of the ground of the objection.

If such prima facie proof as aforesaid is given, the registering officer must require proof of the qualification of the person in regard to whom objection has been made, and –

-
- (a) if such person's qualification is not proved to such registering officer's satisfaction, must expunge such person's name from, or, as the case may be, refuse to insert such person's name in the electoral roll;
 - (b) if such person's qualification is so proved, must retain such person's name, or, as the case be, insert such person's name in the electoral roll.

If at such public inquiry into any objection, the objector or a person authorised in writing in that behalf by the objector fails to appear or appears but fails to give such prima facie proof, then –

- (a) if the objection is to the inclusion in the electoral roll of the name of a person appearing therein the registering officer must retain such person's name in the electoral roll without calling upon such person to prove his qualification;
- (b) if the objection is to the insertion in the electoral roll of the name of any claimant, the registering officer must require proof of the qualification of the claimant and –
 - (i) if the claimant's qualification is not proved to the registering officer's satisfaction, must refuse to insert the claimant's name in the electoral roll;
 - (ii) if the claimant's qualification is so proved, must insert the claimant's name in the electoral roll.

If an objection is made and is disallowed by the registering officer and, in his opinion, the objection was made without reasonable cause, the registering officer may order in writing the objector to pay to the person in regard to whom objection has been made such sum (not exceeding fifty dollars) as compensation for any loss of time or inconvenience incurred by such person in consequence of the objection.

Any sum awarded as compensation is recoverable as though the order of the registering officer or revising officer, as the case may be, were an order of a Sessions Court for the recovery of money by the person to whom such compensation is payable duly made in civil proceedings before such court.¹⁷

4.04 Appeals

Any claimant, objector, or person in regard to whom objection has been made may, if he is aggrieved by a decision of the registering officer, appeal to the revising officer. Every such appeal is required to be in writing signed by the appellant and must state concisely the grounds of appeal. It must be delivered to the revising officer together with a fee of five dollars within ten days from the date of the decision in respect of which the appeal is made.

The revising officer must hear such appeals in public after giving not less than four clear days' written notice of the date, time and place of the hearing of the appeal to the parties concerned and may at his discretion hear any further evidence. His determination of the appeal is final.

If, upon an objection being disallowed by the registering officer, the objector appeals to the revising officer, and in the opinion of the revising officer the appeal was made without reasonable cause, the revising officer may order the objector in writing to pay to the person

in regard to whom the objection was made such sum (not exceeding fifty dollars) as compensation for any loss of time or inconvenience incurred by such person in consequence of the appeal. If any such appeal is allowed by the revising officer, he shall have power to revise or cancel any order made by the registering officer for the payment of compensation by the objector.

When the revising officer has determined the appeals which have been lodged with respect to claims or objections, he must forward to the registering officer a statement containing the names which he has decided must be entered or retained in the electoral roll and those which he has decided must be omitted or expunged from the electoral roll and the registering officer must amend the electoral roll accordingly.¹⁸

4.05 Certification of Electoral Roll

The registering officer of each registration area must, as soon as possible after claims and objections have been determined, certify the electoral roll for that registration area and must, as soon as possible thereafter, give notice in the Gazette that the electoral roll has been certified and that such electoral roll, or a copy thereof, is open for inspection at such reasonable hours as may be stated in such notice at the office of the registering officer or at such place or places in the registration area as may be specified in the notice. Such notice may be given by the Chief Registering Officer in respect of the electoral roll of more than one registration area.

Where the registering officer certifies the electoral roll in accordance with the regulation during the period when an appeal is pending, he is required to insert in or expunge from the certified electoral roll the name of any person in accordance with the decision of the revising officer on the determination of such appeal.

The certified electoral roll comes into force upon the date of the publication in the Gazette of the notice and, subject to such alterations, if any, as may subsequently be made therein, such electoral roll shall continue in force until the next certification of the same.¹⁹

4.06 Revision of Electoral Roll

In each year, other than the year in which an electoral roll was prepared, the Election Commission is required by notice published in the Gazette to call upon –

- (a) every person who is qualified and desires to be registered as a Parliamentary elector in any State; and
- (b) every person who is qualified and desires to be registered as a State elector, in such State,

and who is not already so registered or being already so registered desires to transfer his registration to a different locality in which he is qualified to be registered, to forward his application to the registering officer of the registration area or the assistant registering officer of the registration unit in which he is qualified as an elector so as to reach such registering officer or assistant registering officer on or after the first day and not later than

the last day of the period prescribed by such notice. This period must not be less than twenty-one nor more than forty-two days.

The registering officer must forthwith cause an acknowledgement, by using the tear-off slip on the prescribed form, duly stamped by his official stamp, of every such application received by him during the period specified to be delivered or sent by ordinary letter post to the applicant at the address given by him.

No more than one application for registration on any revision of an electoral roll may be submitted in respect of the same person.

As soon as possible after the expiration of the period prescribed by notice, it shall be the duty of each registering officer to revise the electoral roll of the registration area for which he is appointed.

For the purpose of revising the electoral roll the registering officer of each registration area must prepare two lists, namely: List C containing the names of the persons in the electoral roll in force at the qualifying date who are dead or appear to the registering officer to be or to have become disqualified for registration; and List B containing the names of persons whose names do not appear in List A (i.e., the roll in force) who have applied for registration and who appear to the registering officer to be qualified for registration as electors in the category or categories of electors in which they have applied to be registered.

For the purpose of revising the electoral roll and of satisfying himself as to the qualification of any person for registration or determining whether the name of any person should be entered or retained in the electoral roll or expunged therefrom the registering officer may either make such house-to-house or other inquiry as he may deem necessary by himself or through any person appointed by him in writing in that behalf or send a notice requiring information to the person from whom the information is required by ordinary letter post addressed to such person or by delivering such notice to him personally or to an adult member of his household.

If any person whose name is on the electoral roll fails to give such information to the registering officer with regard to his own qualifications for registration within fourteen days after service upon him by the registering officer of a notice under the Regulations, he is, in addition to any penalty prescribed in any written law, liable to have his name expunged from the electoral roll and is not entitled to have his name included in the electoral roll for the ensuing year.

Every person appointed by a registering officer to whom any information relating to the qualification of any person for registration or relevant for determining whether the name of any person should or should not be entered or retained in the electoral roll has been furnished or by whom such information has been collected must forthwith furnish such information to such registering officer.

On the completion of the revision of the electoral roll for any registration area, the registering officer must give notice in the Gazette that the revision has been completed and

that the revised electoral roll, or a copy thereof, is open for inspection at such reasonable hours as may be stated in such notice at the office of such registering officer and that such part of the electoral roll or a copy thereof as relates to any registration unit in such registration area is open for inspection at such hours as may be stated in such notice at such place or places in that registration unit or such other place, as may be specified in such notice: provided that such notice may be given –

- (a) by the Chief Registering Officer to apply to the electoral roll of more than one registration area;
- (b) by the Chief Registering Officer or the registering officer to apply to parts of the electoral roll relating to any registration unit or units forming part of a registration area.

Any person qualified to have his name entered in the electoral roll of any constituency whose name appeared in such electoral roll before revision or who has applied to have his name entered in the electoral roll may, if his name has been omitted from List A or List B as the case may be, or appears in List C of the revised electoral roll, submit a claim to the registering officer of such registration area to have his name entered in List B or expunged from List C of the revised electoral roll, as the case may be. A person submitting such a claim is referred to as a “claimant”.

Any person whose name appears in Lists A and B of the revised electoral roll for any registration area may object to the inclusion in such List A or B of his own name or the name of any other person and may object to the insertion in List B of the name of any claimant; such person so objecting is referred to as an “objector”.

The procedures which apply to the claims and objections with respect to the completion of the electoral roll (see sub-section 4.03 above) generally apply to the completion of the revised electoral roll.

The registering officer of each registration area must, as soon as possible after the determination of any claims and objections, certify the electoral roll for such registration area in the prescribed form and as soon as possible thereafter give notice in the Gazette that the electoral roll has been certified and that such electoral roll, or a copy thereof, is open for inspection at such reasonable hours as may be stated in such notice at the office of the registering officer or at such place or places in the registration area as may be specified in the notice: provided that such notice may be given by the Chief Registering Officer to apply to the electoral roll of more than one registration area.

The registering officer may certify the electoral roll during the period when any appeal is pending and thereafter must adjust, insert in or expunge from such certified electoral roll the name of any person in accordance with the decision of the revising officer on the determination of such appeal.

The certified electoral roll comes into force upon the date of the publication in the Gazette of the notice and, subject to such alterations, if any, as may subsequently be made therein as a result of the determination of appeals, such electoral roll continues in force until the next certification of the same.

As soon as practicable after the certification of the revised electoral roll, the registering officer or the Supervisor of Elections must prepare a new list by deleting from List A the names of persons appearing in List C and by adding to List A the names of persons appearing in List B and the new list so prepared becomes the List A for the purpose of the next subsequent revision of the electoral roll.

Any alteration to the electoral roll which is required –

- (a) to carry out the decision of any registering officer or revising officer with respect to any claim or objection;
- (b) to correct any clerical error;
- (c) to correct any misnomer or inaccurate description;
- (d) to delete the name of any person who the registering officer is satisfied is dead;
- (e) to strike off the name of any person who has been lawfully deprived of citizenship or who for any other reason is in the opinion of the registering officer not entitled to be on the roll,

may be made by the Chief Registering Officer at any time.²⁰

4.07 General Provisions Regarding Registration

A registering officer or revising officer may, for the purpose of considering or determining any application, claim, objection or appeal which he is required to consider or determine, summon any person to appear before him to give evidence on oath or affirmation and may administer any such oath or affirmation for such purpose and may order the production of any document relevant to any issue which such officer is required to consider and determine.

The Deputy Chief Registering Officer in any State may appoint such number of assistant registering officers for any registration unit in such State as he may consider necessary. An assistant registering officer is required to receive applications made for registration in such registration unit, and shall forward such applications to the registering officer.

The registering officer of any registration area may on request supply without fee –

- (a) one copy of the electoral roll to each candidate at a Parliamentary election or his election agent;
- (b) one copy of any part or parts of the electoral roll relating to any State constituency or part of such constituency included in the registration area to each candidate at a State election for such constituency or his election agent.

