

## CHAPTER 8

### APPOINTMENT AND ROLES OF ELECTION AGENT, ELECTION EXPENSE AGENTS, POLLING AGENTS AND COUNTING AGENTS

#### PART I : GENERAL

8.1 This chapter deals with the appointment of agents at an election and their roles. Each candidate may appoint 4 types of agents, namely election agent, election expense agent, polling agent and counting agent. If a candidate intends to send the notice of appointment of polling agents and counting agents by hand, by post, by electronic mail or by facsimile transmission, the notice must be delivered to the CEO or the RO, as the case may be, at least 7 days before the polling day so as to enable timely delivery of the information to the relevant PRO. After the said deadline, the candidate or his/her election agent must deliver in person the notice to the relevant PRO or RO, as the case may be, on the polling day. The REO will remind all candidates of the deadline for the appointment of agents about 10 days before the polling day and will also provide all candidates with name lists of election agents, polling agents and counting agents received by the REO for their reference 3 days before the polling day. *[Amended in June 2020 and October 2021]*

8.2 The aggregate amount of election expenses incurred by a candidate and his/her election expense agents must not exceed the maximum amount as prescribed by the law. An election expense agent must not incur election expenses in excess of the maximum amount specified by the candidate in the agent's authorisation. *[Added in June 2020]*

8.3 A candidate should think carefully before selecting any of his/her agents. He/She should choose persons suitable for the task. The agents will be viewed as his/her representatives and their conduct may affect the public's perception of him/her and his/her election.

## **PART II : TYPES AND NUMBERS OF AGENTS**

8.4 A candidate may appoint the following agents to assist him/her in an election:

- (a) **1** election agent [s 23(3) of the EAC (EP) (LC) Reg];
- (b) **any number** of election expense agents;
- (c) a maximum of **2** polling agents for **each polling station**, other than a dedicated polling station situated in a penal institution, used for polling for the constituency for which he/she is nominated [s 42(2), (3) and (8A) of the EAC (EP) (LC) Reg];
- (d) 1 polling agent for **each dedicated polling station** situated in a penal institution other than a maximum security prison [s 42(8A)(a) and (c) of the EAC (EP) (LC) Reg]; and

(Only candidates themselves may enter maximum security prison (see para. 8.26 below). For arrangements regarding admission of election agents or polling agents to dedicated polling stations situated in penal institutions, please refer to paras. 8.13 to 8.16 and paras. 8.25 to 8.27 below.)

- (e) not more than such number of counting agents as will be specified by the EAC<sup>50</sup> [s 66(2) of the EAC (EP) (LC) Reg].

*[Amended in January 2010, June 2012, June 2020 and October 2021]*

### **PART III : QUALIFICATIONS OF AGENTS**

8.5 The election, polling and counting agents should be holders of HKID and have attained the age of 18 years [ss 23(5), 42(7) and 66(4) of the EAC (EP) (LC) Reg] while an election expense agent needs to be a person who has attained the age of 18 years [s 25(5) of the EAC (EP) (LC) Reg].

### **PART IV : CIVIL SERVANTS ACTING AS AGENTS**

8.6 Civil servants, other than directorate officers, Administrative Officers, Information Officers, Police Officers and those officers acting in the above grades or ranks with a view to substantive appointment thereto (i.e. other than acting for temporary relief purpose), may act as agents or assist in electioneering activities **provided that** they are not already appointed as the CRO, ROs, AROs, PROs, polling or counting staff, that there is no conflict of interest with their official duties, that no use of public resources is involved, and that no government uniform is worn when participating in electioneering activities. To avoid any unfairness or appearance of unfairness or conflict of interest, civil servants who work in a constituency or have extensive contacts with the public in a constituency are strongly advised not to accept appointment by a candidate in that constituency to be his/her agent and/or participate in electioneering activities in the constituency concerned. Civil servants who

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<sup>50</sup> The number of counting agents to be specified by the EAC will be stated in the specified form for the appointment of counting agents.

participate in electioneering activities, including the seeking of election donations, for any candidates should not use or give the impression of using any public resources in such activities. The guidelines set out in this paragraph are equally applicable to the non-civil service government staff<sup>51</sup>. *[Amended in October 2007, June 2012 and October 2021]*

## **PART V : ELECTION AGENT**

### **Appointment**

8.7 A candidate may appoint **1** election agent to assist him/her and to act on his/her behalf in an election [s 23(3) of the EAC (EP) (LC) Reg]. The appointment may be made at any time after a candidate hands in his/her own nomination form. *[Amended in October 2021]*

8.8 The candidate must give notice of such appointment to the RO for the relevant constituency for which the candidate is nominated [s 23(6) of the EAC (EP) (LC) Reg]. The notice must be in the specified form, signed by both the candidate and the agent, and delivered by hand, by post, by electronic mail or by facsimile transmission to the RO. If the notice of appointment is given on the polling day, it should not be delivered to the RO by post. [S 23(6), (9) and (16) of the EAC (EP) (LC) Reg] The appointment will not be effective until the notice of appointment is received by the RO [s 23(7) of the EAC (EP) (LC) Reg]. *[Amended in June 2016 and October 2021]*

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<sup>51</sup> For the purpose of this Guidelines, non-civil service government staff refer to the following types of staff appointed on non-civil service terms directly employed by the HKSAR Government –

- (a) those employed under the Non-Civil Service Contract Staff Scheme pursuant to Civil Service Bureau (CSB) Circular No. 2/2001;
- (b) those employed under the Post-retirement Service Contract Scheme pursuant to CSB Circular No. 13/2015; and
- (c) those employed on non-civil service terms holding public offices that do not fall under the categories of (a) or (b) above.

