

CHAPTER 1

AN OVERVIEW

Section 1 – Introduction

1.1 The first term of the District Councils (“DCs”) with 390 elected members for a four-year term expired on 31 December 2003. An ordinary election was held on 23 November 2003 to return 400 members for the second term of four years from 1 January 2004 to 31 December 2007.

1.2 Amongst all the public elections conducted under the supervision of the Electoral Affairs Commission (“EAC” or “Commission”), the 2003 DC Election was a very special one. It was the first election in Hong Kong of its kind (ie DC and its predecessor, District Board) which recorded a turnout of over one million electors at the polls. The exceptionally high turnout rate of 44.10% (1,066,373 electors) represented an increase of over 8% as compared to the 35.82% (816,503 electors) at the 1999 DC Election. It was also the first public election in Hong Kong during which decentralised counting of votes was successfully introduced.

1.3 For the Commission, it was also a very eventful election. It had to overcome hiccups and cope with several challenging tasks during the preparation. These tasks included the revision of its proposals on the demarcation of DC constituency boundaries immediately before the public consultation period as a result of the Administration’s decision to increase the number of elected seats from

390 to 400 to cope with the sharp population increase in the new towns of three Districts; the reversion of its decision to shorten polling hours; and the introduction of decentralised vote counting arrangements at individual polling stations upon the close of polls.

1.4 Chapters 2, 4 and 6 of this report give a detailed account of these significant events at the various stages of the election.

Section 2 – Legislation governing the Election

1.5 Like any other public elections the 2003 DC Election operated within the bounds of the law. The election was governed by the following ordinances:

- (a) the Electoral Affairs Commission Ordinance (“EACO”), which empowers the EAC to perform its various functions in supervising the conduct of the election;
- (b) the District Councils Ordinance (“DCO”), which provides the legal basis for conducting the election;
- (c) the Legislative Council Ordinance (“LCO”), which lays down the qualification for registration as an elector; and
- (d) the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”), which prohibits election-related corrupt and illegal matters and is

administered by the Independent Commission Against Corruption (“ICAC”).

1.6 These ordinances were complemented by four subsidiary legislation which provided the detailed procedures for the conduct of the election. They are –

- (a) the EAC (Electoral Procedure) (District Councils) Regulation (“EAC (EP) (DC) Reg”);
- (b) EAC (Nominations Advisory Committees (District Councils)) Regulation (“EAC (NAC) (DC) Reg”);
- (c) EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (“EAC (ROE) (GC) Reg”); and
- (d) the District Councils (Subscribers and Election Deposit for Nomination) Regulation.

1.7 The EAC is at all times committed to improving the electoral arrangements for every election. Before the 2003 DC Election, the EAC revised the EAC (EP) (DC) Reg and the electoral guidelines taking into account the operational experience of past elections as well as suggestions and complaints received from the public and other parties concerned with a view to improving the conduct of the upcoming election.

1.8 The EAC (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 was made to –

- (a) provide for the counting of votes at a polling station after the close of poll, to put into effect the decentralised vote counting arrangement;
- (b) improve the former provisions on the handling of questionable ballot papers, so that ballot papers that were clearly invalid needed not be treated as questionable; and
- (c) make other necessary amendments to streamline the electoral arrangements.

1.9 In scrutinising this Amendment Regulation, the Legislative Council (“LegCo”) considered that to protect the secrecy of vote, ballot papers from two or more polling stations within a constituency should be mixed before counting. It was then resolved that the votes of a polling station with less than 200 registered electors were to be mixed with those of another within the same constituency before counting.

1.10 The Amendment Regulation was passed by the LegCo on 9 July 2003 to give effect to the modified vote counting arrangement and other minor changes. The Amendment Regulation came into operation on 11 July 2003.

Section 3 – This Report

1.11 The Commission is required under section 8(1) of the EACO to submit a report on an election to the Chief Executive within three months after the polling day of the election. Subject to the Chief Executive's agreement, the report may be made public, hence rendering the EAC's work in the conduct and supervision of the election more transparent.

1.12 This report aims to give a comprehensive picture of how the Commission conducted and supervised the election at its various stages. It gives a detailed account of the preparation work and the implementation of the electoral arrangements, reviews the effectiveness of these arrangements, relates how complaints were handled, and puts forth the Commission's recommendations for improving future elections in the light of the experience gained from this election.

