

PART ONE

PROLOGUE

CHAPTER 1

INTRODUCTION

Section 1 – The Vacancy in the Office of the Chief Executive

1.1 The term of office for the second-term Chief Executive (“CE”) was due to expire on 30 June 2007. On 10 March 2005, Mr TUNG Chee-hwa, the then CE tendered his resignation to the Central People’s Government. Mr TUNG’s resignation was approved by the Central People’s Government on 12 March 2005 and the office of the CE became vacant under section 4(c) of the Chief Executive Election Ordinance (Cap 569) (“CEEEO”) on the same date. Pursuant to section 5 of the CEEEO, the Acting CE declared the vacancy of the office of the CE by a notice published in the Gazette Extraordinary on 13 March 2005.

1.2 Under Article 53 of the Basic Law, in the event that the office of the CE becomes vacant, a new CE shall be elected within six months in accordance with the provisions of Article 45 of the Basic Law. The polling date for electing the new CE was fixed in accordance with the requirements of section 10(2) of the CEEEO to be on Sunday, 10 July 2005. Pursuant to section 12 of the CEEEO, the Secretary for Constitutional Affairs (“SCA”) published the polling date by a notice in the Gazette on 6 May 2005.

1.3 Annex I to the Basic Law stipulates that the CE shall be elected by the Election Committee (“EC”) and the term of office of the EC shall be five years. With the enactment of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Ordinance (“CE Election (Amendment) (Term of Office of the CE) Ord”) on 27 May 2005, the new CE elected shall serve the

remainder of the term of the preceding CE, with the term of office expiring on 30 June 2007.

1.4 Under the provisions of the CEEO, the term of office of the current EC, which was responsible for electing the new CE on 10 July 2005, was due to expire on 13 July 2005. According to section 5(1)(b) of the Schedule to the CEEO, an Election Committee Subsector (“ECSS”) by-election or a supplementary nomination (in the case of the Religious subsector) was required to be held to fill the vacancies in the membership of the EC before the CE Election was held.

Section 2 – This Report

1.5 The Electoral Affairs Commission (“EAC” or “the Commission”) is required under section 8(1), (5) and (6) of the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”) to submit a report on the two elections to the CE within three months of the conclusion of the CE Election.

1.6 This report describes how the Commission conducted and supervised both the 2005 CE Election and the 2005 ECSS By-elections at the various stages of the two elections. It sets out the relationship between the two elections and the legislative framework and electoral guidelines governing the elections. It also covers the detailed electoral arrangements for the two elections, including an account of the complaint cases received in respect of the elections and the enquiries received with regard to the CE electoral guidelines, and puts forth the Commission’s recommendations for future improvements.

CHAPTER 2

THE ELECTION COMMITTEE

Section 1 – The Election Committee and its Sectors and Subsectors

2.1 The EC is constituted under the CEEO for the purpose of electing the CE. The EC comprises four sectors which are sub-divided into 38 subsectors. The EC constituted under the Legislative Council (“LegCo”) Ordinance (Cap 542) on 14 July 2000 is regarded as the first EC constituted under the CEEO. The term of office of the EC was five years from the date on which it was constituted.

2.2 The composition of the EC is detailed in Chapter 2 of both of the Guidelines on Election-related Activities in respect of the ECSS Elections and the CE Elections. Most of the EC members were elected by electors in the subsectors at the subsector ordinary elections and by-elections, with the exception of the National People’s Congress (“NPC”) subsector, the LegCo subsector and the Religious subsector. The Hong Kong deputies to the NPC and Members of the LegCo are ex-officio members of the EC, while the Religious subsector returns members to the EC by way of nomination.

Section 2 – Registration of Electors for the Election Committee Subsectors

2.3 The CEEO provides for the annual publication of a provisional register (“PR”) and a final register (“FR”) for the electors of the 38 subsectors. Detailed procedures for registration of electors for the subsectors are set out in the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors)

(Members of Election Committee) Regulation (“EAC (R) (FCSEC) Reg”). The Electoral Registration Officer (“ERO”) is required to publish not later than 15 June in each year in a non District Council (“DC”) election year, the PR of voters for subsectors together with an omissions list containing the names of those persons no longer eligible to be registered. He is also required to publish the subsector FR not later than 25 July in that year. The last subsector PR and the omissions list were published on 15 June 2004 and it was made available for public inspection until 29 June 2004.

2.4 By the deadline on 29 June 2004, there was neither any claim nor objection against the entries in the PR and omissions list lodged with the ERO. The ERO also took the opportunity to seek and obtain the approval of the Revising Officers to add entries of electors to the subsector FR whose eligibility for registration was reinstated, or to remove those entries of electors who had requested for de-registration. The subsector FR was then published by the ERO on 21 July 2004, which continued to have effect until the publication of the next subsector FR in July 2005.

Section 3 – Updating the List of Election Committee Members

Change in Ex-officio Membership

2.5 The existing list of EC members was shown in the FR of the EC members published by the ERO on 11 January 2002 consequent to the ECSS by-elections held on 6 January 2002. This list had to be updated before the CE Election was to be conducted. According to section 41 of the Schedule to the CEEO and section 37(3) of the EAC (R) (FCSEC) Reg, the ERO may amend the FR of the EC members from time to time to give effect to any change in the ex-officio membership of the EC by publishing a notice listing

the names so added or removed. The FR of the EC members published on 11 January 2002 has been subsequently updated to reflect the changes in the membership of the NPC subsector by a notice published in the Gazette on 21 March 2003 and the changes in the membership of the LegCo subsector arising from the 2004 LegCo Election by a notice published in the Gazette on 8 October 2004.

Publication of the Provisional and Final Registers

2.6 Under section 5(1)(b) of the Schedule to the CEEO, before the EC is to elect the CE, a supplementary nomination (in the case of the Religious subsector) or a subsector by-election (in the case of any other subsector) will be held to update the membership of the EC if there are vacancies among the EC members. According to section 4(1)(b) of the legislation, the ERO shall publish a PR of EC members within 14 days after the declaration of the vacancy of the office of CE to provide a basis for the supplementary nomination or subsector by-elections. Accordingly, the ERO published a PR of the EC members on 16 March 2005.

2.7 The PR of the EC members was compiled on the basis of the last preceding FR published on 11 January 2002 as well as the subsequent updatings made by the ERO to reflect the changes in the ex-officio membership of the EC. The PR had excluded those persons who, as the ERO had reasonable grounds to believe, had passed away, resigned or been deemed to have resigned from the EC¹. The names of these persons were entered on an omissions list, which was published at the same time as the PR. Both lists

¹ According to section 3(2) of the Schedule to the CEEO, an EC member under any other subsector is deemed to have resigned from the membership if he or she is also registered as an ex-officio member of the EC (ie a Hong Kong deputy to the NPC or a LegCo Member).

were put up at the Registration and Electoral Office (“REO”) and the District Offices of the Home Affairs Department (“HAD”) for public inspection till 23 March 2005. On or before this date, any person could lodge with the ERO an objection against any entry in the PR and any person whose name was included in the omissions list could lodge a claim with the ERO in respect of the omission of his name. During the public inspection period, the ERO received one notice of objection against the registration of a person as a member in the Industrial (First) subsector in the FR on the ground that the person had ceased to have substantial connection with the subsector. The Revising Officer conducted a hearing on 31 March 2005 and after hearing all representations, the Revising Officer dismissed the objection and ruled that the name of the person being objected to should not be excluded from the FR.

2.8 Having regard to the PR and the determination of the Revising Officer with regard to the objection case, a check was conducted on the then existing number of members of each subsector (other than the ex-officio members, ie the NPC and the LegCo subsectors) against the number of members allocated to each subsector and as a result, a total of 33 vacancies were ascertained in 17 subsectors. A breakdown of these vacancies and their details are listed at **Appendices I and II** respectively. Out of these 33 vacancies, 19 of them arose from members being dead, two from members having resigned from the EC and 12 from members being deemed to have resigned from the EC. The EAC announced at a press conference on 4 April 2005 that the six vacancies in the Religious subsector would be filled by supplementary nominations of EC members by the four related designated bodies and the remaining 27 vacancies in the other 16 subsectors would be filled by by-elections scheduled for 1 May 2005. The notice of the subsector by-elections and the lists of vacancies in the subsectors concerned were published in the Gazette on 8 April 2005.