The registering officer is required to supply to any person copies of any part or parts of the electoral roll from time to time in force so long as there are sufficient copies available after allowing for the number which may be required for the purposes of any election on payment of a fee of one dollar for each such copy together with an additional fee of ten cents for each hundred (or part of a hundred) names in such copy.

No misnomer or inaccurate description of any person or place named or described in any

electoral roll or other document whatsoever prepared or issued under or for the purposes of the Regulations in any way affects the operation of the Regulations as respects that person or place if that person or place is so designated in such electoral roll or document as to be identifiable.²¹

— Section 5 —

POSTAL VOTING

5.01 Persons Entitled to Vote as Postal Voters

Any person who has registered himself as a Parliamentary or State elector, and is –

- (a) an absent voter; or
 - (b) a person certified by the Election Commission to be an election officer and to be liable for duties on polling day; or
 - (c) a member of any police force established by any written law in force in Malaysia, other than a member of the Police Volunteer Reserve; or
 - (d) a member of any of the public services who on polling day is employed whole time in a post outside West Malaysia; or
 - (e) a member of the Election Commission; or
 - (f) a member of any such category of persons as the Election Commission may from time to time by notification in the Gazette designate as postal voters,
- must, on receipt of a postal ballot paper, be entitled to vote at any election.

Persons desiring to vote by post must apply by using the prescribed form. Applications are directed to the returning officer of the constituency wherein they were registered as soon as it is known that an election is contested in that constituency. If an application is approved, the returning officer must issue a postal ballot paper to the applicant. If it is not approved, the returning officer must so inform the applicant and state his reasons therefor, in the prescribed form.

Persons in the category of member of the public services in (d) above who desire to vote by post are required to apply in the prescribed form. Applications must be made to the returning officer of the constituency wherein they were registered through the State Elections Officer of the State wherein the constituency is situated as soon as it is known that an election is contested in that constituency. If the application is approved, the returning officer is required to issue a postal ballot paper to the applicant. If it is not approved, the returning officer must so inform the applicant and state his reasons therefor, in a letter in the prescribed form.²²

5.02 Form of Postal Ballot Papers

The ballot papers to be sent to postal voters must be in the same form as, and indistinguishable from, the ballot papers delivered to other voters.²³

5.03 Persons Entitled to be Present at Issue of Postal Ballot Papers and Opening of Postal Voters' Ballot Boxes

No person other than –

- (a) the returning officer and his clerks;
 - (b) the candidates;
 - (c) an election agent or any one person appointed by a candidate to attend in his election agent's place;
 - (d) a member or officer of the Election Commission,
- may be present at the proceedings on the issue of postal ballot papers or the opening of postal voters' ballot boxes.

If a candidate appoints a person, he must give notice of the appointment to the returning officer, stating the name and address of the person so appointed before the time fixed for the issue of the postal ballot papers or the opening of the said postal voters' ballot boxes, as the case may be.

If an agent dies or becomes incapable of acting, the candidate may appoint another agent in his place and must forthwith give to the returning officer notice in writing of the name and address of the agent appointed.

The agents may be appointed and notice of appointment given to the returning officer by the candidate's election agent instead of the candidate.

A candidate may himself do any act or thing which any agent of his, if appointed, would have been authorised to do, or may assist his agent in doing any such act or thing.

Where in the Regulations any act or thing is required or authorised to be done in the presence of the candidates or their agents, the non-attendance of any such person or persons at the time and place appointed for the purpose must not, if the act or thing is otherwise duly done, invalidate the act or thing done.²⁴

5.04 Notice of Issue of Postal Ballot Papers

The returning officer must give each candidate or his election agent not less than two days' notice in writing of the time and place at which he will issue postal ballot papers.

Where a subsequent issue of postal ballot papers is made, the returning officer must notify each candidate or his election agent as soon as practicable of the time and place at which he will make such subsequent issue.²⁵

5.05 Marking Postal Ballot Papers

Each postal ballot paper issued must be perforated or its reverse stamped with the official mark or initialled by the returning officer and the name and number of the elector must be called out and such number must be marked on the counterfoil, and a list must be made of

the persons to whom postal ballot papers have been sent (referred to as “the list of postal voters”) but without showing the particular ballot paper issued.

The number of a postal ballot paper must be marked on the declaration of identity in the prescribed form and on the envelope bearing the words “Ballot paper envelope”.²⁶

5.06 Documents to be Sent to Postal Voters

The returning officer is required to send to every postal voter the following documents –

- (a) a ballot paper;
- (b) a declaration of identity bearing the number of the ballot paper;
- (c) a ballot paper envelope bearing the number of the ballot paper;
- (d) an envelope for the return of the aforesaid documents (referred to as a “covering envelope”); and
- (e) instructions to the voter.

All envelopes addressed to the postal voters must be counted and forthwith despatched under arrangements previously approved by the Election Commission.²⁷

5.07 Provisions and Procedures in Respect of Postal Voters’ Ballot Box

The returning officer must, at the proceedings on the original issue of postal ballot papers, provide a ballot box or ballot boxes for the reception of the covering envelopes when returned by the postal voters.

Every such ballot box must be shown open and empty to the agents present and must then be locked by the returning officer and sealed with the seal of the returning officer and the seals of such of the agents as desire to affix their seals in such manner as to prevent it being opened without breaking the seal.

Every such ballot box must be marked “postal voters’ ballot box” and with the name of the constituency for which the election is held. The returning officer must make provision for the safe custody of every such ballot box.

The returning officer is required to, as soon as practicable after the completion of the issue of the postal ballot papers, and in the presence of the agents, make up in separate packets –

- (a) the list of postal voters; and
- (b) the counterfoils of those ballot papers which were issued, and seal such packets.

The sealed packet containing the list of postal voters may be opened by the returning officer for the purposes of a subsequent issue, and on completion of that issue the list and the counterfoil of ballot papers which were issued must again be made up and sealed.²⁸

5.08 Procedure during and after Postal Voting

A postal voter who wishes to exercise his postal vote must exercise it by completing and despatching the ballot paper and the declaration of identity in accordance with the instructions to the voter.

The returning officer must, immediately on receipt of a covering envelope before five o'clock in the afternoon of polling day, place it unopened in a postal voters' ballot box locked and sealed in accordance with the Regulations.

Each postal voters' ballot box must be opened by the returning officer in the presence of the agents.

So long as the returning officer ensures that there is at least one postal voters' ballot box for the reception of covering envelopes up to five o'clock in the afternoon of polling day the other postal voters' ballot boxes may previously be opened by him.

The returning officer must give each candidate or his election agent at least twenty-four hours' notice in writing of the time and place of his opening of each postal voters' ballot box and the envelopes contained therein.

When a postal voters' ballot box has been opened, the returning officer must count and note the number of covering envelopes, and must then open each covering envelope separately.

A covering envelope must be marked "rejected" –

- (a) if it does not contain both a declaration of identity and a ballot paper envelope;
- (b) if it does not contain both a declaration and a ballot paper.

If the covering envelope contains only a ballot paper envelope, the returning officer must open the ballot paper envelope to ascertain if the declaration of identity is inside that envelope and if it is found not to contain a declaration of identity, the covering envelope must be marked "rejected".

The covering envelope marked "rejected" to which must be attached the contents (if any) of that envelope must be placed in a separate receptacle (referred to as "the receptacle for votes rejected").

On opening a covering envelope (other than one which contains only a ballot paper envelope) the returning officer must first satisfy himself that the declaration of identity has been duly signed and authenticated and, if he is not so satisfied, he must mark the declaration "declaration rejected", attach thereto the ballot paper envelope or, if there is no such envelope, the ballot paper, and place it in the receptacle for votes rejected: provided that before so doing he must show the declaration to the agents and, if any objection is made by any agent to his decision, he must add the words "rejection objected to".

Where the number on the declaration of identity duly signed and authenticated agrees with

the number on the ballot paper envelope, the returning officer must place the declaration in a separate receptacle (referred to as “the receptacle for declarations of identity”) and the ballot paper envelope in another separate receptacle (referred to as “the receptacle for ballot paper envelopes”).

Where there is no ballot paper envelope or the ballot paper envelope has been opened, the returning officer must –

- (a) where the number on the declaration of identity duly signed and authenticated agrees with the number on the ballot paper, place the declaration in the receptacle for declarations of identity and the ballot paper in a ballot box previously shown open and empty to the agents present and locked by the returning officer and sealed with the seal of the returning officer and the seals of such of the agents as desire to affix their seals in such manner as to prevent it being opened without breaking the seal which must be subsequently treated as a ballot box; and
- (b) where the number on the said declaration does not agree with the number on the ballot paper, mark the declaration “vote rejected”, attach thereto the ballot paper and place it in the receptacle for votes rejected.

Where the number on the declaration of identity duly signed and authenticated does not agree with the number on the ballot paper envelope or that envelope has no number on it, the returning officer must open the envelope and must –

- (a) where the number on the declaration agrees with the number on the ballot paper, place the declaration in the receptacle for declarations of identity and the ballot paper in the ballot box provided for the purpose; and
- (b) where the number on the declaration does not agree with the number on the ballot paper or there is no ballot paper, mark the declaration “vote rejected”, attach thereto the ballot paper (if any) and place it in the receptacle for votes rejected.

Except for the purposes of ascertaining whether a ballot paper envelope contains a declaration of identity or whether the number on the declaration agrees with the number on the ballot paper, the returning officer must not open the ballot paper envelope before it is otherwise required to be opened.

After the conclusion of the proceedings to ascertain contents of a ballot paper envelope in respect of the declaration of identity and whether the number on the declaration corresponds with that on the ballot paper, the returning officer must put the contents of the receptacle for votes rejected and the contents of the receptacle for declarations of identity into two separate packets and seal up such packets.

After sealing up the packets, the returning officer is required to open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

Where a ballot paper envelope does not contain a ballot paper, the returning officer is required to mark the envelope “empty”.

Where the number on a ballot paper envelope agrees with the number on the ballot paper contained therein, the returning officer must place the ballot paper in the ballot box provided for the purpose and must put aside the envelope for immediate destruction.

Where the number on the ballot paper envelope does not agree with the number on the ballot paper contained therein, the returning officer must mark the ballot paper "rejected" and attach the ballot paper envelope thereto.

The returning officer is required to put into a separate packet the envelopes marked "empty" and the ballot papers marked "rejected" and seal up such packet.

