

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 the following four types of agents at an election and their roles:

- (a) election agent;
- (b) election expense agent;
- (c) polling agent; and
- (d) counting agent.

The REO will remind all candidates of the deadline for appointing agents about ten days before the polling day and will also provide all candidates with name lists of all types of agents received by the REO for their reference about two days before the polling day.

8.2 To ensure the secrecy of voting, except for an elector, a police officer, an officer of the CSD, an officer of any law enforcement agency or a member of the CAS on duty, every person authorised to enter a polling station, a counting station, or a ballot paper sorting station must make a Declaration of Secrecy on a specified form before entering the station and observe the provisions governing the secrecy of voting. [Ss 95(1), (2), and (5) of the EAC (EP) (LC) Reg]

PART II : TYPES AND NUMBERS OF AGENTS

8.3 A candidate may appoint the following four types of agents to assist him in an election:

- (a) election agent: **one**;
- (b) election expense agents: **any number**;
- (c) polling agents:
 - (i) a maximum of **two** for **each polling station**, other than a dedicated polling station situated in a penal institution, for the constituency for which he is nominated;
 - (ii) **one for each dedicated polling station** situated in a penal institution other than a maximum security prison; and

- (d) counting agents: Not more than the number specified by the EAC⁴⁰.

[Ss 23(3), 42(2), (3), (8A), and 66(2) of the EAC (EP) (LC) Reg]

PART III : QUALIFICATIONS OF AGENTS

8.4 The election, polling and counting agents should be holders of HKID and have attained the age of 18 years, while an election expense agent must have attained the age of 18 years. [Ss 23(5), 25(5), 42(7), and 66(4) of the EAC (EP) (LC) Reg]

PART IV : CIVIL SERVANTS ACTING AS AGENTS

8.5 When acting as an agent for a candidate or participating in his electioneering activities, civil servants and non-civil service government staff⁴¹ should take note of Part I of Chapter 20 of the Guidelines.

⁴⁰ The number of counting agents to be specified by the EAC will be stated in the specified form for the appointment of counting agents.

⁴¹ For the purposes of these 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.

PART V : ELECTION AGENT

Appointment and Revocation

8.6 When appointing an election agent, a candidate should take note of the following:

- (a) after submitted his own nomination form, a candidate may appoint **one** election agent to assist him and to act on his behalf at an election;
- (b) the notice of appointment of an election agent must be made in the specified form, signed by both the candidate and the election agent, and delivered by hand, by post, by email or by fax transmission to the RO for the constituency for which the candidate is nominated. If the notice of appointment is given on the polling day, it should not be delivered to the RO by post;
- (c) if a candidate wishes to replace or revoke the appointment of his election agent, he must complete the specified form for the revocation and/or the appointment and deliver it to the RO in the manner as described in (b) of this paragraph; and
- (d) the appointment or revocation of an appointment of an election agent will not be effective until such notice is received by the RO.

[Ss 23(3), (6), (7), (9), (10), (11), (12), (13), (14), (15), and (16) of the EAC (EP) (LC) Reg]

Notification

8.7 Not later than 10 days after the end of the nomination period (unless the appointment of the election agent is made 10 days after the notification deadline), each validly nominated candidate 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. The RO must also display outside his office a notice of the particulars of the election agents. [Ss 24(2), (5), and (7) of the EAC (EP) (LC) Reg]

Role of an Election Agent

8.8 An election agent ranks in the **most important position** amongst all types of agents of a candidate. He has the **authority to handle all matters a candidate is authorised to handle for the election** under the EAC (EP) (LC) Reg, **but he is not permitted to handle the following matters on behalf of a candidate:**

- (a) to sign the nomination form or make any requisite declaration or promissory oath;
- (b) to withdraw the candidate's candidature;
- (c) to incur election expenses (save where he 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 enter a dedicated polling station situated in a maximum security prison.

[Ss 23(17) and (18) of the EAC (EP) (LC) Reg, s 23(1) of the ECICO]

NOTE :

An election agent and the candidate should share the responsibility for managing the election campaign. A candidate is responsible for all the acts of his election agent. If the election agent fails to perform his duties, contravenes the ECICO or commits other criminal offences, the candidate may also be held responsible for serious consequences.

8.9 Candidates and their election agents are allowed admission to the polling stations, counting stations and ballot paper sorting stations in respect of the constituency concerned and have the right to observe the counting of votes. However, they must comply with the provisions applicable to polling agents and/or counting agents (see Parts VII and VIII of this chapter).