2.9 After the results of the supplementary nominations and ECSS By-elections held on 1 May 2005 had been published in the Gazette on 20 April 2005 and 5 May 2005 respectively, the ERO published the FR for the EC on 6 May 2005. The persons whose names appear on this FR would be eligible to make nominations at the CE Election and vote at the poll scheduled for 10 July 2005, unless they are disqualified from doing so according to sections 16(5) and 26 of the CEEO².

² According to sections 16(5) and 26 of the CEEO, an EC member whose name appears on the final register shall be disqualified from making nominations and voting at the poll if he or she:

- (a) has resigned from the EC;
- (b) is serving a sentence of imprisonment for the time being (in the case of nomination) or on the polling date (in the case of voting);
- (c) has ceased to have a substantial connection with the subsector concerned;
- (d) has ceased to be registered or eligible to be registered as an elector for a geographical constituency;
- (e) has in Hong Kong or in any other place been sentenced to death or imprisonment (by whatever name called) and has not either served the sentence or undergone such other punishment as a competent authority may have substituted for a sentence or received a free pardon;
- (f) is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs;
- (g) is a member of the armed forces of the People's Republic of China or any other country or territory; or
- (h) is or has been convicted, within the three years before the polling date, of having engaged in corrupt conduct or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or an offence against Part II of the Prevention of Bribery Ordinance (Cap 201) or of any offence prescribed by the EAC Regulations.

CHAPTER 3

THE LEGISLATION AND THE GUIDELINES

Section 1 – The Electoral Legislation

Ordinances and Subsidiary Legislation

3.1 The supervision and conduct of the 2005 ECSS By-elections and CE Election were governed by the following ordinances:

- (a) the EACO which empowers the EAC to perform its various functions in supervising the conduct of the elections;
- (b) the CEEO as amended which provides the legal basis for conducting the elections; and
- (c) the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) which prohibits election-related corrupt and illegal activities and is enforced by the Independent Commission Against Corruption (“ICAC”).

3.2 These ordinances were complemented by the following subsidiary legislation which provide the detailed procedures for the conduct of the elections. They are:

- (a) the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (“EAC (EP) (EC) Reg”);

- (b) the Electoral Procedure (Chief Executive Election) Regulation (“EP (CEE) Reg”);
- (c) the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation;
- (d) the EAC (R) (FCSEC) Reg;
- (e) the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation;
- (f) the Election Committee (Subscribers and Election Deposit for Nomination) Regulation;
- (g) the Election Committee (Appeals) Regulation;
- (h) the Chief Executive Election (Election Petition) Rules; and
- (i) the Maximum Amount of Election Expenses (Chief Executive Election) Regulation.

The Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Ordinance

3.3 When the vacancy of the CE office was promulgated, there was the question as to whether, where the office of the CE has become vacant under

section 4(b) or (c) of the CEEO³, the term of office of a new CE elected pursuant to Article 53 of the Basic Law shall be five years, or the remainder of the term of the preceding CE. The question attracted much public attention and intense discussions. Given the importance of the issue, the Secretary for Justice (“S for J”) re-examined the issue and advised that the new CE elected under such circumstances should serve the remainder of the term of the preceding CE. The advice of S for J was accepted by the Government.

3.4 The Administration introduced the CE Election (Amendment) (Term of Office of the CE) Bill into the LegCo on 6 April 2005 in order to give a clear legal basis to the term of the office of the new CE. The Bill sought to amend section 3 of the CEEO to provide that when the office of the CE has become vacant under section 4(b) or (c) of the CEEO, the term of office of the new CE elected shall be the remainder of the term of the preceding CE.

3.5 At the LegCo meeting on 6 April 2005, the Chief Secretary for Administration advised Members that the Government had decided to submit a report to the State Council, proposing the State Council to make a request to the Standing Committee of the National People’s Congress (“NPCSC”) to interpret, at their meeting to be held at the end of April, Article 53 of the Basic Law concerning the term of office of the new CE. The report was submitted to the State Council on the same day. The interpretation made by the NPCSC on 27 April 2005 stipulated that “when the CE is selected by the EC with a five-year term of office, in the event that the office of the CE becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by

³ Section 4 of the CEEO provides as follows:

“4. The office of the CE becomes vacant –

(a) on the expiry of the term of office of the CE;

(b) if the CE dies; or

(c) if the Central People’s Government removes the CE from office in accordance with the Basic Law.”

Article 46 of the Basic Law, the term of office of the new CE shall be the remainder of the previous CE”. The Bill was consistent with the interpretation made by the NPCSC and the CE Election (Amendment) (Term of Office of the CE) Ord was subsequently enacted by the LegCo on 27 May 2005.

Section 2 – The Electoral Guidelines

3.6 The EAC is empowered under section 6(1)(a) of the EACO to issue guidelines to facilitate the conduct or supervision of an election. The aim of producing these guidelines is to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities and some directions in layman’s language on how to comply with the relevant electoral legislation.

3.7 The EAC published two sets of guidelines in December 2001: one for ECSS elections and another for the 2002 CE Election. The guidelines issued for the ECSS elections on 5 December 2001 applied to all ordinary elections and by-elections of the EC subsectors to be held after that date. Taking into account the latest amendments to the Guidelines for DC elections and the LegCo elections as well as the operational experience of previous elections and by-elections, the EAC updated the Guidelines for ECSS elections and published a revised set of guidelines in loose-leaf format in April 2005.

3.8 The guidelines published for the 2002 CE Election was for the exclusive use of that election. For the 2005 CE Election, the EAC decided to publish a new set of guidelines serving the 2005 election as well as all the subsequent CE elections conducted under the CEEO. A set of proposed guidelines for the CE elections was drawn up which modelled on the guidelines used for the 2002 CE Election, taking into account the latest amendments made

to the guidelines for other public elections and the operational experience of previous elections, as well as suggestions and complaints received from the public and other concerned parties. The major changes proposed in the draft guidelines for the CE elections, as compared with the guidelines for the 2002 CE Election, included the following:

- (a) clarifying that a performance report shown on a website of an incumbent candidate during or before the election period will be regarded as an election advertisement (“EA”) if it is published for the purpose of promoting or prejudicing the election of a candidate;
- (b) giving more details on how election expenses should be counted where expenses are incurred for prejudicing the election of a candidate, and how the value of a commercial or non-commercial space for display of EAs should be accounted for;
- (c) requiring the Returning Officer (“RO”) to issue a notice to candidates requiring them to remove their EAs posted at the private premises within the no canvassing zone (“NCZ”) on the polling day;
- (d) requesting all management bodies of the organisations or buildings concerned to treat all candidates fairly and equally;
- (e) further clarifying as to why prior written consent of support is needed, on the use of title of office bearer, and whether a candidate needs to share the expenses for the EAs if he appears in another candidate’s EA to indicate his support;
- (f) adding a new provision introducing the addition of a caption to a

photograph in an EA as a means to minimise misunderstanding regarding consent of support;

- (g) clarifying that materials published by any person, including a candidate, for the purpose of prejudicing a candidate or candidates are treated as EAs, if reference could be made from the materials to identify the candidate(s) being prejudiced;
- (h) including a statement that service providers which are not licensees under the Broadcasting Ordinance should not be regarded as commercial broadcasters, and are allowed to carry EAs territory-wide;
- (i) adding a new provision to specify that for current affairs or other programmes on TV and radio which are not election-related, candidates may take part as guests in these programmes insofar as their participation is pertinent;
- (j) elaborating that comments made by broadcasters for the purpose of promoting or prejudicing a candidate would be treated as EAs, if reference can be made from the materials to identify the candidate being promoted or prejudiced. If such comments are determined by the Commission as EAs, the Commission will refer the matter to the Broadcasting Authority for appropriate action;
- (k) including a guidance note on safe conduct of election-related activities, a guidance note on personal data privacy in respect of electioneering activities, and the methods of folding of EAs for free postage as appendices to the guidelines;

- (l) adding a new chapter on electioneering activities conducted in schools or participated by school pupils;
- (m) reminding civil servants that they should observe the rules of the Civil Service Bureau (“CSB”) when participating in electioneering activities; and
- (n) inclusion of a new part on Principal Officials participating in election-related activities.

3.9 Before finalising the guidelines for issue to the public, the EAC consulted the public on the proposed guidelines for a period of 14 days from 15 to 28 April 2005 in accordance with section 6(2) of the EACO. During the consultation period, members of the public were invited to give their views on the proposed guidelines and to lodge their written representations with the EAC. A public forum was held on 25 April 2005 in the Conference Room of the REO where the Commission was present to listen to the oral representations put forth in person by those who attended the forum. The consultation mechanism and the major changes listed in paragraph 3.8 above were highlighted in the “Message from the Chairman” enclosed in the proposed guidelines so as to provide a more focused basis for the public to give their views.