If at any stage when envelopes are opened it is discovered that there is more than one ballot paper, the returning officer must, after checking the number on the declaration of identity or ballot paper envelope, as the case may be, place the correct ballot paper in the ballot box provided for the purpose and retain the other ballot paper or papers together with all other documents. The returning officer will then make a statement of facts as discovered, witnessed by the candidates or agents present, and report the facts to the police for investigation.

A postal voter is not entitled to vote in person on polling day.²⁹

— Section 6 —

WRITS OF ELECTION

6.01 Role of Election Commission

For the purpose of every general election and of any by-election, the Election Commission is required to issue writs addressed to the returning officer of each constituency for which a member is to be elected.

Every writ issued must be in the prescribed form and must be returned to the Election Commission in the prescribed manner.

In relation to a vacancy which is to be filled at a by-election, a writ must be issued no earlier than ten days and not later than thirty days from the date on which it is established by the Election Commission that there is a vacancy.³⁰

6.02 Notice of Election

On the issue of a writ, the Election Commission must publish a notice thereof in the *Gazette* and such notice must specify the date on which candidates for election are to be nominated, not being less than four days after the date of the publication of such notice, and the date or dates on which the poll will be taken in the event of a contest, not being less than seven days after the day of nomination.

The returning officer must give further notice of the issue of such writ and of the time and place of the nomination of candidates in the constituency by causing notices in the prescribed form to be published in any such places in the constituency as he may deem necessary.

If at any time after the Election Commission has issued a writ for the holding of a general election or a by-election, owing to any cause whatsoever no nomination of candidates for the election can take place or has taken place on the day of nomination in pursuance of such writ, the returning officer must forthwith inform the Secretary to the Election Commission of such fact by endorsing the reverse of the writ and returning it to the Secretary to the Election Commission.

The Election Commission on being satisfied of such fact is required to return the writ to the returning officer specifying a fresh day of nomination and a fresh polling day, and must, consequently, publish a fresh notice of the election stating therein that the previous notice of the election has been countermanded.

If at any time after an election is commenced it is shown to the satisfaction of the Election Commission that in any polling station, owing to any cause whatsoever the poll cannot be taken or has been taken but cannot be completed on the date determined, the Election Commission must, by notice published in the local area for which the polling station is designated, suspend the poll and appoint a fresh date for the poll to be taken or to be completed in such manner as may be directed by the Election Commission.³¹

— Section 7 —

NOMINATION

7.01 Nomination Papers

Any person eligible for election as a member of the Dewan Rakyat, or of the Legislative Assembly of a State, may be nominated as a candidate for election.

Candidates are nominated by means of nomination papers which must be set out in the prescribed form. Such papers are required to be in triplicate.

Each nomination paper must be completely and correctly filled and must state –

- (a) the name of the constituency in which the candidate seeks election;
- (b) in the case of election to a State Legislative Assembly, the name of the State concerned;
- (c) the full name, other names, if any, identity card number, occupation, if any, and residential address of the candidate, and the candidate's address within the constituency for which the candidate seeks election to which documents relating to the election may be sent;
- (d) the name, the polling district code number, the number in the electoral roll and

identity card number of the proposer and seconder, whose names must appear in the electoral rolls for the time being in force for the constituency for which the candidate seeks election; and

- (e) the name, identity card number and address of the witness in the presence of whom the candidate affixes his signature.

Each nomination paper must also bear the signature of the candidate and of the proposer, seconder and the witness in front of whom the candidate affixes his signature.

Failure to comply with the foregoing relevant requirements may render the nomination paper liable to be rejected by the returning officer.

No nomination paper must be rejected on account of –

- (a) any error or omission in the nomination paper in relation to the description of, or any particulars in respect of, the candidate, or his proposer, or his seconder, if the particulars contained in the nomination paper are sufficient to identify the candidate, or his proposer, or his seconder, as the case may be;
- (b) any error or omission with regard to any place specified in the nomination paper, if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper; or
- (c) any error or omission which is capable of being corrected and is corrected upon being brought to the attention of the person presenting the nomination paper.

The returning officer may direct that any clerical or printing error in the entries in the nomination paper be overlooked if the error is not of any material significance and does not affect the identification of the candidate, his proposer, or his seconder, or the identification of the constituency in respect of which the nomination paper is delivered.

Every candidate must at the time of his nomination and in the manner prescribed deliver to the returning officer a statutory declaration of his qualifications made and subscribed by him and a deposit or deposit receipt.

The returning officer is required to supply, at any reasonable time between the date of the notice of election and eleven o'clock in the forenoon on the day of nomination, free of charge forms of nomination papers and statutory declarations to any person requiring the same.³²

7.02 Deposit by Candidate

A candidate, or some person on his behalf, must deposit or cause to be deposited with the returning officer, the State Elections Officer or with any other Government department authorised by the returning officer in that behalf, between the date of the notice of election and eleven o'clock in the forenoon on the day of nomination, the sum of five thousand ringgit in legal tender in the case of an election to the Dewan Rakyat.

On receipt of legal tender from a candidate the returning officer must proceed to deal with the sum paid in accordance with the financial regulations in force for the time being.

If a candidate is not nominated as a candidate for election or if, after the deposit is made, the candidate withdraws his candidature, the deposit must be returned to the person by whom the deposit was made, and, if the candidate dies after the deposit is made and before the poll is commenced, the deposit, if made by him, must be returned to his legal personal representative, or if not made by him, must be returned to the person by whom the deposit was made.

If the candidate is not shown as standing nominated in the notice of contested election or if the poll is countermanded by reason of his death, the deposit must be returned as soon as practicable after the publication of the said notice or after his death, as the case may be.

The deposit is forfeited if a poll is taken and, after the official addition of the votes by the returning officer, the candidate is found not to have polled more than one-eighth of the total number of votes polled other than rejected votes by all the candidates in the constituency.³³

7.03 Proceedings on Nomination Day

The returning officer, on nomination day, is required to attend at the place of nomination from nine o'clock in the forenoon until the completion of the proceedings.

The nomination papers in triplicate must be delivered in person to the returning officer between the hours of nine o'clock and eleven o'clock in the forenoon by the candidate, his proposer and seconder or by any two or any one of them and if such nomination papers are not delivered by any of those persons or are not accompanied by the statutory declaration and deposit or deposit receipt, the nomination papers must not be accepted by the returning officer.

After the nomination papers have been delivered, the candidate may be allowed to make corrections on the nomination papers in the presence of the returning officer before eleven o'clock in the forenoon.

The returning officer must permit the candidates and their proposers and seconders and one other person, if any, appointed by each candidate in writing to be present on the day and at the place of nomination between eleven o'clock in the forenoon and twelve-thirty in the afternoon and there and then to examine the nomination papers of candidates which have been received for that constituency.³⁴

7.04 Objection to Nomination Papers

Objection may be made to a nomination paper by any person whose name appears in the electoral rolls for the constituency and by any candidate for the constituency on all or any of the following grounds but on no other ground, namely –

- (a) that the particulars of the candidate are insufficient to identify the candidate;
- (b) that the nomination paper does not comply with or was not delivered in accordance with the regulations: provided that no objection can be made under this sub-

- paragraph in respect of any matter which does not render a nomination paper liable to be rejected;
- (c) that it is apparent from the contents of the nomination paper that the candidate is not capable of being elected as a member of the Dewan Rakyat;
 - (d) that the candidate is disqualified from being a member under the provisions of the Constitution of Malaysia.

No objection to a nomination paper can be allowed unless it is made to the returning officer between eleven o'clock in the forenoon and twelve-thirty in the afternoon on the day of nomination.

Every objection must be in writing, signed by the objector and specify the grounds of objection. The returning officer may himself lodge an objection on any of the grounds set out in the Regulations.

The returning officer must with the least possible delay after twelve-thirty in the afternoon on the day of nomination decide on the validity of every objection and inform the candidate concerned or his proposer or seconder named in the nomination paper or the objector of his decision and the grounds thereof. Such decision and the grounds thereof must be kept on record.

The decision of the returning officer is final and conclusive for the purpose of the election in respect of which the proceedings are being held, and cannot be called in question in any court: provided that any person aggrieved by the decision of the returning officer may present an election petition in respect thereof on the grounds set out in the election petition procedure (section 32 of the Election Offences Act 1954).³⁵

7.05 Persons Entitled to be Present at Nomination

No person other than the returning officer, a member or officer of the Election Commission, and the candidates, their proposers and seconders and one other person (if any) appointed by each candidate is, except at the request of and for the purpose of assisting the returning officer, entitled to be present at the nomination proceedings: provided that the one other person who may be appointed by each candidate is not to be permitted to attend when the candidate is delivering the nomination papers to the returning officer.³⁶

7.06 Withdrawal of Candidature

A candidate may, before eleven o'clock in the forenoon on the day of nomination, but not afterwards, withdraw his candidature by giving notice to that effect in the prescribed form to the returning officer. The form must be signed by the candidate and attested by a witness.³⁷

7.07 Uncontested Elections

If on the day of nomination in any constituency, after the determination by the returning officer of any objections which may have been lodged, only one candidate stands nominated for that constituency, the returning officer must forthwith declare the nominated candidate

to be elected, and must forthwith return the writ issued to him, duly completed, to the Secretary to the Election Commission through the State Elections Officer. The Secretary to the Election Commission is required to cause the name of the member so elected to be published in the Gazette.³⁸

— Section 8 —

PREPARATIONS FOR POLLING

8.01 Contested Elections

If on the day of nomination in any constituency, after the determination by the returning officer of any objections which may have been lodged, more than one candidate stands nominated for that constituency, the returning officer must forthwith declare that a poll will be taken.

The returning officer must draw lots to determine the order in which the names of the candidates appear on the ballot papers.

There must be assigned to each independent candidate by lot conducted by the returning officer a symbol approved by the Election Commission, provided that it is not necessary to draw lots if there is only one candidate to whom a party symbol has not been assigned.

A political party may submit to the Election Commission for its approval and for registration, if so approved, a symbol, which is referred to as a “party symbol”, for the use of its candidates at any election.

At the request of a candidate, a returning officer is required to assign to him a party symbol: provided that no party symbol is so assigned except on production by the candidate of a written authority signed by a responsible official of the party authorising the candidate to use such party symbol for the purpose of the election.

The candidate must inform the returning officer how he desires his name or names to be printed on the ballot paper and for this purpose he may omit or specify by initials only any of or part of his name or names.