8.9 An election agent must not incur election expenses for or on behalf of a candidate unless he/she has been appointed as an election expense agent. Expenses incurred by any purported agent before the notice of appointment is received by the RO for promoting the election of a candidate or for prejudicing the election of another candidate or other candidates may, depending on the circumstances, still be treated as the election expenses incurred in respect of the candidate. It is **important** to note that it is an **illegal conduct** for any person other than a candidate or a candidate's election expense agent to **incur election expenses at or in connection with an election** [s 23(1) of the ECICO]. *[Amended in June 2016]*

### **Revocation**

8.10 The appointment of an election agent may be revoked by the candidate at any time. The candidate must also give notice of the revocation in writing in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the RO. If the notice of revocation is given on the polling day, it should not be delivered to the RO by post. A revocation of an appointment of an election agent will not be effective until such notice is received by the RO. [S 23(9), (11), (12), (13) and (16) of the EAC (EP) (LC) Reg] *[Amended in June 2012, June 2016 and October 2021]*

8.11 If an election agent passes away or has his/her appointment revoked, the candidate may appoint another election agent. In such a case, the candidate must give notice of the replacement appointment in the specified form to the RO in accordance with para. 8.8 above. [S 23(14), (15) and (16) of the EAC (EP) (LC) Reg] Like other election agents, the new election agent has to follow the arrangements set out in paras. 8.13 to 8.16 below, including the need to submit an application to the CEO if he/she wishes to observe the poll at a dedicated polling station situated in a penal institution (other than a maximum security prison). *[Amended in January 2010, June 2016 and October 2021]*

## **Notification**

8.12 Not later than 10 days after the end of the nomination period, and thereafter as required, each validly nominated candidate or his/her election agent will receive from the RO a notice containing the particulars of all the election agents (such as names and correspondence addresses) appointed by all candidates for the constituency concerned [s 24(2) and (5) of the EAC (EP) (LC) Reg]. The RO must also display outside his/her office a notice of the particulars of the election agents [s 24(7) of the EAC (EP) (LC) Reg]. *[Amended in June 2012 and October 2021]*

## **Role of an Election Agent**

8.13 A duly appointed election agent ranks in the **most important position** amongst all kinds of agents of a candidate. He/She has the **authority to do everything a candidate is authorised to do** under the EAC (EP) (LC) Reg for the purposes of the election, **except:**

- (a) to sign the nomination form or make any requisite declaration or promissory oath in relation to a candidate's nomination;
- (b) to withdraw the candidate's candidature;
- (c) to incur election expenses save where he/she has been appointed as an election expense agent by the candidate;
- (d) to authorise an election expense agent to incur election expenses;  
and
- (e) to be present in a dedicated polling station situated in a maximum security prison.

[S 23(17) and (18) of the EAC (EP) (LC) Reg] *[Amended in October 2007, January 2010 and June 2016]*

**IMPORTANT :**

An election agent is, along with the candidate, responsible for the management of the election campaign. A candidate is responsible for all the acts of his/her election agent. If the election agent fails in his/her duties, he/she may contravene the law, in particular, the ECICO, and may commit criminal offences for which the candidate may also be liable, with serious consequences. An election agent will need to be authorised as an election expense agent by a candidate to incur election expenses. If so authorised, the election agent becomes also an election expense agent (see Part VI of this chapter). *[Amended in June 2012 and October 2021]*

8.14 Candidates and their election agents are normally allowed admission to all polling stations in respect of the constituency concerned and are entitled to be present at the counting of the votes. Due to security reasons, only candidates may enter dedicated polling stations situated in maximum security prisons to observe the poll. An election agent, who wishes to observe the poll at a dedicated polling station situated in a penal institution other than a maximum security prison, must deliver an application in the specified form to the CEO by hand, by post, by electronic mail or by facsimile transmission at least 1 week before the polling day. The election agent may not be present at that dedicated polling station unless the Commissioner of Correctional Services has given consent to his/her presence. If the Commissioner of Correctional Services refuses to give consent to the application received, he/she will notify the candidate or the election agent as soon as practicable. [S 23(18) and (21) of the EAC (EP) (LC) Reg] *[Amended in January 2010, June 2016 and October 2021]*

8.15 The Commissioner of Correctional Services may, on an application delivered to the CEO during the week before the polling day, give consent if he/she is satisfied that an elector/AR imprisoned or held in custody by the CSD, who is entitled to vote for the relevant constituency at the dedicated

polling station concerned, is admitted or transferred to the penal institution concerned during that week and the application is made without undue delay after the admission or transfer [s 23(20) of the EAC (EP) (LC) Reg]. The REO will post and update on its website the number of registered electors and ARs who are imprisoned or held in custody in individual penal institutions daily from Monday to Friday (other than a general holiday) starting from 3 weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference. *[Added in January 2010, amended in June 2016 and October 2021]*

