

CHAPTER 5

POLLING AND COUNTING ARRANGEMENTS

PART I : BEFORE THE POLL

5.1 Out of the 38 subsectors, the NPC subsector as well as the LegCo subsector are filled by ex-officio members and the religious subsector nominates its EC members (see Chapter 2). No election is therefore necessary for these 3 EC subsectors.

5.2 For the remaining subsectors, the CEO will, in respect of a subsector election, designate one or more places as a polling station(s), a dedicated polling station(s)³, or a counting station(s). [S 28 of the EAC (EP) (EC) Reg] *[Amended in January 2010]*

5.3 Depending on the circumstances, there may be one central polling station or a number of polling stations [s 28 of the EAC (EP) (EC) Reg]. In the latter case, the polling station allocated to a voter or AR will be based on his registered residential address, save for registered voters and ARs imprisoned or held in custody by the law enforcement agencies who will be assigned to vote at the appropriate dedicated polling stations. The RO for each subsector will, at least 1 working day before polling day, give notice of time and place of counting of votes to candidates [s 63 of the EAC (EP) (EC) Reg]. *[Amended in September 2006 and January 2010]*

³ A dedicated polling station means a place situated inside penal institutions or other suitable places at which voters and ARs of corporate voters, who will be imprisoned or held in custody by the law enforcement agencies on the polling day, will be allocated to vote.

5.4 At least 5 days before the polling day, poll cards notifying voters of contested subsectors of the date, time and place of the poll will be sent to their registered address or correspondence address (if any). To allow voters and ARs who will be serving a sentence of imprisonment on the polling day to receive the poll cards as early as possible, the REO will send the poll cards to their prison address as far as practicable [s 31 of the EAC (EP) (EC) Reg]. *[Amended in January 2010]*

5.5 In the case where the number of validly nominated candidates for a subsector does not exceed the number of vacancies, the candidate(s) will be declared elected [s 19 of the EAC (EP) (EC) Reg]. Voters in respect of that subsector do not need to vote, and a notice to that effect will be sent to them.

5.6 A voter (and AR of a corporate voter) **may vote only at the polling station(s) allocated to him** by the CEO. Many of the polling stations are accessible to persons with a disability including those who have difficulty in walking. Voters/ARs with a disability finding it difficult for them to access the polling station allocated to them may **at least 3 days** before the polling day apply to the CEO for re-allocation of a polling station specifically designated for such voters (“special polling station”). Whether the polling station allocated to a voter/AR is accessible to persons with mobility difficulty will be specified clearly in the location map attached to the poll card sent to each voter/AR, together with a note indicating that if any voter/AR allocated to this polling station has any difficulty in mobility and wishes to vote at a special polling station, he may apply to the CEO for re-allocation. If a special polling station is re-allocated to him, then he can vote only at that polling station. If circumstances permit, free Rehabus service will also be arranged to take those voters/ARs to the special polling station. In case circumstances require, the CEO may allocate to a voter or AR an alternative polling station, in addition to or in substitution of the one originally allocated to him [s 30(4) of the EAC (EP) (EC)

Reg]. Voters and ARs concerned can make enquiries with the REO on this subject by telephone or facsimile. *[Amended in September 2006]*

5.7 Due to security reasons, there is a need to separate some persons imprisoned or held in custody from others inside the penal institutions. The Commissioner of Correctional Services (“CCS”) will assign a time slot during the polling hours of a dedicated polling station situated in a penal institution to a voter/AR allocated to that polling station to vote, and inform the voter /AR of the time slot assigned. The CCS must assign time slots so as to give the voters/ARs a reasonable opportunity to vote. A voter/AR to whom a time slot is assigned may only cast his vote during that time slot (see para. 5.18 below). [S 27(2A), (2B), (3A) and (4A) of the EAC (EP) (EC) Reg] *[Added in January 2010]*

PART II : INSIDE THE POLLING STATION

5.8 The poll normally starts at 7:30 am and ends at 10:30 pm. For security reasons, dedicated polling stations situated in prisons normally open from 9:00 am to 4:00 pm. About 15 minutes before the commencement of polling, the Presiding Officer (“PRO”) will show the candidates, their election agents or polling agents, if they are present, the empty ballot boxes before proceeding to lock and seal them. Candidates concerned or their agents may observe the locking and the sealing of the ballot boxes. For each candidate, only 1 such person may be present to observe the locking and the sealing of the ballot boxes: a candidate, his election agent or his polling agent. For security reasons,

- (a) only a maximum of 2 candidates may be present to observe the locking and the sealing of the ballot boxes at a dedicated polling station situated inside a maximum security prison, and

- (b) a maximum of 2 candidates, election agents or polling agents may be present to observe the locking and the sealing of the ballot boxes at a dedicated polling station situated in a prison other than a maximum security prison.