The returning officer must forward to the State Elections Officer a report that the election is contested together with a copy of the nomination paper of each candidate, a copy of the notification in the prescribed form in respect of each candidate, a statement showing the order in which the names of the candidates will be printed on the ballot paper and the symbol assigned to each candidate.

The returning officer must also as soon as practicable forward a certified true copy of each rejected nomination paper and the grounds on which the rejection was made to the Secretary to the Election Commission.

Upon the receipt of the report forwarded to him, the State Elections Officer must cause to be published in the Gazette and also in such manner as he thinks fit a notice in the prescribed form specifying –

- (a) the constituency in which the election is contested;
- (b) the date on which the poll will be taken;
- (c) the names of the candidates in the order in which they will be printed on the ballot papers, the symbol allotted to each candidate and the names of their proposers and seconders; and
- (d) the situation of the polling station or polling stations for each of the polling districts for that constituency and the hours between which each polling station will be open.

If, after an election has been reported as contested one of the candidates nominated dies or becomes disqualified from being a member of the Dewan Rakyat before the poll has commenced, or if owing to any cause whatsoever the poll cannot be taken or has not been taken on the polling day specified in the writ issued to the returning officer, the returning officer must, upon being satisfied of such fact, or such cause, as the case may be, inform the Secretary to the Election Commission by endorsing the fact or the cause as the case may be, on the reverse of the writ issued to him and returning it to him without delay. The Election Commission must countermand the notice for the poll, and must appoint by notice published in the Gazette a fresh date for the election and in such case all proceedings with reference to the election must be commenced afresh, provided that no fresh nomination is necessary in the case of a qualified candidate who stood nominated at the time of the countermand of the poll.³⁹

8.02 Appointment of Presiding Officers, etc

Each returning officer must, subject to the general or special directions of the Election Commission, appoint, and may revoke the appointment of, a presiding officer to preside at each polling station for his constituency.

Where two or more polling stations are established at an appointed place, the returning officer may appoint, and may revoke the appointment of, a senior presiding officer who must exercise general supervision over the presiding officers of the polling stations, and over all arrangements for the conduct of the poll and the counting of votes in the polling stations, at that place.

If any presiding officer is by sickness or other cause, prevented from acting at any election, and there is no time for another person to be appointed by the returning officer, the presiding officer may appoint any clerk under him to act for him and every such appointment must as soon as possible be reported to the returning officer and may be revoked by the returning officer, but without prejudice to the validity of anything already done by such deputy.

The returning officer may, if he thinks fit, preside at any polling station.

Subject to the general or special directions of the Election Commission, each returning officer must appoint, and may revoke the appointment of, such other officers or staff to assist the presiding officer or officers at each polling station for his constituency. These officers and staff are under the general supervision or direction of the presiding officer or officers of the polling station of the constituency.⁴⁰

8.03 Facilities to be Provided at Polling Station

Outside each polling station there must be affixed in a conspicuous place by the presiding officer before the commencement of the poll a notice as set out in the prescribed form.

During the taking of the poll the presiding officer must cause to be exhibited outside his polling station a notice substantially in the form prescribed giving directions for the guidance of voters in voting, which shall be in the national language and in such other language or languages and in such script or characters as the Election Commission may direct.

The returning officer must provide at each polling station reasonable facilities for the electors allotted to such station to enable them to mark their votes screened from observation and to vote in accordance with the Regulations.⁴¹

8.04 Right of Registered Elector to Vote

The electoral rolls for the time being in force are prima facie evidence for the purpose of determining whether a person is or is not entitled to vote at an election in any constituency.⁴²

8.05 Admittance to Polling Station

No person must be admitted to vote at any polling station except the polling station to which that part of the electoral roll which contains his name has been assigned: provided that where an elector for any constituency is employed as a presiding officer or in any other official capacity at a polling station within that constituency and it is inconvenient for him to vote at the polling station to which that part of the electoral roll which contains his name has been assigned, the returning officer may authorise such elector to vote at any other polling station in the constituency. Such authorisation must be given under the hand of the returning officer and must state the name of the elector and his number in the electoral roll, and the fact that he is so employed as aforesaid and must specify the polling station at which he is authorised to vote.

Unless the Election Commission, by notification in the Gazette, appoints any other hours in respect of any constituency or part thereof, the poll in any constituency must be open for twelve hours as specified by the Election Commission.

The presiding officer is required to regulate the number of voters to be admitted at a time whilst the poll is open and must exclude all other persons except the candidate, his election agent and polling agent, the returning officer, the police officers on duty, members or officers of the Election Commission, persons officially employed at the

polling station, a relative of an incapacitated voter or other persons authorised in writing by the Election Commission.

Not more than one polling agent of each candidate is permitted to be admitted at a time to any polling station whilst the poll is open.

No polling agent whose name and address has not been notified to the presiding officer can be admitted to a polling station whilst the poll is open.

It shall be the duty of the presiding officer to keep order at his polling station.

If a person misconducts himself in a polling station or fails to obey the lawful order of the presiding officer, he may immediately by order of the presiding officer be removed from the polling station by a police officer in or near that station or by any other person authorised in writing by the returning officer or the presiding officer to remove him, and the person so removed must not, without permission of the presiding officer, again enter the polling station during the day.

The foregoing powers must not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Failure to obey the lawful orders of the presiding officer is an offence punishable by a fine not exceeding one thousand ringgit.⁴³

8.06 Marking of Polling Station Limits

It shall be the duty of each presiding officer, subject to the general directions of the Election Commission, to mark the limits of the polling station at which he is appointed to preside.⁴⁴

8.07 Poll by Ballot and Ballot Papers

The votes must be given by ballot and the ballot of each voter must consist of a paper, which is referred to as a "ballot paper".

Every ballot paper must consist of a list of candidates in Roman letters and arranged in such order as determined by the returning officer, together with the symbol assigned to each candidate.

Each ballot paper must be in the prescribed form and have a number printed at the top left hand corner and be attached to a counterfoil with the same number printed on it.⁴⁵

8.08 Ballot Boxes

Every ballot box must be so constructed that the ballot paper can be put in but cannot be taken out otherwise than by unlocking the box.

The presiding officer at a polling station must immediately before the commencement of a

poll, show each ballot box to be used to such persons as may lawfully be present at such polling station so that they may see that it is empty.

The presiding officer is then required to lock the ballot box and affix his seal upon it and those of such of the candidates or their agents as attend and desire to affix their seals in such a manner as to prevent it being opened without breaking such seals; and the ballot box must not again be opened until after the close of the poll. He must keep the ballot box in his custody until it is despatched or delivered to the returning officer.⁴⁶

8.09 Manner of Voting

Each voter shall be given one ballot paper and is entitled to one vote.

As each voter applies for a ballot paper, the number and name of the voter as in the electoral roll must be called out and a mark, without indicating in any way the particular ballot paper to be issued to him, must be placed in the roll against the number of the voter to denote that he has been issued with a ballot paper.

The number of the voter must be written on the counterfoil of the ballot paper and the paper must be perforated or stamped with the official mark or initialled by the presiding officer on the margin of the ballot paper and the ballot paper must be issued to the voter by the presiding officer or a person acting under his authority.

The voter, on receiving the ballot paper, is required forthwith to proceed to such place in the polling station as may be indicated by the presiding officer or by any person acting under his authority and must secretly mark such ballot paper in accordance with the directions given for guidance of voters.

The voter must then fold the ballot paper so as to conceal his mark and put it into the ballot box and without undue delay must then leave the polling station limits.

The presiding officer or any person authorised by him may ask any voter whether such voter understands the method of voting and if he thinks fit, at the request of any voter, may explain to such voter in the hearing of any polling agent present in the polling station the method of voting, and in doing so he must carefully refrain from any action which might be construed as advice or direction to vote for any particular candidate.

At the request of a voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed, a relative nominated by the voter, being a relative who is an elector whose name appears in the electoral rolls for the time being in force for any constituency, or if no relation is so nominated, the presiding officer, must mark the ballot paper of such voter in the manner dictated by the voter and cause the ballot paper to be placed in the ballot box. The relative so nominated is required to make a declaration in the prescribed form as to his identity and every such declaration is exempt from stamp duty.

The term "relative" means father, mother, brother, sister, wife, husband, son or daughter of the voter.⁴⁷

8.10 Declarations by Voters

The presiding officer at any polling station may, in his discretion, require any voter, before he is given a ballot paper, to furnish such evidence of his identity as the presiding officer may deem necessary and to make and subscribe to the prescribed declaration and every such declaration is exempt from stamp duty.

If any person fails to furnish such evidence or refuses to make such declaration, the presiding officer must refuse to give him a ballot paper.⁴⁸

8.11 Spoilt Ballot Papers

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be used as a ballot paper may return it to the presiding officer and if the presiding officer is satisfied that the condition of the ballot paper is due to inadvertence, he must issue another ballot paper in place of the ballot paper returned, and the ballot paper so returned (referred to as a “spoilt ballot paper”) must be cancelled by the presiding officer.⁴⁹

8.12 Tendered Votes

If a person representing to be a particular elector named in the electoral roll applies for a ballot paper after another person has been recorded as having voted as such elector, the applicant is after making a declaration, entitled to receive a ballot paper (referred to as a “tendered ballot paper”) and to vote, but a tendered ballot paper must be of a colour different from the ordinary ballot papers and, before being issued to the voter, must be endorsed by the presiding officer with the name of the voter and his number in the electoral roll, and that number must be entered in a list (referred to as the “tendered votes list”).⁵⁰

8.13 Closing of Poll

No ballot paper must be issued to a voter after the hour fixed for the closing of the poll but if at that hour there is in the polling station any voter to whom a ballot paper has been issued, such voter must be allowed to vote.⁵¹

8.14 Place of Counting the Votes

Votes cast by electors at any polling station must be counted at the polling station at which such votes were cast.

The Election Commission may, if it considers it necessary or expedient in the circumstance of any case, by notice direct that the votes cast by electors at any or all the polling stations in a constituency be counted by the presiding officer of the polling station, under the supervision of the returning officer, at such counting place or places as the Election Commission may specify.