8.16 No election agent may be present at a dedicated polling station situated in a penal institution if a polling agent has already been appointed by the same candidate for that polling station [s 23(19) of the EAC (EP) (LC) Reg]. *[Added in January 2010 and amended in October 2021]*

8.17 The PRO of a polling station may regulate the number of candidates, election agents and polling agents to be admitted to the polling station at any one time, for the purpose of maintaining order in the polling station and ensuring that polling is conducted smoothly [s 44(2) of the EAC (EP) (LC) Reg]. **Whilst inside a polling station, a counting station or a ballot paper sorting station, the provisions to be observed by polling agents and counting agents are also applicable to candidates and their election agents.** They are therefore advised to familiarise themselves also with the guidelines set out in Parts VII and VIII of this chapter. *[Amended in January 2010]*

## **PART VI : ELECTION EXPENSE AGENTS**

### **Authorisation**

8.18 A candidate may authorise **any number** of election expense agents to incur election expenses on his/her behalf in an election. The authorisation will



remain in force until the end of the election period, i.e. the end of the polling day or the last polling day if there is more than 1 polling day, unless it is revoked earlier [ss 2 and 23 of the ECICO]. *[Amended in October 2007, June 2012 and October 2021]*

8.19 The authorisation shall be in writing on a specified form and state the name, identity document number and residential address of the election expense agent, and must specify the maximum amount of election expenses the agent may incur [s 25(6) and (7) of the EAC (EP) (LC) Reg]. It should be signed by both the candidate and the election expense agent [s 25(8) of the EAC (EP) (LC) Reg]. A copy of the authorisation must be delivered by hand, by post, by electronic mail or by facsimile transmission to the RO for the relevant constituency, or the CEO if the RO has not been appointed [s 25(9) and (10) of the EAC (EP) (LC) Reg]. *[Amended in June 2012, June 2016 and October 2021]*

8.20 The authorisation is not effective until it has been received by the relevant RO or the CEO as the case may be [s 25(11) of the EAC (EP) (LC) Reg]. Before the authorisation is received, no election expenses should be incurred by a person purporting to be authorised as an election expense agent. It is also important to note that it is an **illegal conduct** for any person other than a candidate or his/her election expense agent to **incur election expenses** [s 23(1) of the ECICO]. The expenses so incurred may also be counted as the candidate's election expenses. *[Amended in June 2016]*

### **Revocation**

8.21 The authorisation of an election expense agent may be revoked by a candidate at any time. The candidate must give notice of the revocation as soon as possible in writing in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the relevant RO, or the CEO if the RO has not been appointed. [S 25(14), (15) and (15A) of the EAC (EP) (LC) Reg] The revocation will only be effective when the relevant RO or

the CEO, as the case may be, receives the notice [s 25(16) of the EAC (EP) (LC) Reg]. The election expenses already incurred before the RO or the CEO receives the notice will still be counted as election expenses of the candidate. *[Amended in October 2007, June 2012, June 2016 and October 2021]*

### **Role of Election Expense Agents**

8.22 An election expense agent is authorised **to incur election expenses on behalf of a candidate**. He/She must not incur election expenses in excess of the amount specified in the agent's authorisation; otherwise he/she commits a criminal offence [s 23(4) of the ECICO].

### **Candidate's Duty to Know the Details of Election Expenses Incurred by his/her Election Expense Agents**

8.23 Every candidate, whether elected or not, or who was returned uncontested, or who has withdrawn the candidature before the close of nominations, or has been decided by the CERC as not validly nominated, or has not incurred any election expenses, is under a **duty**, subject to criminal penalty for breach, to submit to the CEO a return and declaration of his/her election expenses and election donations (thereafter referred to as "election return") with supporting invoices and receipts issued by the goods or service providers. According to s 2 of the ECICO, "candidate" means a person who stands nominated as a candidate at an election and also means a person who, at any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election. The candidate must ensure that the election return is lodged before the expiry of the period of 60 days after the election is settled in relation to the constituency concerned (and in relation to all the constituencies concerned if the election is held for 2 or more constituencies) or within such extended period as may be allowed by the CFI under the relevant law. An election is settled in relation to a constituency on the date on which any of the following events occurs:

- (a) the result of the election is notified in the Gazette;
- (b) the election is declared to have failed.

[S 37(1), (1B), (1C) and (1N) of the ECICO and Part V of Chapter 17]

For the efficient and effective discharge of his/her duty, the candidate should **make sure** that his/her election expense agents will keep account of all election expenses incurred on his/her behalf and will provide to him/her, as soon as practicable but not later than the same period, a detailed statement of expenditure in which each item of expenditure of \$500 or above has to be supported by an invoice and a receipt. If any item of expenditure incurred by the election expense agents is paid or defrayed or contributed to by a donation, the candidate should **make sure** that they will provide him/her with a statement stating the expenses. If an item is not explicit in monetary terms, it should be assessed at a reasonable value; and if any item of donation is more than \$1,000, it should be supported by a copy of the receipt for the donation issued to the donor (in a standard form signed by the candidate). Without such statements, invoices and receipts issued by the goods or service providers or to donor(s), as the case may be, provided by the election expense agents, the candidate will have difficulty in discharging his/her duty to file the election return, which **may render him/her liable for a criminal offence** under s 38 of the ECICO. *[Amended in October 2007, June 2012, June 2016, June 2020 and October 2021]*