Admission of candidates, election agents or polling agents to the aforesaid dedicated polling stations to observe the locking and sealing of ballot boxes will be on a **first-come-first-served basis**. [See also Chapter 7 on the procedures for applying for the presence of election agents or polling agents in dedicated polling stations situated in prisons.] *[Amended in January 2010]*

5.9 The PRO will also inform and show to the relevant candidates, their election agents or polling agents, if they are present, the number of unissued ballot papers in respect of each subsector which are in his possession. The ballot papers are distinguishable by different colour patterns and code numbers. *[Amended in January 2010]*

PART III : OUTSIDE THE POLLING STATION

5.10 Where circumstances permit, the PRO will arrange an enlarged copy of the relevant Introduction to Candidates published by the REO to be displayed outside the polling station, or if it is a dedicated polling station inside the polling station to facilitate easy reference by voters [s 39(1)(a) of the EAC (EP) (EC) Reg]. A no canvassing zone (“NCZ”) will be designated outside each polling station to ensure the free and safe passage of voters into the polling station. Door-to-door canvassing and for the purpose of such canvassing, the display of any badge, emblem, clothing or head-dress, which may promote or prejudice the election of a candidate or candidates at the election, or makes direct

reference to a body any member of which is standing as a candidate in the election or to a political body in Hong Kong, will be allowed on the storeys above or below street level in a building within a NCZ other than a building in which there is a polling station, provided that permission has been obtained for entry to the building for canvassing votes, and that obstruction is not posed to voters and no sound amplifying device is used. Apart from this, the RO or the PRO of the relevant polling station will allow no other canvassing activities within a NCZ except for static display of election advertisements that are authorised. A notice of the declaration of a NCZ and a map or plan showing the boundary of the area will be put up at or near the polling station. A “no staying zone” (“NSZ”) in which no one is allowed to stay or loiter will also be designated immediately outside the entrance/exit of a polling station to avoid any obstruction of entry/exit. [See Chapter 14: Prohibition Against Canvassing Activities Outside Polling Stations] *[Amended in September 2006 and January 2010]*

5.11 On the polling day, a person must not:

- (a) other than the door-to-door canvassing activities stated in para. 5.10 above, engage in canvassing (including suggesting not to vote for any candidate) within the NCZ;
- (b) use a sound amplifying system or device for any purpose within the NCZ;
- (c) use a sound amplifying system or device, for canvassing, so that the sound emitted by it can be heard in the NCZ;
- (d) without reasonable excuse, display in the NCZ 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 political body in Hong Kong; or
- (e) stay or loiter in the NSZ without the express permission of the PRO;

otherwise he commits an offence with a maximum penalty of a fine at level 2 (up to \$5,000) and imprisonment for 3 months [ss 40 and 45 of the EAC (EP) (EC) Reg]. *[Amended in September 2006]*

PART IV : ADMISSION TO THE POLLING STATION

5.12 Other than voters, the following persons may also be admitted to a polling station:

- (a) the PRO and other polling staff;
- (b) the Chief Returning Officer (“CRO”) (Subsectors), the ROs and Assistant Returning Officers (“AROs”);
- (c) members of the EAC;
- (d) the CEO;

- (e) public officers on duty at the polling station, including police officers and members of the Civil Aid Service;
- (f) officers of the CSD and other law enforcement agencies on duty at dedicated polling stations;
- (g) candidates and election agents of relevant subsectors^{Note};
- (h) polling agent(s) appointed for the polling station (this does not apply to dedicated polling stations situated in maximum security prisons^{Note});
- (i) public officers authorised in writing by the CEO;
- (j) any person authorised in writing by a member of the EAC;
- (k) a person authorised in writing by the RO for liaison purposes; and
- (l) a child who accompanies a voter to the polling station for the purpose of voting (if the PRO considers that the child should not be left unattended while that voter is in the polling station and the child will not disturb or cause inconvenience to any person in the polling station).