This notice must be given at least three days before the commencement of the poll

specifying the situation of the counting place and the date and time of the commencement of the count, and the Election Commission must –

- (a) forward a copy of such notice to the State Elections Officer and the returning officer responsible for the polling station or polling stations to which it relates;
- (b) cause a copy of such notice to be given to each of the candidates or his election agent; and
- (c) cause such notice to be posted in some conspicuous place outside the polling station or polling stations to which it relates.⁵²

8.15 Procedure on Close of Poll

As soon as practicable after the close of the poll the presiding officer must, in the presence of such of the candidates or their election agents or polling agents as attend –

- (a) secure the ballot box at such polling station, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals so as to prevent the introduction of any ballot paper thereafter;
- (b) determine the number of ballot papers issued to voters at the polling station, and the number of unused and spoilt ballot papers;
- (c) prepare the ballot paper statement which must be certified by the presiding officer and signed by such of the candidates or their election agents or polling agents as attend and desire to sign the same; and
- (d) make up into separate packets, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals –
 - (i) the unused and spoilt ballot papers placed together;
 - (ii) the marked copies of the electoral rolls;
 - (iii) the counterfoils of the ballot papers; and
 - (iv) the tendered votes list.

As soon as practicable after the conclusion of these proceedings, the presiding officer must make preparation to count the votes cast at the polling station at which he presides in the presence of such of the candidates, their election agents or counting agents as attend and must inform the candidates, their election agents or counting agents of the time when he will begin to count the votes.

Where the Election Commission directs that the votes cast at the polling station be counted at a specified counting place, the presiding officer must take the ballot box, the sealed packets and the ballot paper statement to such counting place.

Where the same person is appointed to preside at more than one polling station within the same polling district and the Election Commission directs that the same ballot box be used at all the polling stations at which he presides, the presiding officer –

- (a) may, in the presence of such candidates or their election agents or polling agents as attend –
 - (i) open the sealed ballot box in such a manner that the ballot papers issued at

- any subsequent polling stations at which he presides can be inserted but nothing can be removed from it;
- (ii) reopen the packets sealed for use at each subsequent polling station at which he presides;
- (b) must only perform the proceedings of determining the number of ballot papers issued, the number of unused and spoiled ballot papers and prepare the ballot paper statement, and proceed to count the votes on the last day of the poll for the constituency and after the completion of the poll at the last polling station at which he presides.

If at an election –

- (a) any ballot box used at a polling station –
 - (i) is unlawfully removed from lawful custody, or is lost; or
 - (ii) is destroyed, damaged, or tampered with, to such an extent, so that the result of the poll at that polling station cannot be ascertained; or
- (b) any such error, irregularity or defect in procedure as is likely to affect the validity of the poll occurs at a polling station, the returning officer must, upon being satisfied thereof, forthwith report the matter to the Secretary to the Election Commission.

Upon receiving such a report, the Election Commission must, after taking all material circumstances into account, either –

- (a) declare the poll at that polling station to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station and –
 - (i) cause a notice of such declaration and the day and hours so appointed and fixed to be published in the Gazette; and
 - (ii) send a copy of such notice to the returning officer who must cause the same to be further published in the constituency in such places and in such manner as he may deem necessary; or
- (b) if satisfied that the result of a fresh poll at that polling station will not, in any way, affect the result of the election, issue such directions to the returning officer as the Election Commission deems proper for the further conduct and completion of the election.⁵³

8.16 Counting of Votes by Presiding Officer

No counting agent whose name and address has not been notified to the returning officer may be present at the counting of votes.

No person other than –

- (a) the members and officers of the Election Commission;
- (b) the returning officer, the presiding officer and such other officers and staff appointed for the purpose;
- (c) the candidates and their election agents and counting agents;
- (d) persons authorised in writing by the Election Commission, may be present at the counting of votes.

Before the presiding officer proceeds to count the votes he or the persons authorised by him must, in the presence of such of the candidates or their election agents or counting agents as attend –

- (a) open the ballot box and extract the tendered ballot papers found therein; and
- (b) compare the number of ballot papers in the ballot box with the ballot paper statement in order to ascertain that all ballot papers are accounted for.

If, in comparing the number of ballot papers with the statement, it appears that the number of ballot papers in the ballot box exceeds the number stated therein according to such statement, the procedure described below must be followed.

The presiding officer must in the presence of the candidates or their agents cause the sealed packet containing the unused and spoilt ballot papers from the polling station but no other packet to be opened, and must, by comparison of the number of unused and spoilt ballot papers with the number of ballot papers originally issued to such polling station, confirm the ballot paper statement. If it appears that an error has been made in the compilation of the ballot paper statement, and if the presiding officer is satisfied that the number of ballot papers in the ballot box does not exceed the number of ballot papers duly issued at the polling station he must order the counting of votes to proceed and must reseal the packet containing the unused and spoilt ballot papers.

If after completing the process described above, it appears to the presiding officer that there are more ballot papers in the ballot box than there were ballot papers issued at the polling station, the presiding officer or the persons authorised by him must, in the presence of the candidates or their agents inspect the perforation, the initial or the official mark of the presiding officer concerned on the ballot paper one by one and extract any ballot paper which is not perforated, initialled or does not bear the official mark of the presiding officer concerned or which is perforated, initialled or marked otherwise.

When the presiding officer has extracted the ballot papers, he must order the counting to proceed.

(The ballot papers extracted by the presiding officer must be sealed in a packet and forwarded to the Election Commission and the Election Commission may open the packet and may cause such enquiry to be made as it deems fit. The Election Commission must retain the extracted ballot papers for a period of six months and must then cause them to be destroyed unless otherwise directed by a Judge of the High Court.)

The presiding officer or the persons authorised by him must then proceed to count the ballot papers according to the votes cast for each candidate and must endorse the word “rejected” on any ballot paper which he may reject as invalid.

The presiding officer must reject as invalid the following ballot papers only, namely, any ballot paper –

- (a) which is not stamped or perforated with the official mark, or initialled by the presiding officer;

-
- (b) on which votes are given for more than one candidate;
 - (c) on which anything is written or marked by which the voter can be identified;
 - (d) which is unmarked or marked other than in the place or manner provided; or
 - (e) which does not clearly indicate the intention of the voter,
- provided that if a presiding officer is satisfied that such ballot paper was issued in a state which would render it invalid owing to some act or omission by him or a person acting under his authority, and if the ballot paper is otherwise valid, the presiding officer must not reject such ballot paper.

Where the presiding officer is satisfied that any mark made on a ballot paper clearly indicates the intention of the voter and the candidate for whom he has given his vote, the presiding officer must not reject the ballot paper on the ground solely that it has not been marked in all respects in accordance with the directions given for guidance of voters.

Before rejecting a ballot paper the presiding officer must show it to each candidate, his election agent or counting agent, if present, and consider his views thereon.

The decision of the presiding officer, whether or not any ballot paper shall be rejected, shall be final.

The presiding officer shall not count the votes in tendered ballot papers but shall deal with such votes in the prescribed manner.

Subject to the circumstances giving rise to a recount set out in the next paragraph, the presiding officer must, immediately after the completion of the counting of the votes –

- (a) announce to the candidates or their election agents or counting agents as attend the number of votes given to each candidate;
- (b) prepare a sufficient number of copies of the statement of the poll which must be certified by the presiding officer and signed by such of the candidates or their election agents or counting agents as attend and desire to sign the same, as follows –
 - (i) one copy, for the returning officer, must be enclosed in a special envelope supplied for the purpose, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals; and
 - (ii) one copy must be delivered to each of the candidates or his election agent or counting agent as attend;
- (c) inform the returning officer, by any means available to him, of the result of the counting of votes at his polling station.

Where –

- (a) the number of votes for all the candidates together with the rejected votes varies from the number of ballot papers found in the ballot box by one per centum or more; or
- (b) the difference between the number of votes cast for the leading candidate and the number of votes cast for the next leading candidate is two per centum or less of the total number of votes cast,

then upon the application of either any candidate or of his election agent or counting agent,

a recount must be made once only before the presiding officer announces the results of the count.

The presiding officer may in his discretion order a recount or recounts to satisfy himself as to the correct result of the voting.⁵⁴

8.17 Safe Custody of Election Documents

On the completion of the counting of votes, the presiding officer must, in the presence of such of the candidates, their election agents or counting agents as attend, make up into separate packets, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals –

- (a) the tendered ballot papers;
- (b) the counted ballot papers; and
- (c) the rejected ballot papers.

The ballot paper statement and the packets containing –

- (a) the unused and spoiled ballot papers;
- (b) the marked copies of the electoral rolls and the counterfoils of the ballot papers;
- (c) the tendered votes list;
- (d) the tendered ballot papers;
- (e) the counted ballot papers; and
- (f) the rejected ballot papers,

must be placed in the ballot box, which must then be sealed with the seal of the presiding officer and the seals of such of the candidates or their agents as desire to affix their seals in such a manner that nothing can be inserted or removed from it without breaking such seals.

The presiding officer must despatch or deliver the ballot box, together with the special envelope containing the ballot paper statement in safe custody to the returning officer.⁵⁵

8.18 Postponement or Adjournment of Counting of Votes

Where at any time after the close of the poll, owing to any cause whatsoever, the counting of the votes at the polling station cannot be started or has started but cannot be completed, the presiding officer must postpone or adjourn such counting, as the case may be, and forthwith inform the returning officer of the constituency, and the candidates or their election agents or counting agents of such fact.

Where the ballot box has not been opened, the presiding officer must forthwith despatch or deliver the ballot box together with the ballot statement and the sealed packets in safe custody to the returning officer.

Where the ballot box has been opened, the presiding officer must, in the presence of such of the candidates or their election agents or counting agents as attend –

-
- (a) put back all the ballot papers into the ballot box, sealed with his own seal and the seals of such of the candidates or their agents as desire to affix their seals; and
 - (b) forthwith despatch or deliver the ballot box together with the ballot paper statement and the sealed packets in safe custody to the returning officer.

Where the counting of votes has been postponed or adjourned, the returning officer must, after consultation with the State Elections Officer, appoint a new time and place at which the presiding officer will count the votes, and inform the candidates or their election agents of such place and time.⁵⁶

8.19 Counting of Postal Votes

The returning officer must, as soon as practicable after the conclusion of the proceedings pursuant to the Postal Voting Regulations, make arrangements for counting the votes of postal voters in the presence of such of the candidates, their election agents or counting agents as attend, and inform the candidates, their election agents or counting agents of the time and place at which he will count such votes.