### **Public Inspection of Authorisation of Election Expense Agents**

8.24 The RO or the CEO, as the case may be, will make available for public inspection all copies of authorisations of election expense agents submitted by candidates until the expiration of the period for which copies of the election return lodged by the candidates are available for inspection, i.e. the period ending with the 60<sup>th</sup> day before the first anniversary of the date of the deadline for lodging the relevant election return (disregarding any order made by

the CFI under s 40 of the ECICO allowing a candidate to lodge an election return within a further period as specified by the CFI) [s 41(6) of the ECICO]. This offers the public and other candidates an opportunity to scrutinise the maximum amount of election expenses that could be incurred by the election expense agents on behalf of the candidates. [S 26 of the EAC (EP) (LC) Reg] *[Amended in June 2012 and June 2016]*

## **PART VII : POLLING AGENTS**

### **Appointment**

8.25 A candidate may appoint **a maximum of 2 polling agents** for each polling station, other than a dedicated polling station situated in a penal institution, used for polling for the constituency in respect of the constituency for which he/she is nominated [s 42(2), (3) and (8A) of the EAC (EP) (LC) Reg]. The notice of appointment must be in writing, in the specified form, signed by the candidate and delivered by hand, by post, by electronic mail or by facsimile transmission to the CEO, at least **7 days** before the polling day. [S 42(8), (8AA) and (11) of the EAC (EP) (LC) Reg] Where a candidate wishes to appoint a polling agent after the above deadline, he/she is required to give notice of the appointment to the PRO of the polling station for which that agent has been appointed. Such a notice must be given by the candidate or the election agent **in person** by delivering the notice of appointment to the PRO at the relevant polling station on the polling day [s 42(9) of the EAC (EP) (LC) Reg]. The appointment will not be effective until the notice of appointment is received by the CEO or the PRO, as the case may be [s 42(10) of the EAC (EP) (LC) Reg]. *[Amended in January 2010, June 2012, June 2016 and October 2021]*

8.26 In respect of the appointment of polling agent to be admitted to a dedicated polling station situated in penal institution, the following provisions would apply:

- (a) only the candidate is allowed to be present in a dedicated polling station situated at a maximum security prison [s 42(8A)(c) of the EAC (EP) (LC) Reg];
- (b) only 1 polling agent may be appointed for a dedicated polling station situated in a penal institution which is not a maximum security prison and the Commissioner of Correctional Services has given consent to the presence of the agent. The appointment is effective only when an application made in a specified form is delivered to the CEO by hand, by post, by electronic mail or by facsimile transmission at least **7 days** before the polling day [s 42(8), (8AA), (8A) and (11) of the EAC (EP) (LC) Reg]; and
- (c) for a dedicated polling station situated in a penal institution which is not a maximum security prison, no polling agent may be appointed if the Commissioner of Correctional Services has already given consent to the presence of the election agent of the same candidate at that polling station [s 42(8A)(b) of the EAC (EP) (LC) Reg].

*[Amended in January 2010, June 2012, June 2016 and October 2021]*

8.27 If the Commissioner of Correctional Services refuses to give consent to the application received, he/she will notify the candidate or the election agent as soon as practicable [s 42(8C) of the EAC (EP) (LC) Reg]. The Commissioner of Correctional Services may, upon receipt of a notice of appointment given during the week before the polling day, still give consent if he/she is satisfied that an elector/AR imprisoned or held in custody by the CSD, who is entitled to vote for the relevant constituency at the dedicated polling station concerned, is admitted or transferred to the penal institution concerned during that week and that the notice of appointment is given without undue delay after the admission or transfer [s 42(8B) of the EAC (EP) (LC) Reg]. The REO

will post and update on its website the number of registered electors and ARs who are imprisoned or held in custody in individual penal institutions on every Monday to Friday (other than a general holiday) starting from 3 weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference. *[Added in January 2010, amended in June 2016 and October 2021]*

### **Revocation**

8.28 The appointment of a polling agent may be revoked by the candidate at any time. The candidate must give notice of revocation in writing in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the CEO (other than on the polling day). If the notice of revocation of appointment is given on the polling day:

- (a) for a polling agent appointed for a polling station other than a dedicated polling station situated in a penal institution, such notice must be delivered to the relevant PRO by either the candidate or the election agent **in person**;
- (b) for a polling agent appointed for a dedicated polling station situated in a penal institution, such notice must be delivered to the CEO by hand, by electronic mail or by facsimile transmission.

[S 42(13), (14) and (14A) of the EAC (EP) (LC) Reg] *[Amended in June 2016 and October 2021]*

8.29 A revocation of an appointment of a polling agent is not effective until the notice thereof is received by the CEO or the PRO, as the case may be [s 42(15) of the EAC (EP) (LC) Reg]. If a replacement of polling agent is appointed and he/she wishes to observe the poll at a dedicated polling station in a penal institution (other than a maximum security prison), he/she is required to follow the arrangements set out in paras. 8.25 to 8.27 above. *[Amended in January 2010 and June 2012]*

### **Role of Polling Agents**

8.30 Polling agents are appointed **to assist a candidate in observing the conduct of the poll**, to detect impersonation or irregularity at polling stations.