3.10 At the close of the public consultation on the proposed guidelines, 15 written representations and two oral representations had been received. The proposed guidelines were also discussed by the LegCo Panel on Constitutional Affairs on 18 April 2005. Having carefully considered all the representations received from the public and views from the LegCo Members, the EAC considered that it was not necessary to make any amendments to the proposed guidelines. The representations were either involving political

issues outside the EAC's ambit or concerned with amendments of electoral legislation not within the purview of the EAC, or the suggested amendments could not be made in time for the coming election. Others were enquiries or general opinions about CE elections but not suggestions to amend the guidelines. The Commission also noted there were a number of representations which supported the proposed guidelines. The Commission announced the publication of the finalised guidelines for the CE elections at a press conference held on 27 May 2005 in the Conference Room of the REO. Similar to the guidelines for ECSS elections, a loose-leaf format was adopted for the production of these guidelines.

3.11 Both the Guidelines for the ECSS elections and the Guidelines for the CE elections were made available for browsing on the Internet and for distribution at the District Offices and the REO.

CHAPTER 4

THE VOTING SYSTEMS

Section 1 – The Election Committee Subsector By-elections

4.1 The voting system for the 2005 ECSS By-elections to return 27 EC members for the 16 EC subsectors was the simple or relative majority system, commonly known as the “first-past-the-post” system. The number of vacancies in each of the 16 contested subsectors concerned varied from one to four. An elector might vote for as many candidates as the number of members to be returned at the by-elections, and no more. In the case of a single vacancy to be filled, the candidate that obtained the highest number of votes would be elected. In the case of two or more vacancies, the candidates elected would be the candidate that obtained the highest number of votes followed by the candidate with the second highest number of votes, and so on, until all vacancies were filled.

4.2 In respect of each subsector, if the number of validly nominated candidates exceeded the number of members to be returned for that subsector, a poll would be held on 1 May 2005. In case the number of validly nominated candidates for a particular subsector was not more than the number of members to be returned for that subsector, the candidate(s) would be returned uncontested.

4.3 A candidate had to be nominated by not less than five subscribers (ie registered electors of the subsector concerned), other than the candidate himself.

Section 2 – The Chief Executive Election

4.4 Under the voting system adopted for the CE Election, a candidate who obtained more than half of the total number (ie the absolute majority) of valid votes at any one round of voting of the election would be elected. Otherwise, all candidates would be eliminated except those who obtained the highest number of valid votes (in case candidates obtain the same number of votes). If there was only one candidate who obtained the highest number of valid votes, all candidates except that candidate and those who obtained the second highest number of valid votes would be eliminated. The remaining candidates would proceed to the next round of voting. The process would continue until one candidate obtained an absolute majority of valid votes to win.

4.5 In the event that there was only one validly nominated candidate at the close of nominations, he would be returned uncontested.

4.6 For the CE Election, a candidate was required to have not less than 100 subscribers (ie members of the EC) nominating him.

PART TWO

**THE ELECTION COMMITTEE
SUBSECTOR BY-ELECTIONS**

CHAPTER 5

BEFORE THE POLLING DAY

Section 1 – Appointment of Returning Officers and Assistant Returning Officers

5.1 For the 2005 ECSS By-elections, 15 directorate officers of the policy bureaux and departments relevant to the EC subsectors concerned were appointed by the EAC as ROs for the 17 subsectors concerned. To provide assistance to the ROs, 15 Assistant Returning Officers (“AROs”) who were senior officers of the policy bureaux and departments relevant to EC subsectors concerned were appointed. Ten government counsel from the Department of Justice (“D of J”) were also appointed to serve as the AROs(Legal) for providing legal advice to the ROs on the polling day and during the count on various matters, particularly in determining the validity of questionable ballot papers. The appointment of the ROs was published in the Gazette on 8 April 2005. The list of ROs, AROs and AROs(Legal) is at **Appendix III**.

5.2 Miss Monica CHEN, JP, the RO of the Heung Yee Kuk subsector, was also appointed as the Chief RO to supervise the operation of the counting station.

Section 2 – Appointment of Nominations Advisory Committees

5.3 Three legal professionals, namely Mr WONG Ching-yue, Senior Counsel, Mr HO Bing-kwan, barrister-at-law and Mr Anson KAN Kam-choy, solicitor, were appointed as Nominations Advisory Committees (“NACs”) for providing legal advice to the ROs in relation to the ECSS By-elections to be

held on 1 May 2005 and the supplementary nominations by the Religious subsector. Their appointments covered the period from 9 to 17 April 2005 and were published in the Gazette on 8 April 2005.

5.4 During the appointment period, the NACs received a total of three requests for legal advice from the ROs on whether the candidates concerned had a substantial connection with their subsectors. The NACs ruled that they were all qualified to be nominated as candidates for the ECSS By-elections.

Section 3 – Nomination of Candidates and Supplementary Nominations

5.5 The nomination period started on 9 April 2005 and ended on 15 April 2005. This one-week period was announced in a notice in the Gazette published on 8 April 2005. By the close of nominations, the ROs of the 16 subsectors (excluding the Religious subsector) received a total of 52 nominations which were all confirmed valid by the ROs. Of these 52 nominated candidates:

- (a) 12 were returned uncontested to fill the 12 vacancies in seven subsectors, namely, the Chinese People’s Political Consultative Conference (“CPPCC”), Finance, Heung Yee Kuk, Import and Export, Industrial (First), Industrial (Second) and Labour subsectors; and
- (b) 40 were to run for the 15 seats in the remaining nine subsectors, namely, the Accountancy, Agriculture and Fisheries, Architectural, Surveying and Planning, Chinese Medicine, Engineering, Higher Education, Hong Kong and Kowloon DCs, Legal, and Textiles and Garment subsectors.

5.6 The lists of all validly nominated candidates for each subsector concerned and the result of uncontested subsectors were published in the Gazette Extraordinary on 20 April 2005. For the Religious subsector, a total of six valid supplementary nominations were received by the RO, the number being equal to the number of vacancies assigned for the designated bodies concerned. These nominees were declared by the RO as members of the EC to fill the six vacancies. The result of the supplementary nominations was published in the Gazette Extraordinary on 20 April 2005 and is reproduced at **Appendix IV**.

Section 4 – Briefings for Returning Officers and Candidates

5.7 To enable all parties concerned to be familiarised with the rules and operation of the by-elections, a series of briefings were held.

5.8 A briefing session for the ROs and AROs, hosted by the EAC Chairman, was held on 1 April 2005 at the Recital Hall of the City Hall. Also present at the briefing session were the Chief Electoral Officer (“CEO”) of the REO and the representatives of the D of J and the ICAC.

5.9 The EAC Chairman hosted a briefing for the candidates and their agents on 17 April 2005 at the Ground Floor Plaza of the Hongkong International Trade and Exhibition Centre (“HITEC”) in Kowloon Bay. In this session, the EAC Chairman briefed the candidates and their agents on the electoral arrangements of the by-elections and the major provisions of the electoral legislation and guidelines. He was accompanied by the CEO and the representatives from the D of J, ICAC and Hongkong Post. These departmental representatives briefed the attendees and answered questions on matters relating to the by-elections which fell within their respective purview.

5.10 After the briefing session, the ROs met the candidates and their agents at the same venue and determined, by means of drawing lots, the order of names of candidates on the ballot papers for different contested subsectors and the designated public spots to be allocated to the candidates for display of their EAs.

Section 5 – Polling and Counting Arrangements

Recruitment of Polling and Counting Staff

5.11 A total of 1,008 electoral staff who were civil servants of various government departments were appointed as polling and counting staff for the conduct of the by-elections. Unlike the previous general or ordinary elections, the REO did not conduct a service-wide recruitment exercise for civil servants to apply for the electoral posts. Due to the tight schedule of the by-elections, the REO has made reference to the list of electoral staff of the 2004 LegCo Election to select suitable staff for the by-elections this time. Most of the appointees have served for the same polling stations or the central counting station in the 2004 LegCo Election and have already gained relevant experience in discharging their polling or counting duties.

Training for Polling and Counting Staff

5.12 In line with the EAC's recommendation in the report on the 2004 LegCo Election, the attendants were strongly reminded of the importance in complying with all the electoral steps for upholding the openness, fairness and honesty of the election in the eyes of the public. With the assistance of the Civil Service Training and Development Institute ("CSTDI"), a half-day seminar on crisis management was also arranged for the senior staff of the REO.

