CHAPTER 6

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

PART I : GENERAL

6.1 This chapter illustrates 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.

6.2 To ensure the secrecy of voting, except for an elector, a child accompanying 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 the specified form before entering the station and observe the requirements governing the secrecy of voting. [Ss 81 and 82 of the EP (RRE) Reg]

6.3 If a candidate or his agent(s) wishes to lodge any complaint about whatever happens inside a polling station, he should follow the procedures laid down in Chapter 19 on Complaints Procedures.

PART II : TYPES AND NUMBERS OF AGENTS

6.4 A candidate may appoint the following four types of agents to assist him in standing for 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 Rural Area 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 RO[38].

[Ss 22(1), 23(1), 36(1), (1A) and 56(2) of the EP (RRE) Reg]

PART III : QUALIFICATIONS OF AGENTS

6.5 The election agents, polling agents and counting agents must 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 22(2), 23(2), 36(3) and 56(3) of the EP (RRE) Reg]

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[38] The number of counting agents to be specified by the RO will be stated in the specified form for the appointment of counting agents.

PART IV : CIVIL SERVANTS ACTING AS AGENTS

6.6 When acting as an agent for a candidate or participating in his electioneering activities, civil servants and non-civil service government staff[39] should see Part I of Chapter 18.

PART V : ELECTION AGENT

Appointment and Revocation

6.7 When appointing an election agent, a candidate must note the following:

(a) after submitting his own nomination form, a candidate may appoint **one** election agent to assist him and to act on his behalf to handle affairs related to his standing for election;

(b) the notice of appointment of an election agent must be in the specified form, signed by both the candidate and the election agent, and delivered to the RO by hand, by post, by email or by fax transmission. If the notice of appointment is given on the polling day, it could not be delivered to the RO by post;

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[39] For the purpose of the 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 Circular No. 2/2001;
(b) those employed under the Post-Retirement Service Contract Scheme pursuant to Civil Service Bureau Circular No. 13/2015; and
(c) those employed on non-civil service terms holding public offices that do not fall under (a) or (b) above.

(c) if a candidate wishes to replace or revoke the appointment of an election agent, he must be in the specified form and deliver it in the manner as described in (b) of this paragraph; and

(d) the appointment or revocation of an election agent is not effective until such notice is received by the RO.

[Ss 22(1), 24(2), (3), (4), (5), (6) and (7) of the EP (RRE) Reg]

Notification

6.8 As soon as practicable after the receipt of a notice of appointment of an election agent by a candidate, the RO will send a notice containing the name and address of the election agent to every other candidate (including a person who is being or has been nominated to stand for the election concerned). The RO must also display outside his office a notice of the particulars of the election agents. [Ss 24(8) and 25 of the EP (RRE) Reg]

Role

6.9 An election agent ranks in the **most important position** amongst all types of agents of a candidate. Except the following matters, he has the **authority to handle all matters a candidate is authorised to handle** for the election under the EP (RRE) Reg:

(a) to sign the nomination form or make any requisite declaration;

(b) to sign a notice of withdrawal of candidature as the candidate;

(c) to appoint an election agent;

(d) to appoint an election expense agent;

(e) to incur election expenses (unless he has also been appointed as an election expense agent by the candidate);

(f) to revoke the appointment of an election agent or election expense agent; and

(g) to be present in a dedicated polling station situated in a maximum security prison.

[S 22(3) and (4) of the EP (RRE) Reg, and s 23(1) of the ECICO]

NOTE:

An election agent and the candidate must share the responsibility for managing the electioneering activities. A candidate is responsible for all the acts of the 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.

6.10 Election agents are allowed admission to the polling stations, counting stations and ballot paper sorting stations of the Rural Areas for which the candidates are concerned and have the right to observe the polling and counting of votes. However, they must comply with the requirements applicable to polling agents and/or counting agents (see Parts VII and VIII of this chapter).

6.11 To maintain order inside 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 37(2) of the EP (RRE) Reg]

Arrangements for Entering Dedicated Polling Stations

6.12 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 can enter dedicated polling stations situated in maximum security prisons to observe the poll;

(b) only **one** election agent or polling agent can be appointed to enter a dedicated polling station situated in a penal institution which is not a maximum security prison to observe the poll. Hence, (i) 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 cannot appoint a polling agent in respect of that polling station; and (ii) if a candidate has appointed a polling agent for a dedicated polling station situated in a penal institution, the election agent cannot enter the polling station.

An application for an election agent or a polling agent to enter a dedicated polling station situated in a penal institution must be in the specified form, signed by the candidate and/or the election agent, and delivered to the RO 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; and

(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 the election agent as soon as practicable.

[Ss 22(3), (3A), (3C), 36(5), 37(1A), (1B), (1D) and (6B) of the EP (RRE) Reg]

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

(a) an imprisoned or detained elector in the Rural Area 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 had been admitted or transferred to a penal institution, the notice of appointment of an election agent or 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. 6.12(b) of this chapter. [Ss 22(3B) and 37(1C) of the EP (RRE) Reg]

6.14 The HAD will post and update on RR Election website (www.had.gov.hk/rre) the number of registered electors who are imprisoned or detained in individual penal institutions daily from Monday to Friday (except general holidays) starting from three weeks before the polling day and on the Saturday immediately before the polling day for the reference of candidates or election agents.