[S 44 of the EAC (EP) (EC) Reg] *[Amended in September 2006 and January 2010]*

A notice will be displayed at the entrance to polling stations other than dedicated polling stations that only the above persons and voters may be allowed to enter.

NOTE (para. 5.12(g) and (h)):

- (a) For the purpose of maintaining order in the polling station, the PRO may regulate the number of voters, candidates, election agents and polling agents to be admitted to the polling station at any one time.
- (b) For each candidate, only 1 such person may be present in the polling station to observe the poll at any one time: a candidate, his election agent or his polling agent. A notice will be displayed outside each polling station showing the capacity of the designated area inside the polling station for candidates, their election agent or polling agents to observe the poll.
- (c) Admission of candidates, election agents and polling agents will be on a **first-come-first-served basis**. In order that as many candidates, election agents and polling agents as possible will have the chance to observe the poll at the polling station, any candidate, election agent or polling agent who has been admitted to the polling station can only stay for 1 hour. He must then leave the polling station unless there is no other candidate, election agent or polling agent waiting for admission. He can apply for re-admission into the polling station again on a first-come-first-served basis.
- (d) Anyone on admission into a polling station has to sign and enter his time of entry on a log sheet. A candidate, election agent or polling agent who has to queue outside the polling station for his turn to observe the poll at the designated area will be given a

number chit that indicates the order of admission. The polling staff will call out the number to admit the holder of the number chit concerned. If the holder concerned is not present at the time, his place will be taken over by the person next in line. He who has lost his place due to his absence will have to obtain a new number chit when he returns.

- (e) For security reasons, only a maximum of 2 candidates may be present at any one time to observe the poll at a dedicated polling station situated inside a maximum security prison, and a maximum of 2 candidates, election agents or polling agents may be admitted to a dedicated polling station situated in a prison other than a maximum security prison at any one time. Observers will have to take turn in case more than two candidates/agents intend to observe the poll at the same time. The PRO may regulate the number of people entering the dedicated polling stations. [See also Chapter 7: Appointment and Roles of Election Agent, Election Expense Agents, Polling Agents and Counting Agents]

[Amended in January 2010]

5.13 Except for a voter, a police officer, an officer of the CSD, an officer of any law enforcement agency or a member of the Civil Aid Service on duty, all other persons permitted to enter a polling station are required to sign a **Declaration of Secrecy** on a specified form and observe the provisions governing the secrecy of voting [s 92 of the EAC (EP) (EC) Reg]. *[Amended in January 2010]*

PART V : CONDUCT INSIDE THE POLLING STATION

5.14 On arrival at the polling station, a voter or AR should show to the polling staff at the ballot paper issuing desks his identity card or such other identity document or documents, which show the identity card/document number, name and photograph of the voter/AR, to the satisfaction of the PRO. The polling staff will check the voter/AR's identity document against the entries on the copy of registers of voters to ascertain if the voter/AR is registered in respect of the subsector concerned. If so, the polling staff will inform him. The polling staff will then call out the name of the voter/AR as stated in the entry in the copy of the register of voters and cross out the name and the identity document number of that entry, before giving him either 1 or 2 different ballot papers, as appropriate. A voter/AR may be asked to check his own entry on the register to ensure that he has been given the correct ballot paper(s). No record will be made as to which particular ballot paper(s) is given to a voter/AR.

5.15 For control purpose regarding the total number of ballot papers issued, the counterfoil of each ballot paper bears a serial number on its front. The serial number on the counterfoil will not, however, be recorded or related to the particular voter to whom the ballot paper is issued.

5.16 If there is reasonable ground for questioning the bona fides of a voter/AR, the PRO shall ask him the following questions at the time of his application for a ballot paper (but not afterwards):

- (a) Are you the person registered in the subsector FR now in effect for this subsector, as follows (reads the whole of the relevant entry or entries in the register)?

- (b) Have you already voted for this subsector?