Representatives of the Constitutional Affairs Bureau (“CAB”) also attended the seminar. The crisis management training session was specially designed for electoral staff by a management consultancy firm, to better prepare public officials in coping with potential problems and crises on the polling day.

5.13 All the Presiding Officers (“PROs”), Deputy PROs (“DPROs”), Assistant PROs (“APROs”) and other polling staff were required to attend a briefing session on 14 April 2005 at the Queen Elizabeth Stadium with a view to equipping them with sufficient knowledge and skills for the efficient management and implementation of polling functions. The session covered major provisions of the EAC (EP) (EC) Reg on the various important polling duties including ballot paper control, compilation of statistical returns, basic training on crisis management and a questions and answers session.

5.14 For the counting staff, a briefing session and a crisis management seminar were held on 18 April 2005 at the Lecture Theatre of the Hong Kong Central Library. Five mock-counting sessions were held at the HITEC in April 2005 to provide them with hands-on practice.

Identifying Venues as Stations

5.15 39 venues were selected as polling stations for some 47,000 electors of the nine contested subsectors to cast their votes in the by-elections. There were at least two polling stations in each of the 18 districts and additional polling stations were set up for the Islands District (two more) and Eastern District (one more) to cater for their specific needs. The basic criteria adopted for identifying these venues were easy and convenient accessibility to electors. All the designated polling stations were easily accessible to the physically handicapped.

5.16 The electors were allocated polling stations according to their residential address. As in the previous ECSS elections, an elector of a subsector could also cast his vote for another subsector as an authorised representative on behalf of a corporate elector, if he was one, at the same polling station. This was for the sake of convenience of the electors.

5.17 There was only one counting station, ie the central counting station, set up at the Grand Rotunda, 3rd floor, HITEC. The indoor games hall at Kowloon Park was also reserved as a fall-back venue to cater for the possibility that the venue at HITEC could not be used due to, say, an outbreak of fire.

Polling Arrangements

5.18 On the day preceding the polling day, the recruited polling staff, with the assistance of the REO staff, set up the designated venues as polling stations for the by-elections.

5.19 In compliance with EAC's recommendation in the report on the 2004 LegCo Election, each ballot issuing desk at a polling station was given a complete booklet of ballot papers for each individual subsector for issue to eligible electors for the ECSS By-elections, instead of breaking down the ballot paper booklet into separate bundles as in the previous elections. The new measure was introduced to reduce confusion on the issue of ballot papers for each subsector and to facilitate the efficient compilation of statistics on the issue of ballot papers and effective supervision of the conduct of poll.

5.20 Outside each polling station, specific areas were designated by the RO as NCZs and no staying zones ("NSZs") to provide the electors with a free and safe environment on their way to the station. A notice was displayed at a

conspicuous spot at or near the station, notifying the public the delineation of the related NCZ and NSZ.

5.21 Besides overseeing the nomination and related matters for the subsector assigned to him, each RO was also tasked with overseeing the operation of two to three designated polling stations on the polling day. The PRO, assisted by the DPRO and APROs, was responsible for ensuring the smooth and efficient operation of the polling station during the poll under his charge and to work closely with the RO concerned.

Counting Arrangements

5.22 All votes cast at different polling stations would be transported to the central counting station for counting after the close of poll. In the central counting station, a counting zone was delineated for each of the contested subsectors and supervised by the relevant RO. There was also a press area where members of the media assembled to cover the event, a public stand where members of the public stayed to observe the count and a seating area for the candidates and their agents. As in previous elections, candidates and their election/counting agents were allowed to stand around the counting table to observe the count from a close distance.

5.23 Based on the experience from the 2004 LegCo Functional Constituencies (“FCs”) Election, the following measures were adopted to streamline and speed up the counting of votes for the by-elections:

- (a) a general zone was set up in the central counting station to serve as a “central clearing house” to which all ballot papers sorted by subsectors were sent, and from which the sealed packets of ballot papers for

individual subsectors were subsequently transmitted by batches to the respective subsector counting zones. These arrangements proved to be particularly efficient and effective for those subsectors with a large electorate, eg the Accountancy and Engineering subsectors;

- (b) a ballot box reception area was set up immediately outside the Rotunda Hall, where there was sufficient space and manpower to receive the ballot boxes and polling documents returned from the PROs. The arrangement was made to prevent prolonged queuing time at the ballot box reception area;
- (c) while complying with the format of ballot paper specified in the EAC (EP) (EC) Reg, a series of different colour combinations were selected for printing the front and reverse sides of the ballot papers for different subsectors so that the counting staff could easily identify the ballot papers of different subsectors and hence speed up the sorting and counting process; and
- (d) in order to enhance the efficiency of the count and to achieve accurate counting results, the counting procedures for each subsector was tailor-made, taking into account the number of contested candidates and the number of electors. Three methods were used: (i) For every subsector which was required to fill one vacancy, the valid ballot papers were first sorted according to the choice marked by the elector on the ballot paper and then placed in a separate transparent plastic box for counting the number of votes each candidate obtained. (ii) For those subsectors with two or more vacancies, except the case under (iii) below, various combinations of the elector's choices would be recorded and counted. (iii) For the Hong Kong and Kowloon DCs

subsector where seven candidates contested for three vacancies, the ballot papers were sorted and put into two transparent plastic boxes, one for votes choosing one particular candidate and the other for votes not choosing that particular candidate and such procedure was repeated for seven rounds, one for each candidate until all the votes obtained by each candidate were counted and recorded. Sufficient training and hands-on practice had been provided to familiarise the counting staff with the various counting methods.

Compilation of Voter Turnout Statistics

5.24 Each polling station was required to send the statistics on the hourly voter turnout to the REO Statistical Information Centre by fax on the polling day (or by telephone in the event of machine failure). The REO staff would input the data into the “New Electoral and Registration System” which has a built-in function for compiling hourly voter turnout statistics for the various subsectors. The REO staff would also input the data received from the polling stations into standalone personal computers using a standard spreadsheet programme as a backup system and for cross-checking purpose.

Contingency Measures

5.25 To cater for unforeseen circumstances such as inclement weather or other emergencies such as fire or power failure, as in previous elections, the following contingency measures were put in place:

- (a) the postponement or adjournment of the poll or the count in one or more polling stations or the central counting station; and

- (b) extension of polling hours if a substantial portion of the polling hours was lost because of flooding, power failure or other emergencies in one or more polling stations.

5.26 Having regard to the experience of the 2004 LegCo Election, when the inadequate supply of ballot boxes had given rise to a series of problems which affected the polling process, the REO had made special efforts to put in place enhanced contingency measures to cater for unforeseen circumstances for this by-election. The enhanced contingency measures included:

- (a) setting up an Emergency Depot in each of the following five regions: Hong Kong Island, Kowloon East, Kowloon West, New Territories East and New Territories West. Each emergency depot was equipped with a reserve pool of stand-by vehicles for delivery of additional supplies, a team of stand-by polling staff for filling in the places left by the last-minute absentees due to unforeseen circumstances, and a reserve stock of ballot papers and other electoral equipment;
- (b) providing a van for each of the 39 polling stations during the poll so as to make urgent deliveries of electoral equipment/materials from the Emergency Depots in case of need and to cater for other emergencies; and
- (c) making full preparation for making public announcements of the implementation of any alternative polling arrangements in case of emergency such as flooding of individual polling station, and for posting notices at the stations concerned, wherever necessary.

5.27 On the polling day there was no need to deliver any reserve stock of

ballot papers or ballot boxes from the regional depots as a sufficient quantity of electoral equipment had already been provided to each polling station before the poll.

Notification to Electors

5.28 On 22 April 2005, the REO sent the electoral mailing packages to some 47,000 registered electors in the nine contested EC subsectors informing them where and how to vote at the polls on 1 May 2005. The mailing packages included a poll card, a map indicating the location of the designated polling station, a voting guide and a leaflet introducing the candidates in their respective subsectors. A leaflet from the ICAC on clean and fair elections was also included.

5.29 As polls were not required for the remaining seven uncontested subsectors, a notice of uncontested nomination was sent to some 3,500 registered electors in these subsectors, informing them that they needed not go to the poll. An introductory leaflet of the uncontested candidate(s) was attached to the notice.