CHAPTER 2

THE DEMARCATION EXERCISE

2.1 The first task that the Commission had to deal with in preparation for the 2003 DC Election was the delineation of the constituency areas. In accordance with section 18 of the EACO, the Commission is required to submit to the Chief Executive a report on its recommendations for DC constituencies not more than 36 months from the date of the preceding DC ordinary election. As the last ordinary election was held on 28 November 1999, the EAC was required to submit the report by 27 November 2002.

2.2 The Registration and Electoral Office (“REO”) started work in around May 2002 on receipt of the population-related information prepared by an ad hoc subgroup formed under the Working Group on Population Distribution Projections set up under the auspices of the Planning Department. The primary function of the ad hoc subgroup was to provide the EAC with the necessary population forecasts and to project the population distribution of the 18 Districts in the Territory as at a date as close to the polling date as practicable. For the 2003 DC Election this date was 30 June 2003. The number of elected seats for the 2003 DC Election at the start of work was 390, ie the same as that for the 1999 ordinary election, and the preliminary demarcation proposals were drawn up on this basis in accordance with the criteria stipulated in section 20 of the EACO and the working principles adopted by the Commission.

2.3 However, when the preliminary demarcation proposals were about to complete, the Administration decided to increase the number of elected seats from 390 to 400, after having taken into consideration the sharp population increase in the new towns of Tin Shui Wai, Tseung Kwan O and Tung Chung and the public views received during the initial consultation period. The ten additional elected seats were added to the DCs of the three concerned Districts, namely Yuen Long, Sai Kung and Islands so that the needs of the residents of these new towns could be better served.

2.4 The change affected not only the three Districts, but also many others, because of the consequential change in the population quota. As a result, the REO demarcation team had to re-examine the preliminary demarcation proposals and revise them. The REO worked hand in hand with the District Officers (“DOs”) of the Home Affairs Department (“HAD”) in drawing up the boundaries of the constituencies and their names. The EAC went through the proposals and eventually decided on a set of delineations for consulting the public.

2.5 The public consultation period was deferred from 5 September 2002 – 4 October 2002 to 6 January 2003 – 4 February 2003. The deadline for submitting the demarcation report to the Chief Executive was accordingly extended from 27 November 2002 to 27 May 2003.

2.6 The proposals, with maps, were open for public consultation during the consultation period, in accordance with section 19 of the EACO. Public forums

were held on 23 and 24 January 2003 to receive oral representations on the proposals from members of the public.

2.7 Taking the public representations into consideration, the Commission finalised its recommendations and submitted the report to the Chief Executive on 22 April 2003. The report also contained a detailed account of the EAC's work in the demarcation exercise. The Chief Executive in Council accepted and approved the recommendations on 13 May 2003. The report was tabled at the LegCo meeting on 21 May 2003 for vetting. The Commission published the finalised set of maps with the delineations in July 2003 for public information.

CHAPTER 3

REGISTRATION OF ELECTORS

Section 1 – Eligibility to vote and Qualification for registration

3.1 To be eligible to vote in this election, a person is required to be registered as an elector for a geographical constituency (“GC”) under sections 24 and 27-31 of the LCO. His name should have appeared on the final register (“FR”) of GC electors published on 25 September 2003. The registration of GC electors was effected in accordance with the provisions of the EAC (ROE) (GC) Reg. To be registered as a GC elector, a person should –

- (a) be aged 18 or above as at 25 September 2003;
- (b) be a permanent resident of Hong Kong;
- (c) ordinarily reside in Hong Kong, with his residential address stated in the application for registration being his only or principal residence in Hong Kong;
- (d) hold a valid identity document or apply for a new/replacement identity document; and
- (e) not be disqualified from being registered as an elector.

3.2 An elector is entitled to vote only once at the election and in the constituency for which he is registered (section 29 of the DCO).

Section 2 – Change in the Registration Cycle

3.3 The cycle of elector registration adopted for the 1999 DC ordinary election had been revised for the 2003 election. Formerly the deadline for applications for registration was 16 March, the provisional register (“PR”) and omissions list were compiled thereafter and published not later than 15 April, and the FR was published not later than 25 May. In 1999 the DC ordinary election was held on 28 November which meant the FR was published about half a year before the election. A noticeable drawback of this cycle was that because of the considerable time gap between the publication of the FR and the polling day, changes in the addresses of the electors during this six-month gap could not be reflected in the FR. As a result, electors who had changed addresses during this time gap would have to vote in the constituencies where they no longer resided.

3.4 To ameliorate the situation the Administration looked into the feasibility of bringing the publication of the FR as close to the polling day as practicable and concluded that it could be brought to as close as two months before the election without affecting the preparation work or electioneering activities of the candidates.