On the completion of the counting of the votes of postal voters, the returning officer must put the counted ballot papers and the rejected ballot papers into separate packets, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals.

The sealed packets containing the counted ballot papers, the rejected ballot papers and the sealed packets of declarations of identity must be placed in the ballot box, sealed with the seal of the returning officer and the seals of such candidates or their agents as desire to affix their seals.

Each returning officer is required to appoint, and may revoke the appointment of, such officers or staff as are necessary to assist him in the counting of the votes of postal voters and the official addition of votes.

After the returning officer has completed the counting of the votes of postal voters for his constituency, the returning officer must make arrangements for the official addition of the votes, and must inform the candidates or their election agents of the time and place at which he will commence to add up the number of votes given to each candidate.

No person other than –

- (a) the members and officers of the Election Commission;
 - (b) the returning officer and such other officers and staff appointed by the returning officer; and
 - (c) the candidates and their election agents and counting agents,
- may be present at the official addition of the votes, unless permitted by the returning officer to attend.

At the place appointed for the official addition of the votes, the returning officer, in the presence of such candidates, their election agents and counting agents as attend, must –

- (a) open the special envelope containing the official statement of the postal voting; and
- (b) upon receipt of the special envelope containing the official statement of the poll despatched or delivered to him by each presiding officer, open the said envelope, and announce the number of votes recorded for each candidate in the statement of the poll contained in such envelope.

After the returning officer has received the official statements of the poll from the presiding officers of all the polling stations in his constituency, the returning officer must, in the presence of such of the persons as attend, ascertain the total number of votes given to each candidate by officially adding up the number of votes recorded for each candidate in the aforementioned statement and in the official statement of the postal voting.

Where, on the official addition of the votes, there is an equality of votes between any candidates and the addition of a vote would entitle any of the candidates to be declared elected, the determination of the candidate to whom such one additional vote must be deemed to have been given must be made by lot in the presence of the returning officer, the candidates and their agents as attend, in such manner as the returning officer determines.

Forthwith after the official addition of the votes, the returning officer must declare as having been elected the candidate to whom the greatest number of votes is given.⁵⁷

8.20 Disposal of Ballot Papers

Upon the completion of the official addition and after declaring the results of the count, the returning officer must open all the sealed ballot boxes and transfer all the sealed packets, other than the packets containing the unused and spoilt ballot papers, the marked copies of the electoral rolls and the counterfoils of the ballot papers, and the tendered votes list contained therein into a special box or boxes, and must seal every such box with his own seal and retain the same for a period of six months in safe custody from the date of the poll and thereafter must cause them to be destroyed unless otherwise directed by the Election Commission.

The returning officer must then forward the sealed packets containing the unused and spoilt ballot papers, marked copies of the electoral rolls and counterfoils of the ballot papers, and the tendered votes list to the State Elections Officer who must retain the same for a period of six months in safe custody from the date of the poll and thereafter must cause them to be destroyed unless otherwise directed by the Election Commission.⁵⁸

8.21 Court Order to Copy or Inspect Election Documents

A Judge of the High Court may make an order that any ballot paper or other document relating to an election which has been kept in safe custody be inspected, copied or produced at such time and place and subject to such conditions as he may deem expedient but no such order can be made unless the Judge is satisfied that such inspection, copy or production is required for the purpose of instituting or maintaining a prosecution or an election petition in connection with the election.⁵⁹

— *Section 9* —

ELECTION PETITIONS

9.01 Avoidance of Election on Election Petition

The election of a candidate at any election shall be declared void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge:

- (a) that general bribery, general treating or general intimidation or other misconduct or other circumstances whether similar to those before enumerated or not have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
- (b) non-compliance with the provisions of any written law relating to any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election;
- (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;
- (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Sessions Court, or by the report of an Election Judge; or
- (e) that the candidate was at the time of his election a person disqualified for election.⁶⁰

9.02 Appointment and Powers of Election Judge

Every election petition must be tried by the Chief Judge or by a Judge of any High Court nominated by the Chief Judge for the purpose: provided that the Chief Judge must not nominate a Judge of a High Court of which he is not Chief Judge without consulting the Chief Judge of that High Court.

Witnesses are required to be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and are subject to the same penalties for the giving of false evidence.

On the trial of an election petition, the Election Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition relates, and any person refusing to obey such order is guilty of contempt of court. The Election Judge may examine any witness so compelled to attend or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the Election Judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Unless otherwise ordered by the Chief Judge all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the High Court whose decision is final.⁶¹

9.03 Who May Present Petition

An election petition may be presented to the High Court by any one or more of the following persons:

- (a) *some* person who voted or had a right to vote at the election to which the petition relates;
- (b) *some* person claiming to have had a right to be returned or elected at such election; or
- (c) *some* person alleging himself to have been a candidate at such election.⁶²

9.04 Relief Which May be Claimed

All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition:

- (a) a declaration that the election is void;
- (b) a declaration that the person was not duly elected or ought not to have been returned;
- (c) a declaration that any candidate was duly elected and ought to have been returned; and
- (d) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.⁶³

9.05 Certificate of Judge as to Validity of Election

At the conclusion of the trial of an election petition the Election Judge must determine whether the candidate whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void, and shall certify such determination –

- (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly or of any other election the Election Commission may be authorised to conduct; or
- (b) in the case of any other election, to the State Authority, upon such certificate being given, the determination is final; and the return must be confirmed or altered, or the Election Commission or the State Authority (as the case may be) must within one month of such determination give notice of election in the constituency or electoral ward concerned, as the case may require, in accordance with such certificate.⁶⁴

9.06 Report of Judge as to Corrupt or Illegal Practice

At the conclusion of the trial of an election petition the Election Judge must also report in writing –

- (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, or a Legislative Assembly; or
- (b) in the case of any other election, to the State Authority,

-
- (i) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and
 - (ii) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice.

Before any person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Judge, the Election Judge must give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

When an Election Judge reports that a corrupt or illegal practice has been committed by any person, that person must be subject to the same incapacities as if at the date of the said report he had been convicted of that practice and a person must be subject to the same incapacities if he was a candidate at the election and the Election Judge reports that such corrupt or illegal practice was committed with his knowledge and consent or by his agent.

The Election Commission or the State Authority must cause a copy of such report to be published in the Gazette, and it is the duty of every registering officer forthwith to peruse the report and forthwith to delete from the register or list of electors assigned to him the name of every person appearing from the report to be incapable of voting at an election.⁶⁵

9.07 Time for Presentation

Every election petition must be presented within twenty-one days of the date of publication of the result of the election in the Gazette: provided that –

- (a) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act;
- (b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within the time following:
 - (i) at any time before the expiration of fourteen days immediately after the date of the publication in the Gazette of the notice as to the election expenses of the person whose election is questioned;
 - (ii) if the election petition specifically alleges a payment of money or other act to have been made or done since the said date by the person whose election is questioned or by an agent of the person or with the privity of the person or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days immediately after the date of such payment or other act.

An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the High Court within the time within which an election petition questioning the return or the election upon that ground may be presented.

Where there is an authorised excuse for failing to make and transmit the return and statements respecting election expenses, the date of the allowance of the excuse or, if there was a failure in two or more particulars and the excuse was allowed at different times, the date of the allowance of the last excuse must be substituted for the date of the publication of the notice in the Gazette.⁶⁶

9.08 Prohibition of Disclosure of Vote

No elector who has voted at any election must, in any proceeding to question the election, be required to state for whom he has voted.⁶⁷

9.09 Votes to be Struck Off at Scrutiny

On a scrutiny at the trial of an election petition the following votes only must be struck off –

- (a) the vote of any person whose name was not on the register or list of electors assigned to the polling station at which the vote was recorded or who has not been authorised to vote at such station;
- (b) the vote of any person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of any person who committed or procured the commission of personation at the election;
- (d) where the election was an ordinary election, the vote of any person proved to have voted at such ordinary election in more than one constituency or electoral ward;
- (e) the vote of any person, who, by reason of a conviction of a corrupt or illegal practice or by reason of the report of an Election Judge, or by reason of his conviction of an electoral offence was incapable of voting at the election; and
- (f) votes given for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification, or when the disqualification or the facts causing it were notorious.

The vote of a registered elector must not be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register or list of electors.

On a scrutiny, any tendered vote proved to be a valid vote must, on the application of any party to the petition, be added to the poll.⁶⁸

9.10 Rejection of Ballot Paper by Returning Officer or Presiding Officer

On an election petition the decision of a returning officer or presiding officer, whether or not a ballot paper must be rejected, under any written law relating to the election, must not be questioned.⁶⁹

9.11 Procedure and Practice on Election Petitions

The procedure and practice on election petitions are regulated by rules of court.⁷⁰

— Section 10 —

ELECTION OFFENCES

10.01 Offences by any Person

Any person who –

- (a) knowingly makes any false statement on or in connection with any application to be placed on any register of electors;
- (b) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing the same to be forged;
- (c) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (d) without due authority supplies any ballot paper to any person;
- (e) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (f) not being a person entitled to be in possession of any ballot paper which has been marked with any authorised mark has any such ballot paper in his possession;
- (g) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in;
- (h) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (i) without due authority destroys, takes, opens or otherwise interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election;
- (j) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
- (k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election;
- (l) votes at any election when he is not entitled to vote thereat; or
- (m) prints any advertisement, hand-bill, placard or poster which refers to an election and contains a reproduction of a ballot paper, or of what purports to be a ballot paper, to be used or likely to be used at such election,

is liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand ringgit or to both such imprisonment and fine and, subject to any provision to the contrary in any written law relating to any election, shall until the expiration of five years from conviction or release from such imprisonment, whichever is later, be incapable of being registered or listed as an elector or of voting at any election or of being elected at any

election, and if at that date he has been elected at any election, his seat becomes vacant from the date of such conviction: provided that nothing in sub-paragraph (m) must be deemed to prohibit the printing in any such advertisement, hand-bill, placard or poster of the name or symbol of one candidate only, together with a reproduction of a cross or other mark indicating approval of any such name or symbol.