Publicity

5.30 The major events of the by-elections were extensively covered by the print and electronic media. Apart from issuing press releases on the various key events of the by-elections, the REO also implemented the following publicity measures for the by-elections:

- (a) posters were printed and distributed to the 119 umbrella organisations of the relevant subsectors, appealing to the electors to participate in the

by-elections through these organisations;

- (b) appeal letters were sent to all the electors of the contested subsectors, inviting them to exercise their civic rights by casting their votes in the by-elections;
- (c) a dedicated website was set up to provide information on the by-elections, such as introduction to the candidates, information about the designated polling stations, etc; and
- (d) newspaper advertisements were placed in 15 local newspapers on 8 April 2005 to publicise the nomination period of the by-elections; and another advertisement was placed in seven newspapers on 29 April and eight newspapers on 30 April to remind the electors of the poll on 1 May.

CHAPTER 6

ON THE POLLING DAY

Section 1 – Central Support

6.1 In line with the practice for past elections and by-elections, a Central Co-ordination Centre (“CCC”) manned by REO staff was set up at the REO office in Guardian House in Wan Chai on the polling day to oversee the electoral arrangements for the purpose of providing a wide range of enquiry, complaint and support services to electors, candidates/agents, ROs/PROs and members of the public. A Statistical Information Centre was also set up there to collate the relevant statistical information such as the hourly voter turnout rates and the number and types of complaints received by the various complaint-handling parties etc for public information through the media on a regular basis. Both centres operated from 7:00 am until the close of count.

6.2 The set up of the CCC included a command desk, two helpdesks, a media enquiry support desk, an enquiry hotline and a complaints centre. The command desk, headed by the CEO, was to oversee the overall conduct of the poll. Helpdesk 1 was responsible for handling enquiries relating to re-deployment of polling staff, report of absentees and the contents of the Operational Manual for Polling Staff while helpdesk 2 dealt with enquiries on setting up or delivery of polling equipment, completion of forms, requests for additional ballot papers and provision of Civil Aid Service (“CAS”) etc. The media enquiry support desk handled press enquiries and disseminated information to the media at regular intervals. The enquiry hotline dealt with enquiries from members of the public and provided support to the polling staff relating to the information on voter registration or entitlement to vote.

6.3 A complaints centre was set up at the REO office in Harbour Centre to receive and process election-related complaints lodged with the EAC direct from the public by phone, by fax or through email, and cases referred to the EAC by other complaint-handling parties. It was manned by staff of the REO's Complaints Unit and operated throughout the polling hours from 7:30 am to 10:30 pm. Details of the complaints handled are set out in Chapter 11.

6.4 Apart from control at the central level, District Liaison Officers, who were staff of the 18 District Offices, were appointed at the district level to carry out liaison work between the PROs of polling stations and the respective ROs as well as the CCC.

6.5 In addition to the above, separate working areas were provided for staff of the CAB, D of J, Information Services Department ("ISD") and REO at the central counting station at HITEC, to facilitate the performance of their respective roles in the conduct of the by-elections.

6.6 The Police and the CAS rendered assistance in maintaining law and order in the NCZs, NSZs and inside the polling stations and central counting station.

Section 2 – The Poll

6.7 On the polling day, 39 polling stations were opened for operation. The poll started at 7:30 am and ended at 10:30 pm.

6.8 Generally, the poll went on smoothly throughout the voting period and no serious problem was encountered. However, the turnout rate of electors

was not particularly encouraging. A total of 7,094 electors turned up at their respective stations to cast their votes, which represented 14.95% of the total electorate of 47,455 from the contested subsectors. This was lower than the rate of 18.63% in respect of the 2002 ECSS By-elections. A breakdown of the turnout rate by subsector is shown in **Appendix V**.

6.9 A complaint was received with regard to the instruction printed on the poll card which stated that an elector could only cast one vote, whereas the electors of some subsectors could in fact choose more than one candidate for some subsectors (more details about this case are set out in paragraph 12.4). A few electors also complained about the unclear instructions given by the polling staff as to the number of candidates they could choose. In the light of these complaints, the REO reminded the polling staff of all the polling stations twice by telephone in the morning and then by fax in the early afternoon that they should draw the attention of the electors to the number of candidates they could choose as printed on the ballot paper. No similar complaints were received afterwards.

Section 3 – The Count

6.10 The counting of votes for the nine contested subsectors was centrally held at the central counting station housed in the HITEC. The Chief RO was responsible for the overall supervision of the central counting station. There were nine counting zones, one for each of the contested subsectors, supervised by the respective ROs.

6.11 After the close of poll at 10:30 pm, all ballot boxes were delivered to the central counting station by the PRO of each polling station under the escort of police officers and also candidates/agents who wished to do so. The first

ballot box was opened by the SCA, the EAC Chairman and Members and the relevant RO at 11:40 pm. The count started thereafter. Arrangements were then made to sort the ballot papers by individual subsector, count the ballot papers for each subsector for verification with the ballot paper account, and deliver the ballot papers to the general zone and then to the counting zones of the relevant subsectors for sorting by candidates. The respective RO was responsible for determining the validity of questionable ballot papers. This was done in the presence of the candidates and the agents who were staying at the counting station. For the Hong Kong and Kowloon DCs subsector, the counting of votes commenced only after the RO had made determination on all questionable ballot papers. As compared with the voter turnout figure of 7,094, only 7,093 ballot papers were cast into the ballot boxes as one elector from the Higher Education subsector had returned her unused ballot paper to the PRO concerned. Of the 7,093 ballot papers cast, 115 questionable ballot papers were identified by the ROs and 79 were determined not valid. The remaining 36 questionable ballot papers were determined as valid and were accepted. An analysis of the rejected ballot papers is at **Appendix VI**.

Section 4 – The Results

6.12 The time for declaration of counting result for individual subsectors varied. The Chinese Medicine subsector was the first one to announce its counting result shortly after 2:00 am on 2 May (the day following the polling day). For the Accountancy subsector (with the largest electorate), the counting result was declared at around 4:10 am on 2 May. The entire counting process took about 4½ hours to complete. The election results of the nine contested subsectors were published in the Gazette Extraordinary on 5 May 2005 and are now reproduced at **Appendix VII** for easy reference.

Section 5 – EAC Visits

6.13 As in previous elections, the three Members of the EAC paid personal visits to some polling stations to observe what was happening on the spot. Each of the Members had his/her individual itinerary throughout the day. They covered a total of ten polling stations together. Early in the morning on the polling day, the Chairman and one of the Members first cast their votes at the polling station to which they were allocated. There was no need for the other member to cast her vote as the candidate for the subsector in question had been returned uncontested. They met at the polling station at Sai Tso Wan Neighbourhood Community Centre where they briefed the media on their views about the polling arrangements observed during their visits. They assembled again in the evening at the central counting station to open and empty the first ballot box with the SCA before meeting the media to sum up on the visits and the complaints received. After the close of count, the EAC met the media to give their views on the by-elections as a whole.

PART THREE

THE CHIEF EXECUTIVE ELECTION

CHAPTER 7

PREPARATION

Section 1 – Appointment of Returning Officer and Assistant Returning Officers

7.1 The Honourable Madam Justice CHU Fun-ling, Carlye, Judge of the Court of First Instance of the High Court, was appointed as the RO for the 2005 CE Election. Mr Patrick LI Pak-chuen, JP, Assistant Director of the HAD, and Miss Linda LAW Lai-tan, Senior Administrative Officer of the HAD, were appointed as the AROs, while Messrs James O'NEIL and Gilbert MO Sik-keung, Deputy Solicitor General and Deputy Law Draftsman of the D of J respectively, were appointed as the AROs(Legal). Their appointments were published in the Gazette on 27 May 2005.

Section 2 – Briefing for Returning Officer

7.2 To assist the RO/AROs in familiarising themselves with the rules and operation of the election, the REO prepared and issued an operation manual to them for reference. A briefing for the RO and AROs was held on 12 May 2005 at the EAC Conference Room at Harbour Centre, Wan Chai. The EAC Chairman, accompanied by the CEO and the representatives from the D of J, briefed the RO and AROs on the electoral arrangements and reminded them of the salient provisions in the electoral legislation and guidelines.

Section 3 – Polling and Counting Arrangements

Identifying Venues as Stations

7.3 Hall 7A of the Hong Kong Convention and Exhibition Centre (“HKCEC”) was booked as the polling-cum-counting station. A venue at the HITEC was reserved as the fall-back venue to cater for the possibility that the venue at the HKCEC could not be used in case of emergencies.