PART VI : ELECTION EXPENSE AGENTS

Appointment and Revocation

6.15 When appointing an election expense agent, a candidate must note the following:

(a) a candidate may appoint **any number** of election expense agents to incur election expenses on his behalf in an election;

(b) unless revoked, the relevant appointment 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) the notice of appointment of an election expense agent must be in the specified form, signed by both the candidate and the election expense agent, and delivered to the RO by hand, by post, by email or by fax transmission. If the notice of appointment is given on the polling day, it could not be delivered to the RO by post;

(d) if a candidate wishes to revoke the appointment of an election expense agent, he must complete the notice of revocation and deliver it in the manner as described in (c) of this paragraph;

(e) the appointment or revocation of appointment of an election expense agent is not effective until such notice is received by the RO or the DHA (as the case may be);

(f) no election expenses should be incurred by a person purporting to be appointed as an election expense agent before the appointment of an election expense agent becomes effective; and

(g) the election expenses already incurred before the revocation 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, and ss 23, 24(1), (2), (3), (4), (5), (7) and 26 of the EP (RRE) Reg]

6.16 It is an **offence** for any person other than a candidate or an 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

6.17 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 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 commits a criminal offence. [Ss 23(4) and 24 of the ECICO]

Details of Declaring Election Expenses

6.18 A candidate[40] (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** submit to the DHA an election return with supporting documents as prescribed by the law, failing which he shall bear criminal liability. The candidate must ensure that the election return is lodged before the expiry of the period of 30 days after the date on which the last of the following events occurs:

(a) the result of the election is notified in the Gazette;

(b) the proceedings for the election are declared to have been terminated;

(c) the election is declared to have failed,

or lodged within such extended period as may be allowed by the CFI under the relevant law (see Part V of Chapter 15). [S 37(1), (1L), (1M) and (1N) of the ECICO]

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[40] 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, regardless of whether he has submitted his nomination form or whether he has withdrawn his nomination after submission of the nomination form. Regarding what constitutes "publicly declared an intention to stand as a candidate", it depends on the overall circumstances as well as the objective facts and evidence.

6.19 When declaring election expenses, candidates and election expense agents must note the following:

(a) the candidate must **make sure** that 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. 6.18 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 donor, the candidate must **make sure** that the election expense agent will provide him with a report 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 for the donation (in a standard form signed by the candidate) issued by the candidate to the donor must be submitted together with the election return as proof.

Should any election expense agents fail to provide such statements together with the related invoices and/or receipts mentioned in paragraphs (a), (b) and (c) above (as the case may be), the candidate will have difficulty in discharging his duty to lodge the election return, and he may violate s 38 of the ECICO. [S 37(2)(b) of the ECICO]

Public Inspection of Notices of Appointment of Election Expense Agents

6.20 The RO or the DHA (as the case may be) will make all copies of the appointment of election expense agents available for public inspection until the

deadline for which copies of the election return are available for inspection, i.e. ending with the 30th day before the first anniversary of the date of the deadline for lodging the relevant election return. [Ss 37(1L) and 41(6) of the ECICO]

PART VII : POLLING AGENTS

Appointment and Revocation

6.21 When appointing a polling agent, a candidate or an election agent must note the following:

(a) a candidate or an election agent may appoint **a maximum of two polling agents** for each polling station (other than a dedicated polling station situated in a penal institution) of the Rural Area for which the candidate is nominated;

(b) the persons appointed as polling agents may also be appointed as counting agents;

(c) the notice of appointment of a polling agent must be in the specified form, signed by the candidate or the election agent and the polling agent, and delivered to the relevant RO by hand, by post, by email or by fax transmission at least **seven days** before the polling day;

(d) upon the expiry of the deadline specified in (c) of this paragraph, if a candidate or an election agent wishes to appoint a polling agent, he must deliver it **in person** to the relevant PRO **on the polling day**;

(e) the appointment of a polling agent may be revoked by the candidate or the election agent at any time:

(i) if the appointment is revoked before the polling day, the candidate or the election agent must be in the specified form and deliver it in the manner as described in (c) of this paragraph;

(ii) if the appointment is revoked **on the polling day**, the candidate or the election agent must be in the specified form and deliver it in the manner as described in (d) of this paragraph. If the candidate or the election agent gives notice of revocation for 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 RO by hand, by email or by fax transmission; and

(f) the appointment or revocation of a polling agent is not effective until such notice is received by the relevant RO or PRO (as the case may be).

[S 36(1), (1A), (2), (4), (5), (6), (7), (7A), (7B) and (9) of the EP (RRE) Reg]

Role

6.22 Polling agents are appointed **to assist a candidate in observing the conduct of the poll** in order to avoid impersonation in relation to voting or other irregularities at polling stations.