Any person who has been convicted of an offence under sub-section (1) of section 4 of the Sedition Act 1948 shall, until the expiration of five years from such conviction, be incapable of being elected at any election, and if at that date of such conviction he has been elected at any election, his seat must be vacated from that date.⁷¹

10.02 Offences by Election Officers

Any officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election who –

- (a) makes, in any record, return or other document which he is required to keep or make under such written law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true;
- (b) permits any person whom he knows or has reasonable cause to believe not to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be;
- (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be;
- (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe was validly cast for any candidate in accordance with the provisions of such written law;
- (f) wilfully counts any ballot paper as being cast for any candidate, which he knows or has reasonable cause to believe was not validly cast for such candidate; or
- (g) is without reasonable cause guilty of any act or omission in breach of his official duty, is liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand ringgit or to both such imprisonment and fine and, subject to any specific provision to the contrary in any written law relating to any election, shall until the expiration of five years from conviction or release from such imprisonment, whichever is the later, be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat must be vacated from the date of such conviction.⁷²

10.03 Maintenance of Secrecy at Elections

Every officer, clerk, interpreter, candidate, agent and any other person (referred to as an “authorised person”) authorised to attend any proceedings connected with the issue or receipt of postal ballot papers, or at a polling station, or at the counting of the votes, must, before so attending make an oath of secrecy in the prescribed form.

Every officer, clerk, interpreter, candidate, agent and authorised person in attendance at a polling station is required to maintain, and aid in maintaining, the secrecy of the voting in such station, and must not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark but the total number of voters who have voted at any station at any time before the poll is closed may in the discretion of the presiding officer be divulged to a candidate or his agent or a police officer authorised to attend or on duty at the polling station.

No such officer, clerk, interpreter, candidate, agent, police officer or authorised person and no person whosoever shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number of the ballot paper given to any voter at such station.

Every officer, clerk, interpreter, candidate, agent, police officer and authorised person, in attendance at the counting of the votes must maintain, and aid in maintaining, the secrecy of the voting, and must not attempt to communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.

No person except a presiding officer acting for a purpose authorised by any written law relating to any election or a person authorised by the presiding officer and acting for such purpose as aforesaid, must communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

Every person attending any proceedings in connection with the issue or the receipt of ballot papers for persons voting by post must maintain and aid in maintaining the secrecy of the voting and must not without lawful excuse –

- (a) communicate, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any ballot paper;
- (b) communicate to any person at any time any information obtained at those proceedings as to the number of the ballot paper sent to any person;
- (c) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on any ballot paper; or
- (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

Every person who acts in contravention of these provisions is liable to imprisonment for six months or to a fine of five hundred ringgit or to both such imprisonment and fine.⁷³

10.04 Corrupt Practices

(a) Personation

Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, is guilty of the offence of personation.

(b) Treating

Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision is guilty of the offence of treating.

(c) Undue Influence

Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right is guilty of the offence of undue influence.

A person is deemed to interfere with the free exercise of the electoral right of a person within the meaning of the law who induces or attempts to induce such person to believe that he, or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure.

(d) **Bribery**

The following persons are deemed guilty of the offence of bribery –

- (i) every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;
- (ii) every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election;
- (iii) every person who, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election;
- (iv) every person who upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at an election;
- (v) every person who advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof must be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;
- (vi) every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;
- (vii) every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;
- (viii) every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or

- loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; and
- (ix) every person who directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

Every person who –

- (a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation;
- (b) commits the offence of treating, undue influence or bribery;
- (c) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, hand-bill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher;
- (d) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate;
- (e) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election; or
- (f) being a candidate or election agent knowingly makes the declaration as to election expenses falsely,

is guilty of a corrupt practice, and must, on conviction by a Sessions Court, be liable, in the case of the offence of personation, treating, undue influence or bribery, to imprisonment for twelve months and to a fine of not less than two hundred and fifty ringgit and not exceeding one thousand ringgit, and, in any other case, to imprisonment for six months and to a fine of five hundred ringgit.

Every person who is convicted of a corrupt practice must, subject to any specific provision to the contrary in any written law relating to any election, by conviction become incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat must be vacated from the date of such conviction: provided that such disability ceases on the expiry of five years from conviction or release from imprisonment, whichever is the later.⁷⁴

10.05 Election Agent, Election Expenses and Illegal Practices

Except as permitted by or in pursuance of the Act, no payment and no advance or deposit must be made by a candidate at an election, or by any agent on behalf of the candidate, or

by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent of the candidate; and any money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, must be paid to the candidate or his election agent: provided that these provisions do not apply to any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

A person who makes any payment, advance, or deposit in contravention of these provisions is guilty of an illegal practice.

No expenses can, with a view to promoting or procuring the election of a candidate, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account –

- (a) of holding any public meeting or public entertainment, or organising any public display;
 - (b) of printing or issuing advertisements, circulars or publications; or
 - (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing, or disparaging another candidate,
- provided this provision does not –
- (i) restrict publication in a newspaper or other periodical of any matter relating to the election;
 - (ii) apply to expenses incurred by any person in travelling or in living away from home, or to similar personal expenses.

Where a person incurs any expenses required to be authorised by an election agent, he must within fourteen days after the date of publication of the result of the election in the Gazette send to the election agent a return, accompanied by a declaration made by him (or in the case of an association or body of persons, a director, general manager, secretary or other similar officer thereof) verifying the return and giving particulars of the matters for which the expenses were incurred: provided that this provision does not apply to any person engaged or employed for payment or promise of payment by the candidate or his election agent.

The expenses shown in the return must be included in the return made by the election agent and the authority received from the election agent must be annexed to and deemed to form part of such return.

Any person who incurs any expenses in contravention of the foregoing provisions, or who makes any declaration which is false and which he either knows or believes to be false or does not believe to be true, is guilty of an illegal practice.

Every payment made by an election agent in respect of any expenses incurred on account of or in respect of the conduct and management of an election must, except where less than ten

ringgit or where, from the nature of the case, such as travel by rail or postage, a receipt is not obtainable, be vouched for by a bill stating the particulars and by a receipt.

Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election, which is not sent in to the election agent within the time stipulated, is barred and must not be paid, and an election agent who pays such a claim is guilty of an illegal practice.

Subject to exceptions permitted under the Act, the time allowed for sending in claims is fourteen days after the date of publication of the result of the election in the Gazette.

All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, must be paid within the time prescribed, and an election agent who makes a payment in contravention of this provision is guilty of an illegal practice.

Subject to any exception permitted under the Act, the time allowed for the payment of such expenses as aforesaid is twenty-eight days after the date of publication of the result of the election in the Gazette.

Where it has been proved to the satisfaction of the Election Judge by a candidate that any payment made by an election agent in contravention of the foregoing provisions was made without the sanction or connivance of such candidate, the election of such candidate is not void, and he shall not be subject to any incapacity by reason only of such payment having been made in contravention of these provisions.

If the election agent in the case of any claim sent in to him within the time prescribed disputes it, or refuses or fails to pay it within the period of twenty-eight days, such claim is deemed to be a disputed claim.

The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court, and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court is deemed to be paid within the time prescribed.

On cause shown to the satisfaction of a Judge of the High Court, such Judge on application by the claimant or by the candidate or his election agent may by order give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any such expenses as aforesaid, although sent in after the time prescribed, or although the same was sent in to the candidate and not to the election agent.

Any sum specified in the order of leave may be paid by the candidate or his election agent, and is deemed to be paid within the prescribed time.

A claim for his remuneration by an election agent is treated in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim, the claim is treated as a disputed claim and dealt with accordingly.

Subject to any exception allowed by the Act, no sum must be paid and no expenses must be incurred by a candidate at an election or by his election agent, after the date of publication of the notice of the election in the Gazette, during or after an election, on account of or in respect of the conduct or management of such election, in excess of –

- (a) fifty thousand ringgit in the case of an election to the Dewan Rakyat;
- (b) thirty thousand ringgit in the case of an election to the State Legislative Assembly;
- (c) etc.

Any candidate or election agent who knowingly acts in contravention of this provision is guilty of an illegal practice.

No payment or contract for payment must, for the purpose of promoting or procuring the election of a candidate at any election, be made –

- (a) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles, vessels or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or
- (b) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill or notice, or on account of the exhibition of any address, bill or notice.

Subject to any exception allowed by the Act, if any payment or contract for payment is knowingly made in contravention of the foregoing provisions either before, during, or after an election, the person making such payment or contract is guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of the said provisions, is also guilty of an illegal practice.

A person must not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he keeps or uses for the purpose of letting out for hire, and if he lets, lends or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll, he is guilty of an illegal practice.

A person must not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited to let, lend, or employ for that purpose, and if he does so he is guilty of an illegal practice.

The foregoing provisions do not prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by an elector or voter or several electors or voters at their joint cost for the purpose of being conveyed to or from the poll.

Notwithstanding anything in the preceding provisions –

- (a) where it is the ordinary business of an elector or voter as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such

elector or voter, if made in the ordinary course of business, must not be deemed to be an illegal practice;

- (b) where electors or voters are unable at an election to reach their polling stations from their place or residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such electors or voters to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed: provided that such means of conveyance is made available equally to all such electors or voters who wish to avail themselves thereof.

No person is, for the purpose of promoting or procuring the election of a candidate at any election, to be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for the purpose or in the capacities following –

- (a) one election agent and no more;
- (b) not more than one polling agent at any one time for each polling area or polling district: provided that where more than one polling station is provided in any polling area or polling district an additional polling agent may be employed in respect of each polling station; and
- (c) a reasonable number of clerks and messengers having regard to the area of the constituency or electoral ward and the number of electors on the register or list of electors for such constituency or electoral ward.

If any person is engaged or employed in contravention of these provisions, either before, during, or after an election, the person engaging or employing him is guilty of an illegal practice.

Within thirty-one days after the date of publication of the result of an election in the Gazette the election agent of every candidate at that election must deposit with the State Elections Officer a true return, referred to as the “return respecting election expenses”, containing detailed statements as respects that candidate of –

- (a) the disputed claims so far as the election agent is aware;
- (b) all unpaid claims, if any, of which the election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the High Court;
- (c) all money, securities and other valuable consideration received by or promised to the election agent from or by any candidate or any other person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom such sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise;
- (d) the amount of expenses, if any, incurred by any person authorised by the election agent.

The return respecting election expenses must be signed by the election agent and be

accompanied by a statement made by the candidate and his election agent and must be on oath before the Chairman or a member of the Election Commission, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, or the State Elections Officer.