A person will not be issued with any ballot paper unless he has answered the questions to the satisfaction of the PRO. [S 51 of the EAC (EP) (EC) Reg]

5.17 Where there is reasonable cause to believe that a person has committed an offence of impersonation of a voter or AR, the PRO may request the police officer on duty at the polling station to arrest that person. If the polling station is a dedicated polling station, the PRO may request the officer of the CSD or of the law enforcement agency to remove the person concerned from the polling station and report the case to the police [s 52 of the EAC (EP) (EC) Reg].
[Amended in January 2010]

5.18 If a voter/AR has been issued with a ballot paper but chooses not to take it, he cannot return to the polling station later on and claim for that or another one. If for a reason considered justified by the PRO, a voter/AR who has not marked the ballot paper issued to him, may, with the permission of the PRO, hand back the ballot paper to the PRO and return later to cast his vote. For a dedicated polling station situated in a prison, the voter/AR has to return to cast his vote within the existing or newly assigned time slot. If, after having been issued with a ballot paper, a voter/AR has become incapacitated by physical illness and has left the polling station without marking his ballot paper, he may return to the polling station to cast his vote before the close of the poll, provided that before he leaves the polling station, his ballot paper has been retrieved by the PRO. For a dedicated polling station situated in a prison, the voter/AR has to return to cast his vote within the existing or newly assigned time slot. Under either of the above circumstances, the following actions must be taken by the PRO and/or the CCS:

- (a) the PRO must keep that ballot paper in his custody and return it, in the presence of a police officer for polling stations other than a dedicated polling station or an officer of the CSD or of the concerned law enforcement agency for a dedicated polling station, to the voter/AR in question when the latter returns before the close of poll to cast his vote. But if at the close of poll, the voter/AR has not returned, the PRO shall endorse the ballot paper with the word “UNUSED”; such ballot paper shall not be counted. [Ss 55 and 77 of the EAC (EP) (EC) Reg]; and/or
- (b) the CCS must, as far as practicable, assign to a voter/AR of a dedicated polling station situated in a prison a new time slot during the polling hours appointed for the dedicated polling station and notify the voter/AR of the time slot.

[Amended in September 2006 and January 2010]

5.19 The PRO would need to keep a ballot paper left in the polling station in his custody in the circumstances described in para. 5.18 above only when he knows which voter/AR had left the ballot paper behind. Otherwise, a ballot paper found to be left in the polling station should be regarded as “UNUSED”; such ballot paper shall not be counted. *[Amended in September 2006]*

5.20 When issued with ballot paper(s), a voter/AR will also be provided with a cardboard to indicate the number of ballot papers issued (ie, white for one ballot paper and red for two ballot papers). The cardboard will be collected by the polling staff after the voter/AR has inserted his ballot paper(s) into the ballot box(es) before leaving the polling station. This arrangement is to facilitate the polling staff manning the ballot boxes to ensure that a voter has cast all his votes

(one or two) before leaving the polling station and that no person can take away any ballot paper from the polling station.

5.21 After being issued with the ballot paper(s), the voter/AR should immediately proceed to one of the voting compartments where he should mark his ballot paper(s) to indicate his choice of candidate(s) in the following manner, as appropriate:

- (a) when a specially designed ballot paper with **ovals** against the names of the candidates is used, the voter/AR should shade the ovals for the choice of candidates up to the number of vacancies to be filled; *or*
- (b) when the usual type of ballot papers with **circles** against the names of the candidates and a chop with a “✓” sign (provided by the polling staff) are used, the voter/AR must use the chop to mark his choice of candidate(s) in the circles up to the number of vacancies to be filled. The chop is to be affixed to give a single “✓” in the circles on the ballot paper opposite the names of the candidates of the voter’s or AR’s choice.

After marking the ballot paper, the voter/AR should cast his vote in the manner as directed by the EAC. The various ways of casting the vote are as follows:

- (a) to put the ballot paper, unfolded, into the ballot box with the marked side facing down;
- (b) to –
 - (i) fold the ballot paper so that the marked side is inside; and
 - (ii) put the folded ballot paper into the ballot box;

- (c) to –
 - (i) put the ballot paper, unfolded, into an envelope provided at the polling station; and
 - (ii) put the ballot paper contained in the envelope into the ballot box; or
- (d) to –
 - (i) fold the ballot paper so that the marked side is inside;
 - (ii) put the folded ballot paper into an envelope provided at the polling station; and
 - (iii) put the ballot paper contained in the envelope into the ballot box.