Requirements that must be Aware of

6.23 Polling agents must note the following:

(a) each candidate may only have one polling agent as his representative to enter the polling station for which he has been appointed at one time;

(b) inside a polling station, polling agent is required to stay and keep his movements within the area designated for observation of the poll and not outside;

(c) where a candidate or an 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; and

(d) in respect of the procedures and arrangements for entering a dedicated polling station situated in a penal institution, see paras. 6.12 to 6.14 of this chapter.

[S 37(4), (5) and (6) of the EP (RRE) Reg]

6.24 Generally speaking, a polling agent may observe the whole conduct of the poll 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 during the poll, 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. 6.23 of this chapter);

(c) subject to para. 6.25(b) of this chapter, observe the issue of ballot papers to electors, subject to the condition that he will not interfere with the work of the polling staff;

(d) where there is reasonable ground for questioning the genuine identity of a person and the qualification of an elector, request the PRO to ask the appropriate questions prescribed in para 4.25 of Chapter 4 to that person at the time of his application for the issue of a ballot paper (but not afterwards); and

NOTE:

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

(e) where there is a reasonable cause to believe that a person who has applied for the issue of 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 43(2), (3), (4) and 44(1) of the EP (RRE) Reg]

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

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

(b) communicate with any elector, or attempt to interfere with any ballot boxes, ballot papers, the EPR System and its backup storage device (if used), the marked copy of the FR of electors 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 HKID number or check his HKID;

(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 requirements governing the secrecy of voting issued with the form of declaration of secrecy;

(e) exhibit, leave or distribute any electioneering promotion materials;

(f) display or wear any promotional materials; and

(g) use a mobile phone, paging machine or any other form of communication device.

[Ss 38 and 82 of the EP (RRE) Reg]

6.26 Polling staff, candidates, election agents and polling agents must wear an identification article 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 of any person, including electors who are about to vote or have voted. [Ss 37 and 82(1)(e) of the EP (RRE) Reg]

6.27 Polling agents should see Parts II to XI of Chapter 4 on matters relating to polling and, in particular, the relevant part for activities that are prohibited, and the consequences of conducting such activities in a polling station.

PART VIII : COUNTING AGENTS

Appointment and Revocation

6.28 When appointing a counting agent, a candidate or an election agent must note the following:

(a) a candidate or an election agent may appoint not more than such number of counting agents as specified by the RO, normally one. Counting agents may attend at a counting station to observe the counting of votes, as well as the sorting of ballot papers received from dedicated polling stations 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 a counting agent must be in the specified form, signed by the candidate or the election agent and counting agent, and delivered to the RO by hand, by post, by email or by fax transmission at least **three days** before the polling day;

(d) upon the expiry of the deadline specified in (c) of this paragraph, if a candidate or an election agent wishes to appoint a counting agent, he

must deliver it **in person** to the officer-in-charge of the relevant counting station **on the polling day**;

(e) the appointment of a counting agent may be revoked by the candidate or the election agent at any time:

(i) if the appointment is revoked before the polling day, the candidate or the election agent must be in the specified form and deliver it in the manner as described in (c) of this paragraph;

(ii) if the appointment is revoked **on the polling day**, the candidate or the election agent must be in the specified form, and deliver it in the manner as described in (d) of this paragraph; and

(f) the appointment or revocation of a counting agent is not effective until such notice is received by the RO or the officer-in-charge of the relevant counting station (as the case may be).

[S 56(1), (2), (4), (5), (6), (7), (8) and (9) of the EP (RRE) Reg]

Role

6.29 Counting agents are responsible for assisting the candidates:

(a) observing in the counting stations the breaking of the seals on the ballot boxes, the sorting, separation and counting of ballot papers, and the 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 ballot boxes received from dedicated polling stations and the sorting of the envelopes in the ballot boxes which contain ballot papers cast at the dedicated polling stations.

Provisions that must be Noted

6.30 A counting agent may be present throughout the count to observe the entire procedure of counting of votes but must not touch, handle, separate or arrange any ballot paper. A counting agent in a counting station **may**:

(a) observe the procedures of breaking the seals on the ballot boxes and opening the ballot boxes for the Rural Areas;

(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 votes recorded on individual ballot papers are counted;

(d) observe the determination of ballot papers as questionable ballot papers; and

(e) observe the packing of ballot papers at the conclusion of the count.

[S 63(1) of the EP (RRE) Reg]

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

(a) observe the procedures of opening the ballot boxes received from dedicated polling stations;

(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 envelopes containing cast ballot papers in each ballot box;

(d) observe the sorting of the aforesaid envelopes according to each Rural Area; and

(e) observe the sealing of the receptacles containing the sorted envelopes for delivery to the respective counting stations of the relevant Rural Areas for counting of votes.

6.32 Counting agents should see Parts XIII and XIV of Chapter 4 on matters relating to sorting of ballot papers and counting of votes and, in particular, the relevant part on activities that are prohibited, and the consequences of conducting such activities, within the ballot paper sorting stations and counting stations.