

## CHAPTER 6

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

#### PART I : GENERAL

6.1 This chapter deals with the appointment of agents at an election and their roles.

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

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

6.3 If he so wishes, a candidate may appoint the following agents to assist him in an election:

- (a) **1** election agent [s 26(1) of the EAC (EP) (DC) Reg];
- (b) **any number** of election expense agents [s 28(1) of the EAC (EP) (DC) Reg];
- (c) not more than **2** polling agents for **each polling station** other than a dedicated polling station situated in a prison in respect of his

constituency [s 45(3) and (5A) of the EAC (EP) (DC) Reg];

- (d) **1** polling agent for **each dedicated polling station** situated in a prison other than a maximum security prison [s 45(5A) of the EAC (EP) (DC) Reg]; and

(For arrangements regarding admission of election agents or polling agents to dedicated polling stations situated in prisons, please refer to paras. 6.12 to 6.15 and paras. 6.24 to 6.27 below.)

- (e) not more than **2** counting agents for **each counting station** in respect of his constituency [s 66(2) of the EAC (EP) (DC) Reg].

*[Amended in January 2010]*

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

6.4 The election, polling and counting agents should be holders of the Hong Kong identity card and have attained the age of 18 years [ss 26(2), 45(4) and 66(3) of the EAC (EP) (DC) Reg] while an election expense agent needs to be a person who has attained the age of 18 years [s 28(2) of the EAC (EP) (DC) Reg].

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

6.5 Civil servants, other than Directorate Officers, Administrative Officers, Information Officers and Police Officers and those officers acting in the above grades and ranks with a view to substantive appointment thereto, ie

other than for temporary relief purpose, may act as agents or assist in electioneering activities provided that they are not already appointed as ROs, 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. However, to avoid any unfairness, semblance of unfairness or conflict of interest, civil servants who work in a constituency or have extensive contacts with the public in a constituency are well advised not to accept appointment by a candidate in the constituency to be his agent. Civil servants who are allowed to participate in electioneering activities, including the seeking of election donations, for any candidate should not use or be seen to use any public resources in such activities. *[Amended in September 2007 and August 2008]*

## **PART V : ELECTION AGENT**

### **Appointment**

6.6 A candidate may appoint **1** election agent to assist him and to act on his behalf in an election [s 26(1) of the EAC (EP) (DC) Reg]. The appointment may be made at any time after a candidate hands in his own nomination form.

6.7 The candidate must give notice of such appointment to the RO for the constituency for which the candidate is nominated [s 26(3) of the EAC (EP) (DC) Reg]. The notice must be in the specified form and signed by both the candidate and the agent [s 26(5) and (6) of the EAC (EP) (DC) Reg]. The appointment will not be effective until the notice of appointment is received by the RO [s 26(4) of the EAC (EP) (DC) Reg].

6.8 However, before the notice of appointment is received, the acts of the election agent purported to be appointed by the candidate and the expenses incurred by any purported agent for promoting the election of the candidate or for prejudicing the election of another candidate or other candidates may be treated as the candidate's own acts and election expenses. 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 such expenditure** [s 23 of the ECICO].

### **Revocation**

6.9 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 to the RO. A revocation of an appointment of an election agent will not be effective until such notice is received by the RO. [S 26(8), (9) and (10) of the EAC (EP) (DC) Reg]

6.10 If an election agent passes away or has his 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. 6.7 above [s 26(11), (12) and (13) of the EAC (EP) (DC) Reg]. If the new election agent wishes to observe the poll at a dedicated polling station situated in a prison (other than a maximum security prison), he is required to follow the arrangements set out in paras. 6.11 to 6.15 below). *[Amended in January 2010]*

### **Notification**

6.11 Not later than 10 days after the expiration of the nomination period, and thereafter as required, each validly nominated candidate or his election agent will receive from the RO a notice containing the details of all the

election agents appointed by all candidates for the constituency concerned [s 27(1) and (3) of the EAC (EP) (DC) Reg]. The RO will also display outside his office a notice of the particulars of the election agents [s 27(5) of the EAC (EP) (DC) Reg].

### **Role of an Election Agent**

6.12 A duly appointed election agent ranks in the **most important position** amongst all kinds of agents of a candidate. He has the **authority to do everything a candidate is authorised to do** for the purposes of the election, **except:**

- (a) anything a candidate is required to do in relation to his nomination;
- (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 be present in a dedicated polling station situated in a maximum security prison.