[Ss 54 and 56 of the EAC (EP) (EC) Reg] *[Amended in September 2006]*

5.22 Immediately after a voter/AR comes out of the voting compartment, he should put his marked ballot paper(s) into the sealed ballot box as directed by the polling staff and return the cardboard to the polling staff, after which the voter should leave the polling station immediately. *[Amended in September 2006]*

NOTE :

A voter/AR must not remove a ballot paper from a polling station. It is an offence under s 54(4) of the EAC (EP) (EC) Reg for a person to bring out a ballot paper from a polling station. Any person who removes a ballot paper from a polling station with an intent to deceive may commit an offence under s 17(1)(c) of the

ECICO and may be prosecuted. It will also be a corrupt conduct under s 17(1)(d) of the ECICO if any person, without lawful authority, destroys, defaces, takes or otherwise interferes with a ballot paper at the election.

5.23 A visually impaired voter/AR who so requests will be provided with a **template** to facilitate his marking of the ballot paper without any assistance from anyone. The template should be returned to the polling staff after use. [S 57 of the EAC (EP) (EC) Reg] [For details about the template, see para. 7.40 of Chapter 7]

5.24 **The ballot is secret. No one can force a person to vote or not to vote for any particular candidate** [s 13 of the ECICO]. **Also, no one is required to tell which candidate he has voted for or is going to vote for.** A person who, without lawful authority, requires or purports to require a voter/AR to disclose the name of, or any particular relating to, the candidate for whom the voter/AR has voted is guilty of a criminal offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 6 months [s 93(10) of the EAC (EP) (EC) Reg and s 37 of the Schedule to the CEEO]. [*Amended in September 2006*]

5.25 No one shall, at any time, disclose the identity of a voter at a dedicated polling station to protect the voter's privacy and safety. Anyone who makes such disclosure commits an offence punishable by a fine at level 2 (up to \$5,000) and imprisonment up to 6 months. [S 93(1A) of the EAC (EP) (EC) Reg] [*Added in January 2010*]

5.26 Any voter/AR 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 unmarked ballot paper. Such spoiled ballot papers will be endorsed on the front with the word '**SPOILT**' and will be kept by the

PRO. The spoiled ballot papers will not be counted at the counting of the votes.
[Ss 60 and 77 of the EAC (EP) (EC) Reg]

5.27 Where a person, representing himself to be a particular voter or AR of a corporate voter entered on the register, applies for any ballot paper after a person has been issued with any ballot paper as such a voter or AR of such a corporate voter, he may be issued with ballot paper(s) with the word '**TENDERED**' endorsed on the front. Such ballot paper(s) will not be counted at the counting of the votes. [Ss 58 and 77 of the EAC (EP) (EC) Reg] However, if a voter who has been issued with a ballot paper chooses not to cast his vote and leaves the polling station and returns later to claim for that or another ballot paper, the PRO may issue a tendered ballot paper to the voter **ONLY IF** he is not certain that the voter is the one who has been issued with a ballot paper earlier.

5.28 Ballot papers which have been issued (whether marked or unmarked) are sometimes abandoned or found left behind by voters in the voting compartments or lying on the floor of the polling station, or otherwise not used. The intention of the voters is not clear in such cases. Any person who discovers such a ballot paper is required to hand it to the PRO. Such a ballot paper will be endorsed with the word '**UNUSED**' (unless it is not reasonably practicable to do so) and will be kept by the PRO. In no circumstances will the ballot paper be put into a ballot box. Such a ballot paper will not be counted at the counting of the votes. [Ss 59 and 77 of the EAC (EP) (EC) Reg]

5.29 A voter/AR who is unable to mark a ballot paper to indicate the choice of candidate(s) (eg being unable to read or write or incapacitated by visual deficiency or other physical cause) may ask the PRO, Deputy PRO or Assistant PRO to mark the ballot paper on his behalf. The marking of the ballot paper will be made to show the voter/AR's choice in the presence of one of the Polling Officers as a witness. [S 57 of the EAC (EP) (EC) Reg]

5.30 Inside a polling station, a voter/AR must not interfere with or attempt to influence any other voter/AR, specifically:

- (a) speak to or communicate with any other voter/AR if the RO, the ARO, the PRO or any polling officer has given direction to him not to do so;
- (b) attempt to obtain information, or disclose any knowledge acquired, concerning the vote of another voter/AR;
- (c) exhibit or distribute any campaign material;
- (d) 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 to a political body in Hong Kong; or
- (e) 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, or any polling officer has given direction to him not to do so.