If the said return and statements are not transmitted before the expiration of the time prescribed, the candidate must not after the expiration of such time sit or vote until either such return and statements have been transmitted or until the date of the allowance of such authorised excuse for failure to transmit the same and if he sits or votes in contravention of the Act, he is liable on conviction, to a penalty of five hundred ringgit for every day on which he so sits or votes.

If any candidate or election agent fails to comply with the foregoing requirements, he is guilty of an illegal practice and this provision is in addition to and not in derogation of the provisions dealing with the punishment and incapacities imposed in respect of a conviction for a corrupt practice.

When any return respecting election expenses and the statements made in respect thereof have been received by the State Elections Officer, he must, as soon as may be, cause a notice of the date on which the return and statements in question were received by him and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and published in the Gazette.

The State Elections Officer must preserve all such returns and statements with the bills and vouchers relating thereto and at all reasonable times during six months next after the publication in the Gazette of the notice mentioned above permit any person to inspect them and to make extracts therefrom on payment of a fee of two ringgit and must, on payment of fifty sen for each folio of one hundred words, supply a copy or copies of any part thereof; and after the expiration of the said period of six months the said documents may be destroyed or returned to the candidate if application for their return is made by the candidate before they are destroyed.⁷⁵

10.06 Employers to Allow Employees Time to Vote

Every employer is required, on polling day, to allow every elector in his employ a reasonable period for voting, and no employer can make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.

Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, on summary conviction is liable to a fine of five hundred ringgit or to imprisonment for six months.

These provisions do not apply to such categories of employees as the Election Commission may from time to time by notification in the Gazette designate.

The Government of Malaysia and each State are bound by the foregoing provisions.⁷⁶

10.07 Limitation of Political Propaganda

No person is to furnish or supply any musical instrument or loudspeaker to any person with intent that it be used by any person in any way or used in or upon vessels, animals, motor cars, trucks, or other vehicles as or for the purpose of political propaganda on polling day and no person must for such purpose use himself or use in or upon any vessel, animal, motor car, truck, or other vehicle any such musical instrument or loudspeaker on polling day.

No person on polling day, within a distance of fifty yards from the limits of any polling station, is to –

- (a) endeavour to establish the identity of any person entering a polling station;
- (b) check on any list the name of any person entering or leaving a polling station;
- (c) place any desk or table or establish any office or booth for any purpose connected with an election;
- (d) solicit or persuade or attempt to persuade any person to abstain from voting at the election, or to vote or to abstain from voting for any candidate at the election; or
- (e) wait or loiter except for the purpose of gaining entry to the polling station to cast his vote,

provided that nothing in the foregoing is interpreted as preventing the proper officer or any person authorised by the proper officer from carrying out his duties in relation to the conduct of any election.

Subject to the provisions of the next paragraph, no flag, ensign, banner, standard, poster or label must at any time be publicly displayed as or for the purpose of political propaganda within a distance of fifty yards from the limits of any polling station, and the presiding officer must remove or cause to be removed any such flag, ensign, banner, standard, poster or label displayed in contravention of this provision.

Nothing contained in the provisions of the above paragraph prevents the furnishing or supplying of any rosette or favour not exceeding seven square inches in superficial area bearing the symbol allotted to any candidate or of any label not exceeding fifty square inches in superficial area bearing such symbol or to the wearing upon the person of one such rosette or favour or to the display of one such label on any vehicle or vessel. Any person who contravenes the foregoing provision, is guilty of an offence.⁷⁷

10.08 Punishment for Conviction for Illegal Practice

Every person who commits an illegal practice is, on conviction by a Sessions Court, liable to a fine of five hundred ringgit and must by conviction until the expiration of five years from such conviction become incapable of being registered or listed as an elector or of voting at any election under the Act or of being elected at any election, and if at that date he has been elected at any election, his seat must be vacated from the date of such conviction.

A prosecution for an illegal practice or a corrupt practice must not be instituted without the sanction of the Public Prosecutor.⁷⁸

10.09 Excuse for Corrupt or Illegal Practice

Where, upon the trial of an election petition respecting an election, the Election Judge reports that a candidate of such election has been guilty by his agents of the offence of treating or undue influence or of any other corrupt or illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the Court –

- (a) that no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent;
- (b) that such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election;
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents,

then the election of such candidate must not, by reason of the offences mentioned in such report, be void and the candidate must not be subject to any incapacity under the Act.

Where, on application made, it is shown to an Election Judge or to a Judge of the High Court by such evidence as seems to the Judge sufficient –

- (a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by the Act, or of being payment, engagement, employment, or contract in contravention of the Act, or of otherwise being in contravention of any of the provisions of the Act, be but for these provisions an illegal practice; and
- (b) that any such act or omission arose from inadvertence or from accidental miscalculations or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith,

and in the circumstances it seems to the Judge, after giving the candidates, the returning officer, and any elector within the constituency or electoral ward an opportunity of being heard, to be just that the candidate in question and the said election and other agent and person, or any of them, should not be subject to any of the consequences under the Act of the said act or omission, the Judge may make an order allowing such act or omission to be an exception from the provisions of the Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent or person must not be subject to any of the consequences under the Act of the said act or omission.

Where the return and statements respecting election expenses of a candidate at an election have not been transmitted as required by the Act, or being transmitted contain some error or false statement, then –

- (a) if the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, negligence or misconduct of his election agent or of any clerk or officer of such agent, or by reason of inadvertence or any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or
- (b) if the election agent of the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit the return and statements which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death, illness, negligence or misconduct of any prior election agent of the candidate, or of the absence, death, illness or misconduct of any clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the Judge may, after such notice of the application, and on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as to the Judge seems fit, and after giving the other candidates, the State Elections Officer and any elector within the constituency or electoral ward an opportunity of being heard, make such order for allowing an authorised excuse for the failure to transmit such return and statements, or for an error or false statement in such return and statements, as to the Judge seems just.

Where it appears to the Judge that any person being or having been election agent has refused or failed to make such return or supply such particulars as will enable the candidate and his election agent, respectively, to comply with the provisions of the Act as to the return and statements respecting election expenses, the Judge before making an order allowing the excuse mentioned must order such person to attend before the Judge, and must, unless he attends and shows cause to the contrary, order him to make the return and statements, or to deliver a statement of the particulars required to be contained in the return, as to the Judge seems just, and to make or deliver the same within such time and to such person and in such manner as the Judge may direct, or may order him to be examined with respect to such particulars, and, in default of compliance with any such order, such person is guilty of an illegal practice.

The order may make the allowance conditional upon the making of the return and statements in a modified form or within an extended time, and upon the compliance with such other terms as to the Judge seems best calculated for carrying into effect the objects of the Act, and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under the Act in respect of the matter excused by the order; and where it is proved by the candidate to the Judge that any act or omission of the election agent in relation to the return and statements respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Judge must relieve the candidate from the consequences of such act or omission on the part of his election agent.⁷⁹

NOTES

1. Constitution of Malaysia, see articles 47 and 48
2. *Ibid.*, see articles 113 and 114
3. *Ibid.*, see article 115
4. *Ibid.*, see article 116 (also article 46 and Thirteenth Schedule)
5. *Ibid.*, see article 118
6. *Ibid.*, see article 119
7. *Ibid.*, see article 114
8. See article 115 of the Constitution and sections 3 and 3A of the Elections Act 1958
9. Elections Act 1958, see section 5
10. *Ibid.*, see section 4
11. Constitution of Malaysia, see article 113
12. Thirteenth Schedule of the Constitution
13. *Ibid.*
14. Elections Act 1958, see section 7
15. *Ibid.*, see section 8
16. See section 9 of the Elections Act 1958 and regulations 3-10 of the Elections (Registration of Electors) Regulations 1971
17. Elections (Registration of Electors) Regulations 1971, see rule 10
18. *Ibid.*, see rule 11
19. *Ibid.*, see rule 12
20. *Ibid.*, see rules 13-19
21. *Ibid.*, see rules 20-24
22. Elections (Postal Voting) Regulations 1959, see regulation 3
23. *Ibid.*, see regulation 4
24. *Ibid.*, see regulation 5
25. *Ibid.*, see regulation 6
26. *Ibid.*, see regulation 7
27. *Ibid.*, see regulations 8 and 9
28. *Ibid.*, see regulations 10 and 11
29. *Ibid.*, see regulations 12-19
30. Elections Act 1958, see section 12
31. Elections (Conduct of Elections) Regulations 1981, see regulation 3
32. *Ibid.*, see regulation 4
33. *Ibid.*, see regulation 5
34. *Ibid.*, see regulation 6
35. *Ibid.*, see regulation 7
36. *Ibid.*, see regulation 8
37. *Ibid.*, see regulation 9
38. *Ibid.*, see regulation 10
39. *Ibid.*, see regulation 11
40. *Ibid.*, see regulations 12 and 12A
41. *Ibid.*, see regulation 13
42. *Ibid.*, see regulation 14
43. *Ibid.*, see regulation 15
44. *Ibid.*, see regulation 16
45. *Ibid.*, see regulation 17
46. *Ibid.*, see regulation 18
47. *Ibid.*, see regulation 19
48. *Ibid.*, see regulation 20
49. *Ibid.*, see regulation 21
50. *Ibid.*, see regulation 22
51. *Ibid.*, see regulation 23
52. *Ibid.*, see regulation 23A
53. *Ibid.*, see regulations 24 and 24A
54. *Ibid.*, see regulation 25
55. *Ibid.*, see regulation 25A
56. *Ibid.*, see regulation 25B
57. *Ibid.*, see regulations 25C and 25D
58. *Ibid.*, see regulation 25E
59. *Ibid.*, see regulation 26
60. Election Offences Act 1954, see section 32
61. *Ibid.*, see section 33
62. *Ibid.*, see section 34
63. *Ibid.*, see section 35
64. *Ibid.*, see section 36
65. *Ibid.*, see section 37
66. *Ibid.*, see section 38
67. *Ibid.*, see section 39
68. *Ibid.*, see section 40
69. *Ibid.*, see section 41
70. *Ibid.*, see section 42
71. *Ibid.*, see section 3
72. *Ibid.*, see section 4
73. *Ibid.*, see section 5
74. *Ibid.*, see sections 7-11
75. *Ibid.*, see sections 12-24
76. *Ibid.*, see section 25
77. *Ibid.*, see section 26
78. *Ibid.*, see section 27
79. *Ibid.*, see sections 28-30