8.10 To maintain order in the polling station and ensure that polling is conducted smoothly, the PRO of a polling station may regulate the number of candidates, election agents and polling agents who may enter the polling station at any one time. [S 44(2) of the EAC (EP) (LC) Reg]

Arrangements for Entering Dedicated Polling Stations

8.11 The procedures and arrangements for entering a dedicated polling station situated in a penal institution are as follows:

- (a) due to security reasons, only candidates may enter dedicated polling stations situated in maximum security prisons to observe the poll;
- (b) only **one** election agent or polling agent may be appointed to enter for a dedicated polling station situated in a penal institution which is not a maximum security prison to observe the poll. An application in the specified form must be delivered to the CEO by hand, by post, by email or by fax transmission at least one week before the polling day. The application shall come into effect only after obtaining the consent of the Commissioner of Correctional Services;
- (c) if the Commissioner of Correctional Services refuses to give consent to the application mentioned in (b) of this paragraph, he will notify the candidate or his election agent as soon as practicable;
- (d) if the Commissioner of Correctional Services has already given consent to allow an election agent of a candidate to enter a dedicated polling station situated in a penal institution which is not a maximum security prison, the same candidate could not appoint a polling agent in respect of that polling station;

- (e) if a candidate has appointed a polling agent for a dedicated polling station situated in a penal institution, his election agent cannot enter the polling station.

[Ss 23(18), (19), (21), 42(8), (8AA), (8A), (8C), and (11) of the EAC (EP) (LC) Reg]

8.12 During the week before the polling day, if the Commissioner of Correctional Services is satisfied that:

- (a) an imprisoned or detained elector in the constituency to which the candidate belongs is admitted or transferred to a penal institution;
- (b) the elector concerned is entitled to vote at the dedicated polling station situated in the penal institution; and
- (c) after the elector is admitted or transferred to a penal institution, the appointment notice of a polling agent was submitted by the candidate concerned without undue delay,

then the Commissioner may give consent to the application for appointment mentioned in para. 8.11(b) of this chapter. [Ss 23(20) and 42(8B) of the EAC (EP) (LC) Reg]

8.13 The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual penal institutions

daily from Monday to Friday (except general holidays) starting from three weeks before the polling day and the Saturday immediately before the polling day for candidates' reference.

PART VI : ELECTION EXPENSE AGENTS

Authorisation and Revocation

8.14 When authorising an election expense agent, a candidate should note the following:

- (a) a candidate may authorise **any number** of election expense agents to incur election expenses on his behalf in an election;
- (b) unless revoked, the authorisation will remain in force until the end of the polling day, or the end of the last polling day if there is more than one polling day;
- (c) a candidate may authorise or revoke the authorisation of an election expense agent at any time. The candidate must complete and deliver the relevant specified form to the RO (or the CEO if the RO has not been appointed) through the channels mentioned in para. 8.6(b) of this chapter;

- (d) the authorisation or revocation of an election expense agent will only be effective when the relevant RO or the CEO (as the case may be) receives the notice of authorisation or revocation;
- (e) no election expenses should be incurred by a person purporting to be authorised as an election expense agent before the authorisation of an election expense agent becomes effective; and
- (f) the election expenses already incurred before the revocation of authorisation of an election expense agent takes effect will still be counted as election expenses of the candidate.

[Ss 2 and 23(7) of the ECICO, ss 25(6), (7), (8), (9), (10), (11), (14), (15), (15A), and (16) of the EAC (EP) (LC) Reg]

8.15 It is an **offence** for any person other than a candidate or his election expense agent to **incur election expenses**. The expenses so incurred may also be counted as the candidate's election expenses. [S 23(1) of the ECICO]

Role of Election Expense Agents

8.16 An election expense agent is authorised to **incur election expenses on behalf of the candidate**. It is important to note that the aggregate amount of election expenses incurred by a candidate and his 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; otherwise he will commit a criminal offence. [S 23(4) of the ECICO]

Details of Declaring Election Expenses

8.17 A candidate⁴² (whether elected or not or returned uncontested, or having withdrawn the candidature before the close of nominations or been decided as not validly nominated, or not having incurred any election expenses) **must**, subject to criminal penalty for breach, submit to the CEO a return and declaration of his election expenses and election donations ("election return") with supporting documents as prescribed by the law. 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 two 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; or
- (b) the election is declared to have failed.