3.5 The proposed amendment to the registration cycle was introduced by the Electoral Provisions (Miscellaneous Amendments) Bill 2002, which proposed, among other things, that, for a DC election year, the closing date for application for registration would be 16 July, and the publication of the PR and FR would be on a date not later than 15 August and 25 September respectively. This bill was

enacted on 27 December 2002. Subsequently the EAC (ROE) (GC) Reg was amended accordingly.

Section 3 – The Registration Campaign

3.6 To appeal to the eligible members of the public to register as electors and to remind those already registered to report to the REO any change of their addresses should they have moved, a large-scale registration campaign was coordinated by the Constitutional Affairs Bureau (“CAB”) and launched from 1 June to 16 July 2003, with the joint efforts of the REO, HAD, Information Services Department (“ISD”), Radio Television Hong Kong (“RTHK”) and ICAC. Publicity and promotional activities were staged, such as announcements in public interest on the television and radio, advertisements on the newspaper, posters and household visits. Moreover as a gesture of appreciation for the newly registered, they were given souvenirs in the forms of a bookstore privilege card and a specifically designed Octopus cardholder.

3.7 Of the 343,632 registration forms received as at the statutory cut-off date on 16 July 2003, 312,003 were received during the 6-week campaign period. The total number of electors in the 2003 FR was 2,973,612 with 164,478 being new ones.

Section 4 – The Registers

3.8 The REO published the PR on 15 August 2003. It included the names

and principal addresses of those whose names were included in the previous FR, but were updated/amended by the REO on the basis of information reported by electors or obtained from other sources, and the particulars of those eligible applicants who had applied for registration before 16 July 2003.

3.9 An omissions list was published in conjunction with the publication of the PR in 2003. This list contained the particulars of the persons who were formerly registered in the 1999 FR but were not included in the 2003 PR and proposed to be omitted from the 2003 FR on the grounds that the Electoral Registration Officer (“ERO”) had reasons to believe that these persons had been disqualified or had ceased to be eligible to be registered, eg they had passed away or they had changed their principal address but the new address was not known to the ERO.

3.10 Both the PR and the omissions list were made available at the REO for public inspection during the period 15 – 29 August 2003, when members of the public might lodge with the ERO objections against any entries in the PR. People whose applications for registration had been rejected or whose names had been put on the omissions list might also lodge claims with regard to such cases.

3.11 By the end of the public inspection period, the ERO received a total of 307 objections and one claim. These were forwarded to two Revising Officers, who were members of the Judiciary, for consideration and ruling. All of the 307 objections came from one objector, who alleged that 307 persons had no longer been residing in a certain housing estate. Of these objections, 244 were allowed

and 63 were dismissed by the Revising Officers. For the claim case the claimant claimed that he had submitted his application form to the REO but his name was not on the PR. The REO explained that it was because the application form in question was submitted after the statutory deadline of 16 July 2003. The Revising Officer accepted this explanation and dismissed the claim. The ERO also took the opportunity to correct six entries in the PR in accordance with section 18 of the EAC (ROE) (GC) Reg, and these were approved by the Revising Officer.

3.12 The FR was published on 25 September 2003. It listed the particulars of a total of 2,973,612 electors. An age and sex profile of these registered electors is at **Appendix I**.

Section 5 – Allocation of Electors to Constituencies

3.13 As soon as the EAC's recommendations on the delineation of the DC constituency areas were accepted and approved by the Chief Executive in Council on 13 May 2003, the REO proceeded to allocate each of the registered electors to a constituency area on the basis of their addresses as shown in the FR. This allocation exercise was completed by the time when the FR was published.

3.14 The REO then sent to each of the 2,973,612 registered electors a notice, known as the Notice of DC Constituency, to notify him of the constituency to which he had been allocated.

CHAPTER 4

THE GUIDELINES

4.1 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 purpose of producing the guidelines is to ensure that all public elections are conducted in an open, honest and fair manner. The guidelines provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. They also give directions in layman's language on how to comply with the relevant electoral legislation and identify common pitfalls so that candidates can avoid breaching the law and regulations due to inadvertence.