If a person contravenes any of the above prohibitions, he commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 3 months [s 45 of the EAC (EP) (EC) Reg]. *[Amended in September 2006]*

5.31 A person must not misconduct himself at 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 polling station or the vicinity of the polling station. A person misconducts himself if he disrupts the poll or disturbs or causes inconvenience to any person in the polling station. A voter/AR must cast his vote without undue delay. If a voter/AR who is allocated to vote at a dedicated polling station fails to cast his vote without undue delay, the RO or the PRO may order him to leave the polling station immediately. If a person fails to leave immediately as ordered by the RO or the PRO, 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 the 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.

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

5.32 Only the following persons may speak to, or communicate with, voters/ARs within a polling station:

- (a) the PRO and other polling staff;
- (b) the ROs and AROs;

- (c) members of the EAC;
- (d) the CEO;
- (e) police officers and members of the Civil Aid Service on duty at the polling station;
- (f) an officer of the CSD or the law enforcement agency on duty at a dedicated polling station;
- (g) a person authorised in writing by the ROs for liaison purposes; and
- (h) any person authorised in writing by a member of the EAC.

[S 45(1) and (6) of the EAC (EP) (EC) Reg] *[Amended in September 2006 and January 2010]*

5.33 No person may canvass or display any election advertisement within a polling station. Any person who undertakes photographing, filming and video or audio recording within a polling station without the express permission of the PRO, or a member of the EAC, or the express permission, in writing, of the RO, commits an offence and will be liable to a fine at level 2 (up to \$5,000) and imprisonment for 6 months [s 45(2) and (8) of the EAC (EP) (EC) Reg]. Normally such permission is only granted to members of the media or government photographers for publicity purposes. *[Amended in September 2006]*

PART VI : CLOSE OF POLL

5.34 Voters/ARs who intend to vote but are not at the door of their designated polling station by the close of poll will not be allowed in afterwards. At the close of poll, the ballot boxes will be locked and sealed by the PRO in the presence of the relevant candidates and their agents, if they are present. The PRO will also inform them of the numbers of unissued ballot papers, spoilt ballot papers and unused ballot papers in his possession. All such ballot papers and the marked copies of the register(s) will then be made up into sealed packets.

5.35 Not more than 2 candidates of the subsectors (or their agents), if they so wish, will be allowed to accompany the PRO in the delivery of the ballot boxes, together with the sealed packets and the ballot paper account prepared by the PRO, from the polling station to the counting station under police escort. Where there are more than 2 of them remaining at the polling station who wish to accompany the PRO in the delivery of the ballot boxes, the PRO will draw lots to determine which 2 candidates or their agents will participate in the delivery. Thereafter, 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, except those 2 persons who are to participate in the delivery, must leave the polling station. *[Amended in September 2006 and January 2010]*

PART VII : THE COUNT

5.36 A central counting station will be set up to conduct the count and announce the election results. The RO for each subsector will, at least 1 working

day before polling day, give notice of time and place of counting of votes to candidates [s 63 of the EAC (EP) (EC) Reg]. The CRO (Subsectors) is to supervise the central counting station and the respective ROs for the subsectors are to be in charge of the counting zone for the relevant subsector. The RO for each subsector, assisted by his AROs and counting staff, will be responsible for the conduct of the count. *[Amended in September 2006]*

5.37 All the ballot boxes will first be delivered to the counting station. The ballot box(es) and ballot paper accounts from a polling station will be given into the charge of the RO (“the relevant RO”). Each ballot box will then be checked to see if it is properly sealed. The seal on the ballot box will be broken by the relevant RO in the presence of the relevant candidates or their election agents or counting agents, if they are present at the time. The ballot box will then be opened and the contents emptied onto a counting table. Thereafter, the relevant RO will -

- (a) sort the ballot papers according to each subsector,
- (b) count the ballot papers for each subsector for verification of the ballot paper account for each subsector,
- (c) hand the ballot papers for those subsectors for which he is not appointed together with the relevant ballot paper accounts (verified) over to the ROs for the respective subsectors,
- (d) count the votes recorded on the ballot paper for the subsector retained by him (for which he is appointed),
- (e) count the votes recorded on the ballot papers for the subsector (for which he is appointed) handed over to him from other ROs,

- (f) determine the validity of questionable ballot papers, and
- (g) compile the final counting results.