[S 26(14) and (15) of the EAC (EP) (DC) Reg] *[Amended in September 2007 and January 2010]*

**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 election agent. If the election agent fails in his duties, he 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 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.]

6.13 Candidates and their election agents are entitled to be present at the counting of the votes and are normally allowed admission to all polling stations in respect of the constituency concerned. 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 prison other than a maximum security prison, must lodge an application in the specified form with the CEO at least one week before the polling day. The election agent may not be present at that dedicated polling station unless the CCS has given consent to his presence. If the CCS refuses to give consent to the application lodged, he will notify the candidate or his election agent as soon as practicable [s 26(15) and (18) of the EAC (EP) (DC) Reg]. *[Amended in January 2010]*

6.14 The CCS may, on an application lodged during the week before the polling day, give consent if he is satisfied that a person 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 prison concerned during that week and the application is lodged without undue delay after the admission or transfer. The REO will post and update on its website

the number of registered electors who are imprisoned or held in custody in individual prisons on every working day starting from three weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference [s 26(17) of the EAC (EP) (DC) Reg]. *[Added in January 2010]*

6.15 No election agent may be present at a dedicated polling station situated in a prison if a polling agent has already been appointed by the same candidate for that polling station [s 26(16) of the EAC (EP) (DC) Reg]. *[Added in January 2010]*

6.16 The PRO of a polling station may regulate the number of candidates and their 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. **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**

6.17 A candidate may authorise any number of election expense agents to incur election expenses on his behalf in an election [s 28(1) of the EAC (EP) (DC) Reg]. The authorisation will remain in force until the end of the election period, ie the end of the polling day or the last polling day if there is more than

1 polling day [ss 2 and 23 of the ECICO]. *[Amended in September 2007]*

6.18 The authorisation shall be in writing on a specified form and state the name, identity document number and address of the election expense agent; and must specify the maximum amount of election expenses the agent may incur. It should be signed by both the candidate and the agent [s 28(3), (4) and (5) of the EAC (EP) (DC) Reg]. A copy of the authorisation must be lodged with the RO for the constituency, or the CEO if the RO has not been appointed, by the candidate. [S 28(6) of the EAC (EP) (DC) Reg] *[Amended in September 2007]*

6.19 The authorisation is not effective until it has been received by the RO or the CEO as the case may be. Before the authorisation is received, no election expenses should be incurred by a person purported to be authorised in the authorisation 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 a candidate's election expense agent to incur such expenses [s 23 of the ECICO]. The expenses so incurred may also be counted as the candidate's election expenses.

### **Revocation**

6.20 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 and in the specified form to the RO, or the CEO if the RO has not been appointed [s 28(11) and (12) of the EAC (EP) (DC) Reg]. The RO or the CEO, as the case may be, will only regard a revocation as effective when he receives the notice [s 28(13) of the EAC (EP) (DC) Reg]. The election expenses already incurred will still be counted as election expenses of the candidate. *[Amended in September 2007]*

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

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

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

6.22 Every candidate is under a **duty**, subject to criminal penalty for breach, to submit to the CEO a return and declaration of his election expenses and donations with supporting receipts and/or invoices not later than 30 days after the publication in the Gazette of the result of the election, or not later than 30 days after the declaration of the termination of the election proceedings under the relevant electoral law, or not later than 30 days after the declaration of the failure of the election under the relevant electoral law [s 37 of the ECICO and Part IV of Chapter 15]. For the efficient and effective discharge of his duty, the candidate should **make sure** that his election expense agents will keep account of all election expenses incurred on his behalf and will provide to him, as soon as practicable but not later than the same 30 days period, a detailed statement of expenditure in which each item of expenditure of \$100 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 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 is more than \$1,000, it should be supported by a copy of the receipt issued to a donor (in a specified form signed by the donor). Without such statements and vouchers provided by the election expense agents, the candidate will no doubt have difficulty in discharging his duty to file the return and declaration of

election expenses and donations, which **may render him liable for a criminal offence.** *[Amended in September 2007]*

### **Public Inspection of Authorisation**

6.23 The RO will make available for public inspection all copies of authorisations submitted by candidates until the expiration of the period for which copies of the election return lodged by the candidates are available for inspection, ie up to the first anniversary of the date on which the result of the election is published. This offers the public and other candidates an opportunity to scrutinise the amount of election expenses [s 29 of the EAC (EP) (DC) Reg].