4.2 The Commission has at all times made its best endeavours in refining the electoral arrangements for elections. Before each general election, the EAC will revise the electoral guidelines. The revision is done on the basis of the guidelines used for previous elections, taking into account the operational experience of each election, as well as suggestions and complaints received from the public and other parties concerned. Before the promulgation of each set of guidelines, a 30-day consultation period will be announced during which representations are invited from the public and other parties concerned on the proposed guidelines. A public forum will also be held at which the EAC will receive oral representations from the public. The guidelines will then be revised taking into account the views received during the public consultation period before they are finalised for issue to the public. In 1999 the EAC published a set of guidelines for the exclusive use of the

DC ordinary election held in that year. For the 2003 election the EAC published a set of guidelines which aimed at serving not only the 2003 election but would apply to all DC ordinary elections and by-elections conducted under the DCO after the date of its publication on 29 September 2003. A loose-leaf format was adopted for the production of these guidelines. In the event that future amendments to the guidelines are necessary, only loose-leaf amendment sheets will be issued without the need to reprint the entire set. It will save manpower and financial resources in the long run by rendering it unnecessary to produce an entire set of guidelines for each and every future election.

4.3 The REO started the drafting work in early October in 2002, modelling on the 1999 DC election guidelines, and making reference to the guidelines issued for the previous elections, ie the 2000 LegCo, Election Committee subsectors and 2002 Chief Executive elections. It also took into account the operational experience in these elections, the DC by-elections and the Village Representatives elections and the suggestions received with a view to introducing improvements on the electoral arrangements for the upcoming election.

4.4 The major changes proposed in the draft guidelines, as compared with the final guidelines for the 1999 ordinary election, included the following:

- (a) shortening of the polling hours for the election from the previous 15 hours (from 7.30 am to 10.30 pm) to 12 hours (ie from 7.30 am to 7.30 pm);

- (b) vote counting at polling stations (ie the polling station to turn into the counting station after the close of poll);
- (c) deposit of declarations and copies of election advertisements (“EAs”) with the Returning Officer (“RO”) before, instead of within seven days after, publication;
- (d) prohibition of the use of sound amplifying device or staging shows (eg lion dances) near the no canvassing zone (“NCZ”) where the sound so generated could be heard by people within the NCZ; and
- (e) guidelines for Government officials (excluding the Principal Officials appointed under the Accountability System) to attend public functions which candidates also attend.

4.5 Items (a) and (b) of the changes were for implementing the Commission’s plan for improving the two most important aspects of the electoral arrangements, polling and counting. The plan was to shorten the polling hours and tighten the counting procedure. Shortening the polling hours would save resources and in conjunction with counting of votes at the polling stations would engender an earlier announcement of the election result. Counting at the polling stations would also reduce the risk and time involved in transporting the heavy ballot boxes to a centralised counting station. These changes would alleviate fatigue on the part of the candidates and their agents at this final and crucial but

hectic stage of the election, not to mention the exhaustion that would otherwise be experienced by the media corps and electoral staff, and would enable the public and the electors to know the election result before they go to bed. It would also avoid too much late disturbance to the neighbourhood of the polling stations that would be turned into a loud celebration venue after the declaration of the election result.

4.6 In accordance with the EACO and established practice, the Commission conducted a 30-day public consultation exercise from 28 April 2003 until 27 May 2003. During this period members of the public were invited to give their views on the proposed guidelines and lodge their written representations with the EAC. A forum was held in the afternoon of 19 May 2003 in the conference room of the REO when the Commission was present to listen to the oral representations put forth in person by those who attended the forum. Attendees included some of the then incumbent DC members. The Commission heard 11 representations. The majority favoured the shortening of polling hours and the new arrangement of vote counting at polling stations. By the close of the public consultation period the Commission received a total of 221 written representations.

4.7 On the proposal of shortening the polling hours, the feedback from the majority was favourable. The Commission received a total of 192 representations, of which 120 (or about 63%) favoured the shortening of polling hours from the previous 15 to the proposed 12 hours. Of this 111 (or about 92.5%) supported the hours of 7.30 am – 7.30 pm. The remaining 72 representations objected to the proposed shortening of polling hours and preferred maintaining the previous hours of 7.30 am – 10.30 pm.

4.8 On the proposal of vote counting at polling stations, the EAC received 111 representations, all of which supported it.

4.9 The proposed guidelines were then revised taking into account the views received during the public consultation period before they were finalised and issued to the public.

4.10 The Commission held a press conference on 22 September 2003 to announce the publication of the finalised version of the guidelines which were to come into operation on 29 September 2003. However, a few days before publishing the polling hours in the Gazette, the Commission met strong objections from the public against the shortened hours. A total of 168 representations were lodged with the Commission strongly objecting to the shortening of polling hours and one even pledged to seek a judicial review of the Commission's decision. Having examined all the representations, the Commission felt that most of the concerns raised were genuine. The Commission decided that the original polling hours of 7.30 am – 10.30 pm should be retained taking into account the following considerations –

- (a) because of the outbreak of the “SARS” during the consultation period between end April and end May 2003, some people, as expressed in the latter batch of representations, might have been too preoccupied with the “SARS” issue and hence overlooked the opportunity to express their opinions on the proposed new polling hours during the public consultation period;

- (b) since 1 July, the public had shown more interests in politics and electoral affairs; and
- (c) the savings derived from the shortening of the polling hours would be relatively insignificant, particularly when some electors might not be able to vote or might find it inconvenient for them to vote because the new polling hours would conflict with their working hours.