The above steps will be appropriately modified if counting is done by computer [ss 73 and 74 of the EAC (EP) (EC) Reg].

5.38 Only the following persons may be present at the counting of votes:

- (a) the CRO (Subsectors);
- (b) the ROs, AROs and counting staff for the relevant subsectors;
- (c) members of the EAC;
- (d) the CEO;
- (e) candidates and their election and counting agents, of the relevant subsectors;
- (f) police officers and members of the Civil Aid Service on duty at the counting station;
- (g) public officers authorised in writing by the CEO;
- (h) any person authorised by the CRO (Subsectors) or the RO in charge of the counting zone of the central counting station; and
- (i) any person authorised in writing by a member of the EAC.

The CRO or the RO will designate a restricted zone inside the counting zone where the counting staff will count the votes. Candidates and their agents must not go into the restricted zone. Any member of the public may observe the counting of the votes from an area (“the public area”) at the counting station set apart for that purpose by the CRO or the RO, unless the CRO or the RO considers that his presence may:

- (a) cause disorder or disturbance in the counting station; or
- (b) prejudice the secrecy of the individual votes.

[S 66 of the EAC (EP) (EC) Reg]

5.39 Before entry, every person authorised to be present at a counting 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 [s 92 of the EAC (EP) (EC) Reg].

5.40 The CRO (Subsectors) or the RO as the case may be, may designate an area at the counting station for the public to observe the count at a distance [s 66(6) of the EAC (EP) (EC) Reg]. Persons present within that designated area will not be required to make a Declaration of Secrecy. Except with the express permission of the CRO (Subsectors) or the relevant RO or a member of the EAC, as the case may be, any person who undertakes photographing, filming and video or audio recording within a counting zone during the period commencing from the time at which the counting of the votes is to begin at the zone and ending upon the completion of the counting and re-count, if any, at the zone commits an offence [s 67(1) and (2) of the EAC (EP) (EC) Reg].

5.41 A person must not misconduct himself in or in the vicinity of a counting station or fail to obey any lawful order of the CRO (Subsectors) or the RO, otherwise he commits an offence punishable with a fine and imprisonment and may be ordered by the CRO (Subsectors) or the RO to leave the area. A person misconducts himself if he disrupts the counting of votes or disturbs or causes inconvenience to any person in the counting station. The RO may also order a person to leave the counting station if the person conducts himself in such way that the purpose of his presence is not that for which he was authorised or permitted to enter or remain in the counting station. If he fails to leave immediately, he may be removed by a police officer or by any other person authorised in writing by the CRO (Subsectors) or the RO. The person so removed may not re-enter the counting station except with the permission of the CRO (Subsectors) or the RO. [Ss 67 and 68 of the EAC (EP) (EC) Reg]

5.42 The RO will conduct the count in the presence of the candidates, their election agents or counting agents, if they are present. After the RO has opened the ballot boxes, the candidates and their agents may request to inspect any papers other than ballot papers taken from the ballot boxes before they are disposed of. **At no time should a candidate, his election agent or counting agent touch any ballot papers.** *[Amended in January 2010]*

Invalid Ballot Papers

5.43 A ballot paper is invalid if:

- (a) it is endorsed on the front with the word “TENDERED”;
- (b) it is endorsed with the word “UNUSED”;
- (c) it is endorsed on the front with the word “SPOILT”; or

- (d) no vote has been marked on it.

These ballot papers will be set aside as invalid on the spot. They will not be counted and will not be treated as questionable ballot papers. A candidate, an election agent or a counting agent may inspect these ballot papers but is not entitled to make representations to the relevant RO concerning these ballot papers. [Ss 74A(b) and 77 of the EAC (EP) (EC) Reg] [*Amended in September 2006*]

Questionable Ballot Papers

5.44 Ballot papers with doubtful validity in the following areas are set aside as questionable ballot papers. A questionable ballot paper will be decided as invalid if in the opinion of the RO:

- (a) it has any writing or mark by which the voter can possibly be identified;
- (b) it is not marked in accordance with s 56 of the EAC (EP) (EC) Reg, ie
 - (i) not marked by shading the ovals opposite the names of the candidates of a voter/AR's choice; or
 - (ii) in case where a chop with a "✓" is to be used:
 - (aa) not marked with the chop; or
 - (bb) not marked by affixing the chop to give a single "✓" in the circle opposite the names of the candidates of the voter/AR's choice (however, the RO may count

the vote on that ballot paper if he is satisfied that the intention of the voter/AR is clear); or

- (iii) votes given for more than the number of vacancies for a subsector;
- (c) it is substantially mutilated; or
- (d) it is void for uncertainty.