## **PART VII : POLLING AGENTS**

### **Appointment**

6.24 A candidate may appoint **not more than 2 polling agents** for each polling station, other than a dedicated polling station situated in a prison, in respect of the constituency for which he is nominated. A candidate may appoint only one polling agent for a dedicated polling station situated in a prison subject to the consent of the CCS. No polling agent may be appointed if the CCS has given consent to the presence of the election agent of that candidate in that polling station. No polling agent may be appointed for a dedicated polling station situated at a maximum security prison [s 45(3) and (5A) of the EAC (EP) (DC) Reg]. *[Amended in January 2010]*

6.25 The appointment of a polling agent for a polling station other than a dedicated polling station situated in a prison shall be made on a specified form. The candidate must give notice of such appointment in writing signed by him to the RO at least **7 days** before the polling day [s 45(5) and (8) of the EAC (EP) (DC) Reg]. Where a candidate appoints a polling agent after the above deadline, he 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 **personally** by delivering the notice of appointment to the PRO at the relevant polling station on the polling day and before the agent concerned enters the polling station [s 45(6) of the EAC (EP) (DC) Reg]. The appointment will not be effective until the notice of appointment is received by the RO or the PRO, as the case may be [s 45(7) of the EAC (EP) (DC) Reg]. *[Amended in January 2010]*

6.26 For the appointment of a polling agent for a dedicated polling station situated in a prison other than a maximum security prison, the candidate must lodge an application in a specified form with the CEO at least one week before the polling day. The appointment will not be effective unless the CCS consents to the appointment. If the CCS refuses to give consent to the application lodged, he will notify the candidate or his election agent as soon as practicable [s 45(5A) and (5C) of the EAC (EP) (DC) Reg]. *[Added in January 2010]*

6.27 The CCS may, on an application lodged during the week before the polling day, give consent if he is satisfied that a person imprisoned or held in custody by the CSD, who is entitled to vote for the relevant constituency at the polling station concerned, is admitted or transferred to the prison concerned during that week and that the application is lodged without undue delay after the admission or transfer. The REO will post and update on its website the number of registered electors who are imprisoned or held in custody in individual prisons every working day starting from three weeks before the

polling day and on Saturday immediately before the polling day for candidates' reference. [S 45(5B) of the EAC (EP) (DC) Reg] *[Added in January 2010]*

### **Revocation**

6.28 The appointment of a polling agent may be revoked by the candidate at any time. The candidate must also give notice of revocation in writing and in the specified form, to the RO before the polling day or to the PRO other than a PRO of a dedicated polling station in a prison on the polling day in the same manner as specified in paragraph 6.25 [s 45(9), (10) and (11) of the EAC (EP) (DC) Reg]. A revocation of an appointment of a polling agent will not be effective until notice thereof is received by the RO or the PRO other than a PRO of a dedicated polling station situated in a prison, as the case may be [s 45(12) of the EAC (EP) (DC) Reg]. For the revocation of a polling agent appointed for a dedicated polling station in a prison, the candidate must give a notice in the specified form to the RO. If a replacement polling agent is appointed and he wishes to observe the poll at a dedicated polling station in a prison (other than a maximum security prison), he is required to follow the arrangements set out in paras. 6.24 to 6.27 above. *[Amended in January 2010]*

### **Role of Polling Agents**

6.29 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 Polling Agents should be Aware of**

6.30 On behalf of each candidate, only 1 polling agent may be admitted at any one time to the polling station for which he has been appointed

[s 47(6) of the EAC (EP) (DC) Reg]. He is required to stay and keep his movements within the area designated for observation of the poll and not outside. Where a candidate or his election agent is present within a polling station, a polling agent of that candidate may not be present at the same time within the polling station [s 47(7) and (8) of the EAC (EP) (DC) Reg]. [See also Part IV of Chapter 4 regarding the admission of candidates, election agents and polling agents to the polling station.] *[Amended in January 2010]*

6.31 Before entering a polling station, every person, other than an elector, a police officer, an officer of the CSD or an officer of a law enforcement agency or a member of the Civil Aid Service on duty, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting [s 93 of the EAC (EP) (DC) 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 and, in particular, not to divulge which elector has voted for which candidate. *[Amended in January 2010]*

6.32 On attending the polling station for which he has been appointed, a polling agent shall report to the PRO and produce his identity card and the Declaration of Secrecy completed by him for inspection [s 47(10) of the EAC (EP) (DC) Reg].