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

⁴² 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.

8.18 When declaring election expenses, candidates and election expense agents should note the following:

- (a) the candidate should **make sure** that his election expense agents will keep account of all election expenses incurred on his behalf and will provide him as soon as possible, not later than the deadline specified in para. 8.17 of this chapter, with 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;
- (b) 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 his election expense agent will provide him with a statement stating the expenses. If any item is not explicit in monetary terms, it should be assessed at a reasonable value; and
- (c) for any donation of \$1,000 or more, a copy of the receipt (in a standard form signed by the candidate) for the donation issued by the candidate should be submitted together with the election return as proof.

Should any election expense agents fail to provide such statements together with the invoices and receipts issued by goods or service providers or to donors, as the case may be, the candidate will have difficulty in discharging his duty to file the election return, and he may have violated s 38 of the ECICO. [S 37(2)(b) of the ECICO]

Public Inspection of Authorisation of Election Expense Agents

8.19 The RO or the CEO, as the case may be, will make all copies of authorisations of election expense agents available for public inspection until the deadline for which copies of the election return lodged by the candidates are available for inspection, i.e. the period ending with the 60th day before the first anniversary of the date of the deadline for lodging the relevant election return. [Ss 37(1B) and 41(6) of the ECICO]

PART VII : POLLING AGENTS

Appointment and Revocation

8.20 When appointing a polling agent, a candidate should note the following:

- (a) a candidate may appoint a **maximum of two polling agents** for each polling station (other than a dedicated polling station situated in a penal institution) in the constituency for which he is nominated;
- (b) the appointment notice of a polling agent must be made in the specified form, signed by the candidate, and delivered by hand, by post, by email or by fax transmission to the CEO, at least **seven days** before the polling day;

- (c) upon the expiry of the deadline specified in (b) of this paragraph, the candidate or the election agent must deliver the completed notice of appointment **in person** to the relevant PRO **on the polling day**;
- (d) the appointment of a polling agent may be revoked by the candidate at any time. The candidate must complete and submit the specified form for revocation of appointment through the channels mentioned in (b) and (c) of this paragraph. If the candidate submits a revocation notice of a polling agent appointed for a dedicated polling station situated in a penal institution on the polling day, such notice must be delivered to the CEO by hand, by email or by fax transmission;
- (e) the authorisation or revocation of a polling agent will only be effective when the CEO or the PRO (as the case may be) receives the notice of authorisation or revocation;
- (f) the persons appointed as polling agents may also be appointed as counting agents; and
- (g) for the provisions regarding the appointment of a polling agent to enter a dedicated polling station situated in a penal institution, please see paras. 8.11 and 8.12 of this chapter.

[Ss 42(2), (3), (8), (8AA), (8A), (9), (10), (11), (13), (14), (14A) and (15) of the EAC (EP) (LC) Reg]

Role of Polling Agents

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

Provisions which the Polling Agents should be Aware of

8.22 Polling Agents should note the following:

- (a) each candidate may only have one polling agent as his representative at the polling station for which he has been appointed at one time;
- (b) inside a polling station, polling agents is required to stay and keep his movements within the area designated for observation of the poll and not outside; and
- (c) where a candidate or his election agent is present within a polling station, a polling agent of that candidate will not be allowed to stay within the polling station at the same time.

[Ss 44(6), (7) and (8) of the EAC (EP) (LC) Reg]

8.23 Generally speaking, a polling agent may observe all proceedings in the polling station for which he has been appointed and record his observations but shall not 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 name in block letters beneath his signature for easy identification. Candidates are advised to keep a list of their own polling agents for easy verification when the sealing certificate is broken at the counting station.

- (b) leave the polling station at any time within the one-hour slot after he is admitted to the polling station in which case his 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. 8.22 of this chapter);
- (c) subject to para. 8.24(b) of this chapter, observe the issue of ballot papers to electors, 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, request the PRO to ask the appropriate questions prescribed in Part IX of Chapter 6 to that person at the time of his application for a ballot paper (but not afterwards); and

NOTE :

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

- (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 provide evidence to substantiate the allegation in a court of law.