Polling Arrangements

7.4 As different rounds of voting may need to be held on the polling day of 10 July 2005 in view of the voting system for CE elections, the polling hours for the first three rounds of voting were scheduled as follows:

<u>Round of voting</u>	<u>Polling hours</u>
First round	9:00 am – 10:00 am
Second round	2:00 pm – 3:00 pm
Third round	7:00 pm – 8:00 pm

In the event that there was a need for the fourth round or further rounds, it would be held on the following day (ie 11 July 2005). For each round of voting, the count would follow right after the poll.

7.5 To enhance efficiency, a computerised Voter Verification System would be used in the election to check the eligibility of electors. Each issuing desk would be provided with a computer terminal for verifying electors’ eligibility to vote. The identity card number of an elector would be keyed in the computer terminal to check his identity. A ballot paper would be issued

after confirming the elector's eligibility, and this would be recorded in the computer system. A small pool of polling officers at a separate location nearby would also cross out the relevant entry in a hard copy of the FR as a manual record. The elector should then proceed to any one of the voting compartments, and use the "✓" chop supplied to mark his choice of candidate on the ballot paper. A full-scale mock polling was conducted on 26 May 2005 to test the system. In case of any unforeseeable event that rendered the failure of the system, the manual operation mode would be adopted immediately and the FR of electors would be used for checking electors' eligibility to vote.

7.6 As more than one round of voting might be required, several sets of ballot papers would be printed in different colour schemes for easy identification of different rounds of voting. The number of the specific round of voting would be printed on the top-right hand corner of each ballot paper. Furthermore, serial numbers on the counterfoil of ballot papers would be prefixed with different letters of the alphabet to avoid confusion (eg starting with A0001 for the first round and B0001 for the second round). As in other public elections, serial numbers were printed on the counterfoils of ballot papers to control the issue of ballot papers, but such serial numbers would not be shown in any manner on the ballot papers to preserve the secrecy of the vote.

Counting Arrangements

7.7 To enhance the transparency of the election, it was planned that the choice marked on each valid ballot paper would be made known to those present in the counting station by calling out the candidate number and name of the candidate for whom the vote was given, ie vocal counting. The vote would be recorded on a board set up on the stage within the counting zone manually. The ballot paper would then be placed in the transparent plastic

box designated to hold the ballot papers for that candidate.

7.8 Apart from the above measures, to enhance the transparency of the counting process, as in other public elections, there would also be a public stand in the counting station where members of the public could stay to observe the count, an area for the media to cover the counting process and a seating area for the candidates and their agents. EC members would also be invited to stay to observe the count and wait for the announcement of the result.

Publicity

7.9 The major events of the election were extensively covered by the print and electronic media. These included the issue of the electoral guidelines, update on nominations and declaration of election result by the RO. Apart from issuing press releases on the key events, the REO also implemented the following publicity measures to enhance the transparency of the election:

- (a) posters were printed and distributed to various departments for promoting the nomination period;
- (b) a dedicated website for the 2005 CE Election was set up to release information on the election, such as factual data, publicity arrangements and update on nominations;
- (c) an e-leaflet providing information on the eligibility for candidature, the composition of the EC, voting system, etc was posted on the website; and
- (d) announcements of public interest were broadcast on TV and radio

programmes to publicise the nomination period of the election and the eligibility for candidature.

CHAPTER 8

ADVISORY SERVICE FOR CANDIDATE ON THE GUIDELINES

Section 1 – The Advisory Service

8.1 As in the 2002 CE Election, the Commission set up an advisory service for candidates on the interpretation and operation of the CE electoral guidelines. Candidates (including those who had publicly declared their intention to stand for the election, whether or not they had submitted nomination forms) and their election agents were eligible to use the advisory service. The service, however, did not cover enquiries on the parts of the guidelines relating to the ECICO, which were to be handled by the ICAC. The provision of the advisory service was laid down in the first chapter of the electoral guidelines.

8.2 The advisory service was provided with effect from 27 May 2005 (ie the day when the CE electoral guidelines were published) until the end of ordinary business hours before the polling day, or the close of nominations in the event that the election was uncontested. During this period, candidates or their election agents could lodge their enquiries with the Commission in writing. As far as practicable the EAC would answer an enquiry within three working days. All the questions and answers would be published, with the enquirers' identities withheld, for better understanding of the guidelines by the public.

8.3 The EAC acquired the assistance of Ms Dorothy CHENG, a Senior Government Counsel from the D of J, for the provision of legal advice on the enquiries as and when necessary.

Section 2 – Enquiry Received

8.4 During the period of 27 May to 16 June 2005 (ie the closing day of the nomination period), one enquiry relating to EAs and election expenses was received. The Commission answered the enquiry within three working days as pledged. The question and answer were published vide a press release, the EAC website and the dedicated website for the election for reference of the general public to enhance the transparency of the election. They are now reproduced at **Appendix VIII**.

CHAPTER 9

NOMINATIONS

Section 1 – The Nomination Period

9.1 The nomination period commenced on 3 June 2005 and ended on 16 June 2005. Nomination forms were available from the REO from 27 May 2005 onwards. The fixing of the nomination period and the polling date was announced in a Gazette notice published on 27 May 2005.

Section 2 – Disqualification of Election Committee Members

9.2 Among the EC members who belonged to the DCs, Heung Yee Kuk and CPPCC subsectors, there were a number of them who were no longer members of such bodies. There was public concern that such EC members might have lost their substantial connection with their subsectors, and were thus disqualified from making nominations and voting in the election under sections 16(5) and 26 of the CEEO.

9.3 According to section 1(3) of the Schedule to the CEEO, the circumstances in which a person has a substantial connection with a subsector include, but are not limited to, being a member, partner, officer or employee of a body included in the subsector. It is clear from this provision that whether a person has a substantial connection with a subsector should not be determined solely by whether he is a member of a body included in the subsector. An EC member who is no longer a DC, Heung Yee Kuk or CPPCC member is thus not necessarily disqualified from making nominations and voting at the CE Election. As long as he still maintains a substantial connection with the

subsector concerned, he will continue to be qualified to make nominations and to vote. Whether the EC members concerned have lost their substantial connection with their respective subsectors needs to be considered on a case-by-case basis. It is possible that some of them may still maintain connection in one form or another with their respective subsectors. Whether such connection amounts to “substantial connection” will have to be considered on the facts of each case.

9.4 To address the above concern and to draw the attention of subscribers to the provisions of the relevant legislation, the REO issued a letter to all EC members on 24 May 2005 before the nomination period to remind them of the provisions relating to disqualification from making nominations and voting in the election. In addition, a note bearing the same message was included in the nomination form as a reminder. The relevant sections of the legislation were also reproduced in the explanatory notes to the nomination form for easy reference by candidates and subscribers.

Section 3 – Legal Provisions against Pressuring Electors Not to Nominate a Particular Candidate

9.5 In response to media enquiries on the legal provisions against pressuring electors not to nominate a particular candidate, the EAC issued a press release on 31 May 2005 reminding all parties concerned that intimidation and bribery are offences under the law, punishable by fine or imprisonment. The content of the press release was subsequently added to the CE electoral guidelines as an annex for reference of the candidates and general public.

Section 4 – Nomination Forms Received and their Validity

9.6 A total of six nomination forms were submitted to the RO during the nomination period. After examining and verifying the information supplied in the nomination forms, the RO ruled that only one nomination form was valid at the close of nominations. The valid nomination form, subscribed by 674 EC members, was submitted by Mr TSANG Yam-kuen, Donald. The RO confirmed that Mr Tsang had fully satisfied the statutory qualifications for candidature. In accordance with section 17 of the CEEO, the RO determined Mr Tsang's nomination as a candidate in the election to be valid. His name and the names of EC members nominating him were published in the Gazette Extraordinary on 16 June 2005.

9.7 As for the other five nomination forms received during the nomination period, they were not subscribed by any EC member. All such forms were therefore ruled as invalid by the RO.

9.8 Details of all the nominations received and their validity are at **Appendix IX**.

CHAPTER 10

ELECTION RESULT

Section 1 – The Result

10.1 As there was only one validly nominated candidate (ie Mr TSANG Yam-kuen, Donald) at the close of nominations at 5:00 pm on 16 June 2005, in accordance with sections 23 and 28 of the CEEO, the RO met the media at about 5:30 pm on 16 June 2005 to announce that Mr TSANG Yam-kuen, Donald was returned and elected in the election.