6.33 The following will occur before, during and after the poll on the polling day:

(a) Before

- (i) Before the commencement of the polling, the PRO will inform the candidates or their agents (either election agent or polling agent) if they are present, the number of ballot

papers in his (the PRO's) possession, showing them the books of ballot papers not yet issued to any elector (“**UNISSUED** ballot papers”).

- (ii) The PRO will show the empty ballot boxes to such persons before proceeding to lock and seal them.

(b) During

- (i) In the course of polling, the PRO will show to each candidate or his election or polling agent, who is present at the relevant time, any abandoned ballot papers that have been issued or any torn pieces of such ballot papers found lying anywhere in the polling station (“**UNUSED** ballot papers”). Such ballot papers will not be put into a ballot box and will not be counted at the counting of votes. [Ss 61 and 78 of the EAC (EP) (DC) Reg]

- (ii) Where a person, representing himself to be a particular elector entered on the register, applies for any ballot paper after a person has been issued with any ballot paper as such an elector, he may be issued with a ballot paper with the word “**TENDERED**” endorsed on the front. Such ballot paper will not be counted at the counting of votes. [Ss 60 and 78 of the EAC (EP) (DC) Reg]

- (iii) Any elector who has inadvertently torn or damaged any ballot paper or has made an error in marking any ballot paper issued to him may ask the PRO to exchange it for another ballot paper. Such spoilt ballot paper will be endorsed on the front with the word “**SPOILT**” and will

be kept by the PRO. The spoilt ballot papers will not be counted at the counting of votes. [Ss 62 and 78 of the EAC (EP) (DC) Reg]

(c) After

The PRO will, in the presence of persons present, lock the flap on the lid of the ballot boxes and seal it. He will also inform each candidate or his agent who is present of the number of the following types of ballot papers in his possession: unissued ballot papers, unused ballot papers, and spoilt ballot papers. Candidates, their election agents, polling agents and counting agents, if present, may stay inside the polling station to observe the conversion of the venue into a counting station. The count will commence upon the completion of the conversion. *[Amended in August 2008]*

6.34 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 do anything that may interfere with the conduct of the poll. A polling agent **MAY**:

- (a) leave the polling station at any time during the poll in which case his place may be taken by a candidate, an election agent or another polling agent appointed to attend at the polling station [see para. 6.30];
- (b) observe the locking and sealing of empty ballot boxes before the poll commences and the locking and sealing of the ballot boxes 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 to facilitate checking when the sealing certificate is broken at the counting station.

- (c) observe the issue of ballot papers to electors and the crossing out of the relevant entries from the copy of the register of electors, subject to the condition that they cannot interfere with the work of the polling staff;
- (d) where there is reasonable ground for questioning the bona fides of an elector, ask the PRO to put the following prescribed questions (subject to necessary modifications) to that person at the time of his application for a ballot paper (but not afterwards):
  - (i) Are you the person registered in the final register of electors now in effect for this constituency, as follows (reads the whole of the relevant entry in the register)?
  - (ii) Have you already voted for this or any other constituency in this election?

**NOTE :**

The person will not be issued with any ballot paper unless he has answered the questions to the satisfaction of the PRO. [S 54(3) and (4) of the EAC (EP) (DC) Reg]

- (e) where there is reasonable cause to believe that a person who has applied for a ballot paper has engaged in impersonation, declare it to 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 substantiate the charge in a court of law. [S 55 of the EAC (EP) (DC) Reg]

*[Amended in January 2010]*

6.35 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 if the RO, the ARO, the PRO, the Deputy PRO, the Assistant PRO or any polling officer has given direction to him not to do so, or interfere with or attempt to interfere with any ballot boxes, ballot papers, the marked copy of the register 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 about 1 metre, or 2 metres if the configuration allows, around the voting compartments. Moreover, it is most improper for a polling agent to ask an elector about his identity card number, let alone check an elector's identity card;
- (c) 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;

- (d) exhibit or leave or distribute any campaign material;
- (e) without any reasonable excuse, display any propaganda material, eg 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 a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election;
- (f) use a mobile telephone or any telephone or paging machine or any other form of electronic communication device if the RO, the ARO, the PRO, the Deputy PRO, the Assistant PRO or any polling officer has given direction to him not to do so.