### **Provisions which the Polling Agents should be Aware of**

8.31 On behalf of each candidate, only 1 polling agent may be admitted at any one time to the polling station for which he/she has been appointed [s 44(6) of the EAC (EP) (LC) Reg]. He/She is required to stay and keep his/her movements within the area designated for observation of the poll and not outside. Where a candidate or his/her election agent is present within a polling station, a polling agent of that candidate will not be allowed to be present at the same time within the polling station [s 44(7) and (8) of the EAC (EP) (LC) Reg]. (See also Part V of Chapter 6 regarding the admission of candidates, election agents and polling agents to the polling station.) *[Amended in January 2010, June 2012 and October 2021]*

8.32 Before entering a polling station, every person, other than an elector/AR, a police officer, an officer of the CSD, an officer of any law enforcement agency or a member of the CAS on duty, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 95(1), (2) and (5) of the EAC (EP) (LC) Reg]. This is to make sure that, subject to penalty of making a false declaration, all persons inside a polling station will observe the secrecy of the vote of the elector/AR and, in particular, not to divulge which elector/AR has voted for which candidate. *[Amended in January 2010, June 2012 and October 2021]*

8.33 On attending the polling station for which he/she has been appointed, a polling agent shall report to the PRO and produce his/her identity card and the Declaration of Secrecy completed by him/her for inspection [s 44(10) of the EAC (EP) (LC) Reg].

8.34 The following procedures shall apply on the polling day:

(a) Before the poll

- (i) About 30 minutes before the commencement of the poll (or 15 minutes for dedicated polling stations situated in penal institutions), the PRO will inform the candidates or their agents (either election agent or polling agent) if they are present, of the number of ballot papers in the PRO's possession, and open the sealed packets of ballot papers to show them the books of ballot papers not yet issued to any elector/AR ("**UNISSUED ballot papers**").
- (ii) About 15 minutes before the commencement of the poll, the PRO will show the empty ballot boxes to such persons before proceeding to lock and seal them.

(b) During the poll

- (i) Where a person, claiming to be a particular elector/AR entered on the FR, applies for a ballot paper after a person has already been issued with a ballot paper under the name of such an elector/AR, the PRO may issue a tendered ballot paper to the latter elector/AR **only if** he/she is not certain that the latter person is the former person who had been issued with a ballot paper earlier, and the latter person has answered the appropriate questions in accordance with the law as set out in para. 6.49 to the satisfaction of the PRO. The PRO will in such circumstances issue a ballot paper with the word "**TENDERED**" and "重複" endorsed on the front. Such a ballot paper shall not be counted at the counting of the votes. [Ss 60(1) and 80(1)(b) of the EAC (EP) (LC) Reg]



- (ii) Any elector/AR who has inadvertently torn or damaged any ballot paper or has made an error in marking any ballot paper issued to him/her may ask the PRO to exchange it for another unmarked ballot paper. If the PRO considers the request reasonable, he/she will issue a new ballot paper to the elector/AR in exchange for the spoilt one and shall endorse on the front of it with the word “**SPOILT**” and “**損壞**” and keep it in his/her own custody. The spoilt ballot paper will not be put into a ballot box and will not be counted at the counting of votes. [Ss 62 and 80(1)(c) of the EAC (EP) (LC) Reg]
  - (iii) The PRO shall endorse on the front of any ballot papers which have been issued and abandoned or found left behind anywhere in the polling station with the word “**UNUSED**” and “**未用**” and keep them in his/her own custody. Such ballot papers shall not be put into a ballot box and will not be counted at the counting of votes. [Ss 61 and 80(1)(d) of the EAC (EP) (LC) Reg] Under these circumstances, the PRO will show to each candidate or his/her election agent or polling agent, who is present at the relevant time, such ballot papers.
- (c) After the poll
- (i) The PRO shall, in the presence of persons at the polling station, lock and seal the flaps of the inserting slots of the ballot boxes. He/She will also inform each candidate or his/her agent, if present, of the types of ballot papers in his/her possession (i.e. the number of unissued ballot papers, unused ballot papers, and spoilt ballot papers) [s 63(2) of the EAC (EP) (LC) Reg].

- (ii) For GCs, candidates, their election agents, polling and counting agents, if present, may stay inside the polling station to observe the conversion of the venue into a counting station [s 63(1A) of the EAC (EP) (LC) Reg]. The count will commence upon the completion of the conversion (please see Part XI of Chapter 6 for the relevant arrangement for the small polling stations, dedicated polling stations and the ECC polling station).
  
- (iii) For FCs and the ECC, up to 2 persons being candidates competing in the constituencies (or their respective agents), if they so wish, will be allowed to accompany the Assistant PRO(s) in the delivery of the ballot boxes from the polling station to the central counting station under police escort. Where there are more than 2 persons with such intention remaining at the polling station, the PRO will draw lots to determine which 2 candidates or their respective agents will participate in the delivery. Other FC and ECC candidates and their agents are allowed to remain in the polling station only until they see that the police escort for the delivery is available. Thereafter, all of them shall leave the polling station. They may enter the counting station to observe the count of the GC votes in the public area.

*[Amended in July 2008, June 2016, June 2020 and October 2021]*

8.35 Generally speaking, a polling agent may observe all proceedings in the polling station for which he/she has been appointed and record his/her observations but shall not do anything that may interfere with the conduct of the poll. A polling agent **may**:

- (a) observe the opening of sealed packets of ballot papers and the locking and sealing of empty ballot boxes before the poll commences, and the locking and sealing of the ballot boxes during or at the close of the poll;

**NOTE :**

A polling agent who signs the sealing certificate of a ballot box as witness is required to write his/her name in block letters beneath his/her signature for easy identification. Candidates are advised to keep a list of their own polling agents to facilitate checking when the sealing certificate is broken at the counting station.