10.2 The RO's announcement was immediately followed by the Commission's meeting with the media. The EAC Chairman remarked on the occasion that the Commission had fulfilled its duties under the EACO. The electoral arrangements and procedures of the election were implemented in compliance with the Basic Law, the CEEO and the other relevant electoral legislation. The EAC was of the view that the election result was lawful and valid and would notify the Hong Kong Special Administrative Region ("HKSAR") Government of the election result so that the Administration could report to the Central People's Government according to Article 45 of the Basic Law. The Chairman also reminded all candidates, including those who had publicly declared their intention to stand for the election, to submit the return and declaration of election expenses and donations not later than 30 days after the gazettal of election result. In response to enquiries from the media, the Chairman briefed the audience about the election-related complaints received and the estimated amount of savings in public resources as a result of the election being uncontested.

10.3 Both the RO's announcement and the EAC's media session received wide attention from the media and were telecast live.

10.4 Shortly after the press conference, the Commission wrote to notify the HKSAR Government of the election result accordingly.

10.5 The election result was published in the Gazette Extraordinary on 16 June 2005.

Section 2 – Notification to Electors

10.6 As the election was uncontested, a notice stating that no poll would be conducted, together with a copy of the introductory leaflet from the validly nominated candidate, was sent to each elector on 21 June 2005.

PART FOUR

RETROSPECTIVE VIEWS

CHAPTER 11

COMPLAINTS

Section 1 – A General View

11.1 Complaints in elections are common. The complaint-handling mechanism is one of the means to safeguard the fairness and integrity of the electoral system. With its experience gained from processing complaints in the past years, the EAC noticed that some complaints revealed deficiencies in certain areas of the electoral arrangements which prompted the EAC to explore and institute remedial measures that would bring about better arrangements for future elections. Complaints also provide an effective monitoring system for candidates to exercise mutual checks among themselves and through these complaints, they understand the electoral law and guidelines better. The EAC has always been endeavouring to handle the complaints received efficiently and fairly to let the public know that justice is safeguarded and to ensure that the complaint-handling mechanism is not abused.

Section 2 – The Election Committee Subsector By-elections

11.2 The complaint-handling period started from 9 April 2005, ie the day when the nomination period commenced, and ended on 15 June 2005, ie 45 days after the polling day of 1 May 2005. Instead of setting up a Complaints Committee as in some previous elections, the EAC assumed the task of handling election-related complaints for the by-elections. Five different parties were responsible for processing the complaints received: the EAC, ROs, Police, ICAC and, on the polling day, the PROs as well. Members of the public could lodge their complaints with any of these parties. The EAC,

supported by the REO's Complaints Unit, dealt with cases that were within its jurisdiction and not covered by any statutory provisions involving criminal liability. The ROs were delegated with the authority to handle such complaint cases that were less serious. The Police handled cases that involved criminal liability and the ICAC attended to cases that involved breaches of the ECICO and Prevention of Bribery Ordinance (Cap 201). If the PROs received any complaints on the polling day at their respective polling stations, they would take immediate action on the spot.

11.3 By the end of the complaint-handling period, a total of ten cases were received direct from the public by the EAC (six cases), ICAC (one case) and PROs (three cases). There were no complaint cases received by the ROs and the Police. The complaint cases covered various nature including the entitlement to vote, designation of polling station, conduct of polling staff, false statement about a candidate etc. A detailed breakdown of these cases by the receiving party and nature is shown at **Appendix X**.

11.4 On the polling day, as mentioned in Chapter 6, a complaints centre was set up in the REO office in Harbour Centre to handle the complaints received. Each RO was required to oversee the operation of two to three polling stations and was responsible for handling complaints relating to these polling stations which were outside the PROs' jurisdiction. The Police assigned police officers on duty in the police stations to attend to complaints and the ICAC assigned their officers to man a complaints hotline during the polling hours. The PROs received complaints on the spot. A total of seven complaint cases were received by the EAC (four cases) and the PROs (three cases) on the polling day of the by-election. A breakdown of these complaint cases is shown at **Appendix XI**. These seven complaints were also included in Appendix X.

11.5 Of the ten cases received during the complaint-handling period, one was found substantiated and nine unsubstantiated. The substantiated case was about polling staff giving misleading instructions to electors as to the number of candidates they could choose. Immediate action was taken to rectify the situation as detailed in paragraph 6.9 above. Advisory letters were also sent to the polling staff concerned after investigation to remind them of the appropriate electoral procedures.

Section 3 – The Chief Executive Election

11.6 The complaint-handling period for the CE Election started with the commencement of the nomination period on 3 June 2005 until 31 July 2005 (45 days after the close of nominations on 16 June 2005). The EAC directly handled the complaints relating to the CE Election. As the complaints for the election might be of a more complicated nature, the EAC enlisted the assistance of Mr Gilbert MO Sik-keung, Deputy Law Draftsman from the D of J, for legal advice as and when necessary. The ICAC and the Police, collaborating with the EAC, also assisted in the handling of complaints within their respective purview.

11.7 During the complaint-handling period, a total of 13 complaints were received by the EAC, Police and the ICAC. Among the seven complaint cases received by the EAC, two cases were about media reporting, three were about electioneering by Principal Officials, one was about the way nominations were made and the remaining one was about arrangements on election forum. A breakdown of all these complaint cases is set out in **Appendix XII**. All of these 13 cases were found unsubstantiated after investigation.

Section 4 – Judicial Review

11.8 After the conclusion of the 2005 CE Election, there were six cases of judicial review lodged with the High Court, of which the hearing of two cases is still pending. The other four cases had been dismissed by the court or withdrawn.

CHAPTER 12

REVIEW AND RECOMMENDATIONS

Section 1 – A General Remark

12.1 The Commission is generally satisfied with the smooth conduct of both the ECSS By-elections and the CE Election, which were organised in an open, fair and honest manner. After the completion of both elections, the EAC, following the past practice, conducted a comprehensive review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The significant areas under review and the related recommendations are set out in the ensuing paragraphs.

Section 2 – Review and Recommendations

(A) Ballot papers not treated as questionable

12.2 For the ECSS By-elections, all unmarked ballot papers, ballot papers not marked with the “✓” chop and those endorsed with the words “Tendered”, “Unused” and “Spoilt” thereon were treated as questionable ballot papers and the validity of these papers was decided by the RO under sections 77 and 78 of the EAC (EP) (EC) Reg. These ballot papers accounted for most of the questionable ballot papers to be determined by the RO. If these ballot papers were regarded as invalid, instead of questionable, in the course of counting, the RO’s workload in determining questionable ballot papers could be substantially relieved and the counting time would also be shortened. Similar arrangement had been adopted for the 2003 DC Election and the 2004 LegCo Election and set out in each of the electoral procedure regulations for these two elections.

In view of the tight time frame for holding the ECSS By-elections this year, no such legislative amendments have been made on the relevant electoral procedure regulation.

Recommendation:

12.3 In line with the arrangements for the DC and LegCo elections, consideration could be given to amending the EAC (EP) (EC) Reg so as to empower the RO to treat the above ballot papers as invalid during the ballot papers sorting process for future ECSS elections or by-elections.

(B) The poll card

12.4 Some candidates of the ECSS By-elections raised concern on the polling day that the existing English version of the poll card which stated that “You are entitled to cast ONE vote at the polling station...” was misleading for those subsectors whose electors were entitled to choose more than one candidate. As stated in paragraph 6.9 above, the REO subsequently reminded the polling staff that they should draw the attention of the electors to the number of candidates they could vote for as printed on the ballot paper. The use of “ONE vote” in this context means casting one ballot paper, not voting for only one candidate, which is similar to the term used under section 30(2), 30(3) or 54(1) of the EAC (EP) (EC) Reg.

Recommendation:

12.5 To remove any possible ambiguities, the wordings of the poll card should be revised to state the number of ballot paper the elector is entitled to collect for future subsector elections or by-elections, ie “You can collect ONE

ballot paper at the polling station shown overleaf to cast your vote(s) for your subsector in which you are either a voter or an authorised representative” or “You can collect TWO ballot papers at the polling station shown overleaf to cast your votes for the two subsectors in which you are a voter for one subsector and an authorised representative for another subsector”, whichever applicable. Similar amendments may also be made to the poll cards for other elections whenever necessary.

(C) Setting up of polling stations

12.6 For the ECSS By-elections, some PROs pointed out that the setting-up time of their respective polling stations at 4:00 pm on the day preceding the polling day was too late. In identifying venues as polling stations, priority was given by the REO to community halls and sport centres, in view of the tight schedule for the preparation of the by-elections. The venue owners or management bodies had been requested by the REO to release their venues in the early afternoon on the day preceding the polling day for setting-up work. However, most sport centres could only be made available at 4:00 pm due to prior bookings by the public, according to the Leisure and Cultural Services Department (“LCSD”). It was noted by the REO that the setting-up work for most polling stations was completed before 6:00 pm while the latest completion time was 7:35 pm.