[Ss 51(2), (3), (4), (5), and 52(1) of the EAC (EP) (LC) Reg]

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

- (a) interfere with or attempt to influence any elector;
- (b) speak to or communicate with any elector, or attempt to interfere with any ballot boxes, ballot papers, the EPR System and its backup storage facilities, the marked copy of the FR in printed form or other election materials. 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 adhesive tapes around the voting compartments;

- (c) ask an elector about his identity card number or check an elector's identity card;
- (d) attempt to obtain information or disclose any knowledge acquired, concerning the vote of any elector. A polling agent should read and observe carefully the provisions governing the secrecy of voting issued with the form of Declaration of Secrecy;
- (e) exhibit or leave or distribute any campaign materials;
- (f) display or wear any promotional materials; and
- (g) use a mobile phone, paging machine or any other form of electronic communication device.

[Ss 45 and 96 of the EAC (EP) (LC) Reg]

8.25 Polling staff, candidates, their election agents and polling agents must 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 person, including electors who are about to vote or have voted. [S 96(7) of the EAC (EP) (LC) Reg]

8.26 Polling agents should read Parts II to XI of Chapter 6 of the Guidelines on matters relating to polling and, in particular, Part XI for activities that are

prohibited, and the consequences of conducting such activities in a polling station. If a candidate or his agent wishes to lodge any complaint about whatever happens inside a polling station, he should follow the procedures laid down in Chapter 21 on Complaints Procedure of the Guidelines.

PART VIII : COUNTING AGENTS

Appointment and Revocation

8.27 When appointing a counting agent, a candidate should note the following:

- (a) a candidate may appoint not more than such number of counting agents as will be specified by the EAC. Counting agents may attend at the count at a counting station and observe the sorting of GC ballot papers received from dedicated polling stations or the ECC polling station at each ballot paper sorting station;
- (b) the persons appointed as counting agents may also be appointed as polling agents;
- (c) the notice of appointment of counting agents must be in writing, in the specified form signed by the candidate and delivered by hand, by post, by electronic or fax transmission to the relevant RO at least seven **days** before the polling day;

- (d) after the deadline specified in (c) of this paragraph, the candidate or his election agent is required to deliver **in person** the completed notice of appointment to the relevant PRO (or the RO at the central counting station) **on the polling day**;
- (e) the appointment of a counting agent may be revoked by the candidate at any time:
 - (i) if the appointment is revoked before the polling day, the candidate must complete the specified form for revocation of appointment and deliver it to the RO in the manner as set out in (c) of this paragraph;
 - (ii) if the appointment is intended to be revoked **on the polling day**, the candidate or his election agent is required to deliver **in person** the completed notice of revocation to the PRO at the counting station (or the RO at the central counting station); and
- (f) the appointment or revocation of an appointment of a counting agent will not be effective until notice is received by the RO or the PRO (as the case may be).

[Ss 2(6), 66(1), (2), (5), (5A), (6), (7), (8), (9), (10), (10A), (11) and (12) of the EAC (EP) (LC) Reg]

Role of Counting Agents

8.28 Counting agents are appointed to assist the candidates in:

- (a) observing in the counting stations the breaking of the seals on the ballot boxes, sorting, separation and counting of ballot papers and counting of votes recorded on the valid ballot papers; or
- (b) observing in the ballot paper sorting stations 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.

Provisions which the Counting Agents should be Aware of

8.29 A counting agent may be present throughout the count to observe the entire counting proceedings but must not touch, handle, separate or arrange any ballot papers. A counting agent in a counting station **may**:

- (a) observe the breaking of the seals on the ballot boxes and the opening of the ballot boxes for the relevant constituency;
- (b) inspect any papers other than ballot papers taken from the ballot boxes which are intended to be disposed of;

- (c) observe the conduct of the count by counting staff including how ballot papers are separated by constituency and how votes on individual ballot papers are counted;
- (d) observe the determination of questionable ballot papers and make representations on behalf of the candidate concerned; and
- (e) observe the packing of ballot papers at the conclusion of the count.

[S 81(7) of EAC (EP) (LC) Reg]

8.30 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 which are intended to be disposed of;
- (c) observe the counting of the number of 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 for delivery to the PRO of the respective main counting stations.

8.31 Counting agents should read Parts XIII and XIV of Chapter 6 of the Guidelines on matters relating to sorting of ballot papers and counting of votes and pay particular attention to the relevant sections for activities that are prohibited, and the consequences of conducting such activities, within the ballot paper sorting station and counting station.