- (b) leave the polling station at any time within the 1-hour slot after he/she is admitted to the polling station in which case his/her place may be taken by the relevant candidate, election agent or another polling agent (representing the same candidate) appointed to attend at the polling station (see para. 8.31 above);
- (c) subject to para. 8.36(b) below, observe the issue of ballot papers to electors/ARs and (either through the EPR system or the drawing of a line across concerned entries in the printed copy of the FR (if used)), subject to the condition that they will not interfere with the work of the polling staff;
- (d) where there is reasonable ground for questioning the bona fides of an elector/AR, ask the PRO to put the following prescribed questions (subject to necessary modifications having regard to whether the ballot paper applied for is a GC ballot paper, an FC ballot paper or an ECC ballot paper) to that person at the time of his/her application for a ballot paper (but not afterwards):

- (i) “Are you the person registered in the final register now in effect for this geographical constituency/the final register now in effect for this functional constituency/the Election Committee final register (as appropriate), as follows (the Presiding Officer to read the whole entry as it is recorded in the register)?”
- (ii) “Have you already voted for this geographical constituency/this functional constituency/the Election Committee constituency (as appropriate) in this election?”

**NOTE :**

The person will not be issued with any ballot paper unless he/she has answered the questions to the satisfaction of the PRO.

[S 51(2), (3), (4) and (5) of the EAC (EP) (LC) Reg]

- (e) where there is reasonable cause to believe that a person who has applied for a ballot paper has engaged in corrupt conduct by impersonation, inform the PRO for appropriate action before that person leaves the polling station. This may possibly lead to the arrest of the person. The polling agent must however undertake in writing to give evidence to substantiate the allegation in a court of law. [S 52(1) of the EAC (EP) (LC) Reg]

*[Amended in October 2007, January 2010, June 2012, June 2016 and October 2021]*

8.36 Inside a polling station, a polling agent **must not**:

- (a) interfere with or attempt to influence any elector/AR;

- (b) speak to or communicate with any elector/AR, or interfere with or attempt to interfere with any ballot boxes, ballot papers, backup storage facilities of the EPR system, the marked copy of the FR in printed form (if used) or other relevant election materials. In this regard, a polling agent should station within the designated area demarcated by red adhesive tape, and must not enter, or move close to, the restricted zone delineated with yellow tapes which is about 1 metre, or 2 metres (depending on the configuration), around the voting compartments. Moreover, it is improper for a polling agent to ask an elector/AR about his/her identity card number, and also most improper to check an elector/AR's identity card;
- (c) attempt to obtain information, or disclose any knowledge acquired, concerning the vote of any elector/AR. A polling agent should read and observe carefully the provisions governing the secrecy of voting issued with the form of Declaration of Secrecy;
- (d) exhibit or leave or distribute any campaign material;
- (e) display or wear any promotional material, e.g. any badge, emblem, clothing or head-dress which:
  - (i) may promote or prejudice the election of a candidate or candidates at the election; or
  - (ii) makes direct reference to a body any member of which is standing as a candidate in the election or to a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election; or  
*[Amended in October 2007]*
- (f) use a mobile telephone, paging machine or any other form of electronic communication device.

8.37 A polling agent must not misconduct himself/herself in or in the vicinity of a polling station or fail to obey any lawful order of the RO or the PRO; otherwise he/she commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months [s 45(4) and (7) of EAC (EP) (LC) Reg] and may be ordered by such officer to leave the area. If he/she fails to leave immediately, he/she may be removed by:

- (a) a police officer if the polling station is not a dedicated polling station;
- (b) an officer of the CSD or any law enforcement agency if the polling station is a dedicated polling station; or
- (c) any other person authorised in writing by the RO or the PRO to remove him/her.

The person so removed may not re-enter the polling station during that day except with the permission of the RO or the PRO. [S 46(2), (3) and (4) of the EAC (EP) (LC) Reg] *[Amended in January 2010]*

### **Other Useful Information for Polling Agents**

8.38 Polling staff, candidates, their election agents and polling agents will be required to wear an identification device issued by the RO or the PRO for identification. If in doubt, a polling agent may enquire with the PRO as to the identities of the persons inside the polling station. No attempt, however, should be made to obtain information as to the identity of any elector/AR who is about to vote or has voted [s 96(8) of the EAC (EP) (LC) Reg]. *[Amended in June 2016]*

8.39 Electors/ARs with mobility difficulty may be permitted to vote in a special polling station designated for that purpose. Candidates or their agents can make inquiries with the RO for information.