Recommendation:

12.7 To allow the polling station staff to have sufficient time for the setting-up work in future elections, the REO should make every effort to persuade the venue owners or management bodies to release their venues in the afternoon as early as possible on the day preceding the polling day.

(D) Contingency plan

12.8 In response to the recommendation set out in the report of the Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections published in May 2005, a comprehensive contingency plan was drawn up by the REO to provide for a wide range of measures including the setting up of five emergency depots for replenishment of supplies (eg ballot boxes, ballot papers, furniture etc), the provision of additional staff and dedicated transport facilities to each of the 39 polling stations. In addition, a backup system for compilation of voter turnout statistics and a fall-back venue for setting up the central counting station had been put in place by the REO to ensure the smooth conduct of the ECSS By-elections. Trial runs of these measures had been conducted beforehand, where necessary.

Recommendation:

12.9 The Commission considers that the arrangement for drawing up a comprehensive contingency plan (apart from the existing one for inclement weather and emergencies) for the various aspects of electoral arrangements to cater for unexpected difficulties for each and every election or by-election should continue.

(E) Number of ballot paper allocated to each issuing desk

12.10 Some PROs suggested in the 2004 LegCo Election that the number of ballot papers for individual FCs allocated to a polling station should be increased, so that the PRO could give one complete booklet of ballot papers for a specific FC to each issuing desk to facilitate the compilation of statistics for

ballot papers issued for individual FC. This suggestion was adopted for the ECSS By-elections by providing each issuing desk with a complete booklet of ballot papers, instead of separate parts of a booklet, for individual subsectors.

Recommendation:

12.11 The new practice was conducive to the compilation of statistics on the number of ballot papers issued to individual subsectors. The Commission suggests that this practice, which would improve both efficiency and accuracy, should continue for future elections.

(F) Fax machines used at polling stations

12.12 For the 2005 ECSS By-elections, fax machines were used for the first time as the channel for collecting electoral statistics from a total of 39 polling stations by the Statistical Information Centre on the polling day. The overall operation was smooth apart from the occurrence of two minor incidents, ie black shades found on fax copies received from five polling stations during the first few reporting periods and distortion of images on nearly half of the fax copies received from all polling stations in the late afternoon. Both of these problems were quickly resolved and did not occur again for the rest of the day. These minor incidents did not affect the compilation of statistics as the staff of the Statistical Information Centre had taken immediate action to confirm the voter turnout figures with the PROs concerned over the phone.

Recommendation:

12.13 Consideration should be given to using fax machines as the means for reporting electoral statistics for future by-elections of similar scale. This

method has proved to be more straight forward, simple and easy to operate with a high level of data integrity maintained, as compared with the other methods used in previous elections such as verbal reports by telephone or electronic report through the Interactive Voice Response System. Whether this method is suitable for large scale ordinary elections in which the number of polling stations and electors could be more than 10-fold of the 2005 ECSS By-elections would need to be further reviewed.

(G) Training of staff

12.14 The crisis management training newly introduced for polling staff of the ECSS By-elections was considered by some PROs as too brief and general. For this first time, owing to time constraints, the course had to focus on generic matters and would in some aspects fall short of catering for all practicalities of elections. For future elections, there may be scope for expanding the course content to cover more election-specific subjects and its usefulness and value should be evaluated in the long run.

Recommendation:

12.15 To ensure that the Government will have a team of staff who are well-trained in discharging electoral related duties, consideration should be given to enhancing the training for REO staff as well as polling and counting staff on contingency planning and crisis management so as to equip them with the necessary skill in handling unexpected situations. Assistance from outside experts may be sought in organising these training courses, where appropriate. Consideration should also be given to incorporating more practical exercises and problem-solving drills in the training programmes, and organising focus group discussions. The recruitment and training schedule of polling and

counting staff might be advanced so that they can have a longer lead time to familiarise themselves with the relevant electoral procedures etc.

(H) Number of subscribers required

12.16 For the CE Election, during the consultation period of the proposed guidelines and the complaint-handling period, representations and complaints were received concerning the requisite number of subscribers for nominating a CE candidate. Some suggested lowering the minimum number of requisite subscribers while others suggested setting a ceiling to limit the maximum number of subscribers for nominating a CE candidate. Any change concerning the requisite number of subscribers would, however, involve amendment of the CEEO which falls outside the purview of the EAC.

Recommendation:

12.17 The Commission suggests that the Administration may take the above views into account in conducting the review of the method for electing the CE in future.

(I) Amendment of disqualification provisions

12.18 As stated in paragraphs 9.2 to 9.4 above, there was public concern that some EC members who were no longer DC, CPPCC or Heung Yee Kuk members might have lost their substantial connection with their subsectors, and were thus disqualified from making nominations and voting in the 2005 CE Election. Although section 1(3) of the Schedule of the CEEO has provided an interpretation on the term “substantial connection”, whether an EC member has lost his substantial connection with the relevant subsector has to be considered

on a case-by-case basis. This situation is not satisfactory.

Recommendation:

12.19 In view of the public concern, the Administration should review the current legislation and consider how cases where EC members have lost their membership in DC, CPPCC or Heung Yee Kuk should be dealt with.

(J) Polling hours

12.20 In the 2005 CE Election, the duration for each round of voting is estimated to be one hour. If the membership of the EC were increased in future, the duration of the polling hours for each round of voting may need to be adjusted as appropriate.

Recommendation:

12.21 Consideration should be given to adjusting the polling hours of each round of voting, taking into account the size of the electorate after the review on constitutional development has been concluded.

(K) Selection of venue for CE election

12.22 Hall 7A of the HKCEC was reserved as the polling-cum-counting station for the 2005 CE Election. During the preparation stage, it was noted that the physical constraints of the venue have presented many logistical problems in terms of security, transport, access of electors, candidates and their supporters to the station. The new Annex of the HKCEC was considered to be a more suitable venue insofar as accessibility and security control are

concerned, but on this occasion this venue was not available.

Recommendation:

12.23 Consideration should be given to exploring other suitable and available venues for the conduct of the CE election. Endeavour will continue to be made to secure booking of such a venue as early as possible.

CHAPTER 13

ACKNOWLEDGEMENT

13.1 Both the ECSS By-elections and the CE Election have been smoothly conducted. The Commission attributes this to the dedicated and concerted efforts of all parties involved in the preparation for and conduct of the elections.

13.2 The Commission would like to express its gratitude to the following organisations, and government bureaux and departments for their valuable assistance and unflinching support: the building management office of Harbour Centre, Auxiliary Medical Service, CAB, CAS, CSB, CSTDI, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Highways Department, Government Logistics Department, Department of Health, Home Affairs Bureau, HAD, Hong Kong Observatory, Hong Kong Police Force, Hongkong Post, Housing Authority and Housing Department, ICAC, ISD, Lands Department, LCSD, Marine Department, Office of the Government Chief Information Officer (of the Commerce, Industry and Technology Bureau), Official Languages Division (of the CSB) and Radio Television Hong Kong.

13.3 The Commission is grateful to the RO and AROs for the CE Election, the ROs, AROs and NACs for the ECSS By-elections, and the legal advisers for the enquiry service on the guidelines and for handling complaints relating to the CE Election. The Commission would like to thank those polling and counting staff who conscientiously performed their duties and dutifully followed the relevant operational procedures. The Commission is also thankful to staff of

the REO, who provided unfailing support in the conduct of the ECSS By-elections and preparation for the CE Election.

13.4 The Commission also wishes to express its appreciation to the work of the media. Wide coverage of the activities relating to the ECSS By-elections and the CE Election has indeed contributed much to enhancing the transparency of the elections.

13.5 Last but not least, the Commission wishes to acknowledge its gratitude towards those who have all the time complied with the electoral legislation and guidelines throughout the elections and those who cast their votes at the ECSS By-elections.

PART FIVE

EPILOGUE

CHAPTER 14

LOOKING FORWARD

14.1 The EAC remains fully committed to fulfilling its mission of supervising the conduct of public elections in Hong Kong in accordance with the law. It will continue to make every endeavour in keeping a vigilant watch over the conduct of the elections to maintain the transparency, fairness and honesty of each election. The EAC will not be hesitant in accepting positive and constructive comments from the public to bring about improvements to future elections.

14.2 The Commission wishes to recommend that this report be made public, at a time the CE thinks fit, so as to enable members of the public to be kept in the picture as to how the preparation and conduct of the elections were being carried out.