[S 48 of the EAC (EP) (DC) Reg] *[Amended in September 2007]*

6.36 A polling agent must not misconduct himself in or in the vicinity of a polling station or fail to obey any lawful order of the RO or the PRO; otherwise he commits an offence punishable with a fine and imprisonment and may be ordered by such officer to leave the area. If he fails to leave immediately, he may be removed by:

- (a) a police officer if the polling station is not a dedicated polling station; or
- (b) an officer of the CSD or a law enforcement agency if the polling station is a dedicated polling station; or

- (c) any other person authorized in writing by the RO or the PRO to remove him.

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 49 of the EAC (EP) (DC) Reg] *[Amended in January 2010]*

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

6.37 Most of the persons admitted to a polling station will be wearing identifications (eg badges). 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 who is about to vote or has voted. [See s 94(8) of the EAC (EP) (DC) Reg]

6.38 There may be electors with a disability who have been permitted to vote in the polling station specifically designated for the constituency for the purpose. Candidates or their agents can make inquiries with the RO for information.

6.39 Only the PRO, the Deputy PRO or an Assistant PRO may, in the presence of one of the Polling Officers as a witness, help an elector who claims he is unable to read or write or incapacitated by visual deficiency or other physical cause to mark a ballot paper to indicate the choice of the elector [s 59 of the EAC (EP) (DC) Reg]. The responsible officer should inform the candidates and their agents who are present when such a request for assistance is received. A candidate or his polling agent in the polling station may request the PRO, the Deputy PRO or an Assistant PRO to choose a particular Polling Officer who is not working at the issuing counter as the witness, but the final

decision as to which Polling Officer should be the witness remains with the PRO, Deputy PRO or Assistant PRO. An incapacitated elector's relatives, friends and any other persons are in no circumstances allowed to accompany the elector in the course of voting.

6.40 In each polling station, a number of **templates** are made available for the use of the visually impaired elector, if he chooses, to facilitate him to mark his vote on the ballot paper [s 59(3) of the EAC (EP) (DC) Reg]. The template contains the following features:

- (a) the template for each constituency is of the same width and length as the ballot paper;
- (b) the template contains embossed numbers or numbers in braille starting with the first numeral in a sequence assigned to the candidates of the constituency on the top followed downwards by other numerals in that sequence, and on the right hand side against each of the number is a round hole;
- (c) the **left hand top corner** of the ballot paper and the template is cut so as to enable the elector 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 on the ballot paper, each embossed or brailled 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 number. The number of candidates in the constituency equals the number of holes under which there is ballot paper.

The choice of candidate is made by the visually impaired elector by pressing the chop with a “✓” sign provided on the circle (through the holes of the templates) against the candidate’s number.

6.41 No person may canvass or display any election propaganda material relating to any candidate or the election within a polling station. Candidates and their agents should not bring electioneering literature into the polling station or leave them there and should remove any promotional badges, emblems, clothing and head-dress before entering. A person must not use a sound amplifying system or device for any purpose within the NCZ; nor should he use such system or device or conduct any activity (eg lion dance), for canvassing, so that the sound emitted by it can be heard in the NCZ. Also, a person must not stay or loiter in the NSZ without the express permission of the PRO. Any person who undertakes photographing, filming and video or audio recording within the polling station without the express permission of the PRO, or the RO for the constituency, or a member of the EAC, commits an offence [s 48(2) of the EAC (EP) (DC) Reg]. Normally such permission is only granted to members of the media or government photographers for publicity purposes. Polling agents should also read Parts I – VI of Chapter 4 on all matters relating to polling and in particular, paras. 4.29 and 4.30 for activities that are prohibited, and the consequences of conducting such activities, in a polling station. *[Amended in September 2007]*

6.42 If a candidate or his election or polling agent has any complaint about whatever happens inside a polling station, he should follow the procedures laid down in para. 19.9 of Chapter 19.