8.40 Only the PRO, the Deputy PRO or an Assistant PRO may, in the presence of one of the polling staff as a witness, help an elector/AR to mark a ballot paper if he/she claims that he/she is unable to read or is incapacitated from casting his/her vote by himself/herself due to visual impairment or other physical cause [s 59(1) and (2) of the EAC (EP) (LC) Reg]. The responsible officer should inform the candidates or their agents who are present when such a request for assistance is received. A candidate or his/her polling agent in the polling station may suggest the PRO, the Deputy PRO or an Assistant PRO to choose a particular polling staff who is not working at the issuing counter as the witness, but the final decision as to which polling staff should be the witness remains with the PRO, Deputy PRO or Assistant PRO. An elector/AR's relative, friend or any other person is in no circumstances allowed to accompany the elector/AR in the course of voting. *[Amended in June 2012 and June 2016]*

8.41 In each polling station designated for an election in respect of a constituency, subject to practicability of production, a number of **braille templates** are made available for the use of persons with visual impairment, if they so choose, to facilitate them to mark their vote on the ballot paper [s 59(3) of the EAC (EP) (LC) Reg]. The basic features of the template are as follows:

- (a) the template for each constituency is of the same width and length as the ballot paper;
- (b) the template contains numbers in braille and protruding Arabic numerals starting with the first numeral in a sequence assigned to the candidates of the constituency from the top downwards and on the left hand side against each of the number is a round hole;
- (c) the **top left hand corner** of the ballot paper and the template is cut so as to guide the person with visual impairment to place the template on top of the face of the ballot paper in the proper direction; and

- (d) when the template is placed properly over the ballot paper, each braille number corresponds with the candidate number in the constituency; and each of the holes on the template corresponds with the circle on the ballot paper against the candidate. The number of holes equals the number of candidates in the constituency.

In the case of an election in respect of a GC which adopts the “double seats and single vote” voting system, an election in respect of an FC which adopts “first past the post” voting system and a by-election<sup>52</sup> of the ECC which adopts “block vote” voting system, a person with visual impairment should affix chop provided at the polling station to give a single “✓” in the circle through the holes on the templates against the candidate of his or her choice. Whenever it is necessary, the polling staff will help the person with visual impairment to identify the different ballot papers before the person proceeds to mark his/her choice. *[Amended in June 2012, June 2016 and October 2021]*

8.42 No person may canvass, display or wear any promotional material relating to any candidate or the election within a polling station. Candidates and their agents should not bring electioneering materials into the polling station or leave them there, and should remove any promotional badges, emblems, clothing or head-dress before entering. A person must not use a sound amplifying system or device for any purpose within the NCZ; nor should he/she use such system or device or conduct any activities (e.g. lion dance) for canvassing, so that the sound emitted by it can be heard within the NCZ [ss 40(16) and 41(1) of the EAC (EP) (LC) Reg]. However, an officer of the CSD may use a sound amplifying system or device in the NCZ of a dedicated polling station situated in a penal institution for the performance of his/her duties on the polling day [ss 40(19) and 41 (1A)]

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<sup>52</sup> For the ECC in a LegCo general election, due to the considerable number of candidates for the constituency and hence the constraint of the size and design of its ballot papers, it is not practical to produce braille templates. Persons with visual impairment may request the PRO, the Deputy PRO or an Assistant PRO to mark the ballot paper on his/her behalf in the presence of a polling staff as a witness.



of the EAC (EP) (LC) Reg]. Also, a person must not stay or loiter in the NSZ without the express permission of the PRO [s 41(1)(d) of the EAC (EP) (LC) Reg]. Any person who undertakes photographing, filming and video or audio recording within a polling station without the express permission of the PRO, the RO for the relevant constituency, or a member of the EAC, commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 6 months [s 45(2) and (7) of the EAC (EP) (LC) Reg]. Normally such permission is only granted to government photographers for publicity purposes. Polling agents should also read Parts II to XI of Chapter 6 on all matters relating to polling and in particular, paras. 6.68 to 6.71 for activities that are prohibited, and the consequences of conducting such activities, in a polling station. *[Amended in October 2007, June 2012, June 2016 and October 2021]*

8.43 If a candidate or his/her election or polling agent has any complaint about whatever happens inside a polling station, he/she should follow the procedures laid down in Chapter 21 on Complaints Procedure of the Guidelines.

## **PART VIII : COUNTING AGENTS**

### **Appointment**

8.44 A candidate may appoint not more than such number of counting agents as will be specified by the EAC to attend at the count at a counting station and to observe the sorting of GC ballot papers received from dedicated polling stations or the ECC polling station at each ballot paper sorting station [ss 2(6), 66(1) and (2) of the EAC (EP) (LC) Reg]. The same persons may, but need not, be appointed also as polling agents. *[Amended in January 2010, June 2012, June 2016 and October 2021]*

8.45 The notice of appointment must be in writing, in the specified form signed by the candidate and delivered by hand, by post, by electronic mail or by

facsimile transmission to the relevant RO at least **7 days** before the polling day [ss 2(6), 66(5), (5A) and (7) of the EAC (EP) (LC) Reg]. Where a candidate wishes to appoint a counting agent after the above deadline, the notice of the appointment must be delivered by the candidate or the election agent **in person** to the PRO for the relevant counting station (or the RO in the central counting station) on the polling day during the period from the commencement of the poll to the conclusion of the count (for counting stations) or the completion of the sorting of ballot paper (for ballot paper sorting stations) [ss 2(6) and 66(6) of the EAC (EP) (LC) Reg]. The appointment is only effective when the notice of such appointment is received by the RO or the PRO, as the case may be [ss 2(6) and 66(8) of the EAC (EP) (LC) Reg]. *[Amended in January 2010, June 2012, June 2016 and October 2021]*