[Ss 56, 74A(a), 77 and 78 of the EAC (EP) (EC) Reg] *[Amended in September 2006]*

5.45 The validity of all questionable ballot papers will be decided by the RO of the relevant subsector. When deciding on the validity of the ballot papers in (a) above, where appropriate, the RO will make reference to the judgment made by the Court on an election petition case (HCAL 127/2003). In that case, the Court ruled that the handwritten tick found on the ballot paper in question in the said election petition was considered a mark by which the voter could possibly be identified. The validity of ballot papers with any other writings or mark will remain to be determined by the RO on a case-by-case basis. For ballot papers at (b) above, the RO may count that ballot paper if he is satisfied that the intention of the voter/AR is clear notwithstanding that the vote is not marked by affixing the chop to give a single “✓” in the circle opposite the name of the candidate as the voter’s or AR’s choice [S 77 of the EAC (EP) (EC) Reg]. Before the RO makes his decision, a candidate or his election agent or counting agent, if present at the counting zone, may inspect and make representations to the RO on the questionable ballot paper. After considering the representation, if any, the RO will decide on the validity of the questionable ballot paper. *[Amended in September 2006]*

5.46 A relevant candidate or his election agent or counting agent may object to the acceptance or rejection of a questionable ballot paper by making his objection known to the RO for the particular EC subsector, who will decide whether the ballot paper (or the vote recorded thereon) is valid or to be rejected and, in the latter event, endorse on the ballot paper the word “rejected”. [S 78(5) of the EAC (EP) (EC) Reg] *[Amended in September 2006]*

5.47 A relevant candidate or his election agent or counting agent may object to the rejection of a ballot paper by the RO, in which case the RO shall add to the endorsement the words “rejection objected to”. Questionable ballot papers which are accepted by the RO but objected to by a relevant candidate or his election agent or counting agent will be marked “acceptance objected to”. [S 78(5) and (6) of the EAC (EP) (EC) Reg] *[Amended in September 2006]*

5.48 The decision of the RO for a particular subsector in regard to any question arising in respect of any ballot paper relating to that subsector shall be **final**, but may be subject to appeal [s 79 of the EAC (EP) (EC) Reg]. The appeal is to be heard by the Revising Officer and an application has to be made to him.

5.49 The counting of votes will proceed continuously, as far as possible, until the counting is completed.

5.50 After the count, the RO for a particular subsector will make known the result to the relevant candidates or their election agents or counting agents present. Such a candidate or his election agent may request the RO to re-count the votes and the relevant RO shall comply with any such request unless in his opinion it is unreasonably made. [S 76 of the EAC (EP) (EC) Reg] *[Amended in January 2010]*

PART VIII : DECLARATION OF RESULT

5.51 When the counting of votes and re-counts, if any, are completed and a result obtained, the RO for a particular subsector shall declare the candidate(s) elected for that subsector. The RO shall display a notice of result of the election of that subsector in a prominent place outside the counting station [s 80 of the EAC (EP) (EC) Reg]. The result will also be published in the Gazette within 7 days of the declaration of the result [s 81 of the EAC (EP) (EC) Reg].

PART IX : DISPOSAL OF DOCUMENTS

5.52 As soon as practicable after the RO has ascertained the result of the poll, he will seal all the relevant documents and ballot papers into packets. Candidates and their agents may observe the packaging, if they so wish. [S 82 of the EAC (EP) (EC) Reg]

5.53 These sealed packets of documents will then be deposited with the CEO for safe custody for 6 months before they are destroyed. [Ss 83 and 85 of the EAC (EP) (EC) Reg]

5.54 **Except pursuant to a court order** in relation to an appeal or a criminal proceeding, **no person may inspect any ballot paper in the custody of the CEO.** [S 84 of the EAC (EP) (EC) Reg]