## **PART VIII : COUNTING AGENTS**

### **Appointment**

6.43 A candidate may appoint not more than 2 counting agents for each counting station to attend at the count and for each ballot paper sorting station to observe the sorting of ballot papers received from dedicated polling stations [ss 2(3) and 66(2) of the EAC (EP) (DC) Reg]. *[Amended in January 2010]*

6.44 The appointment should be made on a specified form [ss 2(3) and 66(6) of the EAC (EP) (DC) Reg]. The candidate must give notice of such appointment in writing to the RO at least **7 days** before the polling day [ss 2(3) and 66(4) of the EAC (EP) (DC) Reg]. Where a candidate appoints a counting agent after the above deadline, the notice of the appointment must be given by the candidate or the election agent **personally** by delivering the notice of appointment to the PRO during the period from the commencement of the poll to the conclusion of the count or the completion of the sorting of ballot paper as the case may be, but before the agent concerned enters the counting station or the ballot paper sorting station [ss 2(3) and 66(5) of the EAC (EP) (DC) Reg]. The appointment will not be effective until the notice of appointment is received by the RO or the PRO, as the case may be [ss 2(3) and 66(7) of the EAC (EP) (DC) Reg]. *[Amended in January 2010]*

### **Revocation**

6.45 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 and in the specified form to the RO [ss 2(3) and 66(9) of the EAC (EP) (DC) Reg]. Any such notice given after the commencement of the poll shall

be given by the candidate or his election agent **personally** by delivering the notice to the PRO [ss 2(3) and 66(10) of the EAC (EP) (DC) Reg]. A revocation of an appointment of a counting agent will not be effective until notice thereof is received by the RO or the PRO, as the case may be [ss 2(3) and 66(11) of the EAC (EP) (DC) Reg]. *[Amended in January 2010]*

### **Role of Counting Agents**

6.46 Counting agents are appointed to attend at:

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

This arrangement ensures the transparency of the counting and sorting process and is conducive to openness and fairness. [See Part VII and Part VIII of Chapter 4: Polling and Counting Arrangements.] *[Amended in January 2010]*

### **Provisions which Counting Agents should be Aware of**

6.47 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 the police officers and members of the Civil Aid Service on duty, must make a Declaration of Secrecy on a specified form and observe the provisions governing the secrecy of voting. 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. Members of the public present within the area designated by the PRO will not be required to make a Declaration of Secrecy. *[Amended in January 2010]*

6.48 On attending the counting station or the ballot paper sorting station, a counting agent shall report to the relevant PRO and produce his identity card and the Declaration of Secrecy completed by him for inspection [ss 2(3) and 68(4) of the EAC (EP) (DC) Reg]. *[Amended in January 2010]*

6.49 Generally speaking, counting agents are entitled to be present throughout the count to observe the relevant counting proceedings. They will be allowed by the PRO to stay close to, and round the counting tables to monitor the count. A counting agent in a counting station may:

- (a) observe the opening of the ballot boxes for the relevant constituency by the 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 Officers including how individual votes are counted; and
- (d) observe, where he wishes, the packing of ballot papers by the Counting Officers and the PRO at the conclusion of the count.

*[Amended in January 2010]*

- 6.50 A counting agent in a ballot paper sorting station may:
- (a) observe the opening of the ballot boxes received from dedicated polling stations;
  - (b) inspect any papers other than the envelopes, which contain cast ballot papers, taken from the ballot boxes before they are disposed of;
  - (c) observe the counting of the envelopes, which contain cast ballot papers, in each ballot box;
  - (d) observe the sorting of the aforesaid envelopes according to each constituency; and
  - (e) observe the sealing of the receptacles containing the sorted envelopes before they are delivered to the PRO of the respective main counting stations of the relevant constituencies.

*[Added in January 2010]*

- 6.51 A counting agent **MUST NOT**:
- (a) handle, separate or arrange ballot papers or envelopes; and
  - (b) misconduct himself in or in the vicinity of a counting station or a ballot paper sorting station, or fail to obey any lawful order of the PRO; otherwise he commits an offence punishable with a fine and imprisonment and may be ordered by the PRO to leave the area. If he fails to leave immediately, he may be removed by a police officer or by any other person authorised in writing by the

PRO to remove him. 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 PRO, as the case may be. [Ss 2(3) and 70 of the EAC (EP) (DC) Reg]

*[Amended in January 2010]*

6.52 Counting agents should read Part VII and Part VIII of Chapter 4 on all matters relating to sorting of ballot papers and counting of votes, and in particular, paras. 4.38 to 4.42 and paras. 4.46 to 4.49 for activities that are prohibited, and the consequences of conducting such activities, within the ballot paper sorting station and counting station. *[Amended in September 2007 and January 2010]*