### **Revocation**

8.46 The appointment of a counting agent may be revoked by the candidate at any time. The candidate must also give notice of revocation in writing in the specified form and deliver the signed notice by hand, by post, by electronic mail or by facsimile transmission to the RO (other than on the polling day) [ss 2(6) and 66(9), (10) and (10A) of the EAC (EP) (LC) Reg]. If the notice of revocation is given on the polling day, such notice must be delivered by the candidate or his/her election agent **in person** to the PRO for the relevant counting station (or the RO in the central counting station) [ss 2(6) and 66(11) of the EAC (EP) (LC) Reg]. A revocation of an appointment of a counting agent is not effective until notice thereof is received by the RO or the PRO, as the case may be [ss 2(6) and 66(12) of the EAC (EP) (LC) Reg]. *[Amended in January 2010, June 2012, June 2016 and October 2021]*

### **Role of Counting Agents**

8.47 Counting agents are appointed to attend at:

- (a) the counting stations to observe the breaking of the seals on the ballot boxes, the sorting, separation and counting of ballot papers and the counting of votes on the valid ballot papers; or
- (b) the ballot paper sorting stations to observe the breaking of the seals on the GC ballot boxes received from dedicated polling stations or the ECC polling station, and the sorting of the GC ballot papers.

This arrangement ensures the transparency of the sorting and counting process and is conducive to the principle of openness and fairness (see Parts XII and XIII of Chapter 6). *[Amended in January 2010 and October 2021]*

**Provisions which the Counting Agents should be aware of**

8.48 Before the counting of votes or sorting of ballot papers commences, every person authorised to be present at a counting station or a ballot paper sorting station, other than police officers and members of the CAS on duty, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 95(2) of the EAC (EP) (LC) Reg]. This is to make sure that, subject to penalty of making a false declaration, all persons inside a counting station or a ballot paper sorting station will observe the secrecy of the vote of the elector/AR and, in particular, not to divulge which elector/AR has voted for which candidate. Members of the public present within the area designated by the PRO or the CRO or the RO will not be required to make a Declaration of Secrecy. *[Amended in July 2008, January 2010, June 2012 and October 2021]*

8.49 On attending the counting station or the ballot paper sorting station, a counting agent shall report to the relevant RO or PRO, as appropriate and produce his/her identity card and the Declaration of Secrecy completed by him/her for inspection [ss 2(6) and 68(4) of the EAC (EP) (LC) Reg]. *[Amended in June 2012 and June 2016]*

8.50 Counting agents are entitled to be present throughout the count to observe the entire counting proceedings. They will be allowed by the RO or the PRO to stay close to, and round the counting tables to observe the count. Nonetheless, they must not touch any ballot papers. A counting agent **may**:

- (a) observe the breaking of the seals on the ballot boxes and the opening of the ballot boxes for the relevant constituency by the RO/AROs/PRO;
- (b) inspect any papers other than ballot papers taken from the ballot boxes before they are disposed of;
- (c) observe the conduct of the count by counting staff including how ballot papers relating to a constituency are separated from those relating to other constituencies and how votes on individual ballot papers are counted;
- (d) observe the determination of the validity of questionable ballot papers by the PRO or the RO and make representations on behalf of the candidate concerned [s 81(7) of EAC (EP) (LC) Reg]; and
- (e) observe, where he/she wishes, the packing of ballot papers by the counting staff and the RO or the PRO, as the case may be, at the conclusion of the count.

*[Amended in January 2010, June 2012, June 2016 and October 2021]*

8.51 A counting agent in a ballot paper sorting station **may**:

- (a) observe the opening of the GC ballot boxes received from dedicated polling stations or the ECC polling station;
- (b) inspect any papers other than the ballot papers taken from the ballot boxes before they are disposed of;

- (c) observe the counting of the GC ballot papers in each ballot box;
- (d) observe the sorting of the aforesaid GC ballot papers according to each GC; and
- (e) observe the sealing of the receptacles containing the sorted GC ballot papers before they are delivered to the PRO of the respective main counting stations of the relevant GCs.

*[Added in January 2010]*

8.52 A counting agent **must not**:

- (a) touch, handle, separate or arrange ballot papers; and
- (b) misconduct in or in the vicinity of a counting station or a ballot paper sorting station, or fail to obey any lawful order of the CRO/RO/PRO, as the case may be, otherwise he/she commits an offence and will be liable to a fine at level 2 (\$5,000) and to imprisonment for 3 months and may be ordered by the CRO/RO/PRO to leave the area [s 68A(3) and (4) of the EAC (EP) (LC) Reg]. If he/she fails to leave immediately, he/she may be removed by a police officer or by other person authorised in writing by the CRO/RO/PRO to remove him/her. The person so removed may not re-enter the counting station or the ballot paper sorting station during that day except with the permission of the CRO/RO/PRO, as the case may be. [Ss 2(6) and 69 of the EAC (EP) (LC) Reg]

*[Amended in January 2010 and June 2016]*

8.53 Counting agents should read Parts XII and XIII of Chapter 6 on all matters relating to sorting of ballot papers and counting of votes and in particular, paras. 6.81 to 6.85 and paras. 6.89 to 6.97 for activities that are prohibited, and the consequences of conducting such activities, within the ballot paper sorting station and counting station. *[Amended in October 2007 and January 2010]*