4.11 In view of the imminent need to go ahead with the election and in order not to create uncertainty for the electorate in the event that a judicial review was lodged, the Commission, having considered various options, decided that as it was of paramount importance to ensure the election be held as scheduled and under no uncertainty, the polling hours should be reverted to 7.30 am – 10.30 pm. The decision, the Commission stressed, was not due to any political pressure. To let the public know of this decision, the Commission held a press conference on 26 September 2003. Amendment sheets on the change of polling hours were subsequently issued to the parties concerned to replace the relevant page of the finalised guidelines, which had been sent out on 22 September 2003.

CHAPTER 5

APPOINTMENTS AND NOMINATIONS

Section 1 – Appointment of Nominations Advisory Committees

5.1 For the sake of providing the ROs and candidates with free legal advice on the eligibility of the candidates, in case they needed it, two legal professionals were appointed as Nominations Advisory Committees (“NACs”) under the EAC (NAC) (DC) Reg. They were Messrs Lawrence LOK Ying-kam, Senior Counsel and HO Bing-kwan. Both of them were experienced members of the legal profession and were not affiliated with any political organisations. Their appointment covered the period from 1 September to 19 October 2003 and was published in the Gazette on 29 August 2003. The EAC also issued a press release announcing their appointment on the same date. During their appointment period the NACs received 28 requests from the ROs and candidates for legal advice.

Section 2 – Appointment of, and Briefing for, ROs

5.2 The DOs of the 18 districts were appointed on 19 September 2003 as ROs, each one serving his own district.

5.3 The EAC Chairman hosted a briefing session for the ROs in the afternoon of 29 September 2003 in the Conference Hall (1) on Level 4 of the Administration Building of the Hong Kong Cultural Centre in Tsim Sha Tsui.

Also present at the briefing session were the Chief Electoral Officer/REO (“CEO/REO”) and representatives of the Department of Justice (“DoJ”), Food and Environmental Hygiene Department (“FEHD”), Housing Department (“HD”), Lands Department (“Lands D”) and Leisure and Cultural Services Department (“LCSD”). The EAC Chairman highlighted the major electoral arrangements for the ROs’ attention, including the nomination procedure, appointment of agents, polling and counting arrangements, matters relating to the NCZ and no staying zone (“NSZ”), provisions in the legislation and guidelines governing EAs and election expenses, and handling of complaints. The ROs present were enthusiastic in raising questions on the various electoral arrangements.

Section 3 – Appointment of Assistant ROs

5.4 To provide assistance to the ROs, 28 Assistant ROs (“AROs”), who were either the Assistant DOs or Senior Liaison Officers of the relevant District Offices, were appointed. For providing legal advice to the ROs and Presiding Officers (“PROs”) during the count, 20 AROs (Legal) were also appointed. They were all legal officers, the majority of whom came from the DoJ and the rest of whom came from the HD, Lands D and Legal Aid Department (“LAD”).

Section 4 – Eligibility for Nomination as a Candidate

5.5 To be qualified for nomination as a candidate of the election, a person should –

- (a) be aged 21 or above;
- (b) be a registered elector;
- (c) not be disqualified from voting in the election;
- (d) not be disqualified from being nominated as a candidate or elected as an elected member of a DC; and
- (e) have ordinarily resided in Hong Kong for at least three years preceding the date of his nomination.

5.6 The qualification and disqualification for the nomination of candidates were governed by the DCO and the nomination procedure was set out in the EAC (EP) (DC) Reg.

Section 5 – Nomination of, and Briefing for, Candidates

5.7 Nomination of candidates commenced on 2 October 2003 and closed at 5 pm on 15 October 2003, during which candidates handed in their nomination forms in person to the respective ROs. This two-week period was announced in a notice in the Gazette published on 19 September 2003. By the close of nomination the ROs received 846 nominations, of which 837 were confirmed valid by the ROs, three were verified as invalid and six had been withdrawn before the close of nomination. The lists of all validly nominated candidates for each constituency were published in the Gazette on 24 October 2003.

5.8 To draw the attention of the candidates and their agents to the major provisions of the relevant electoral legislation and the guidelines and the important

points they should look out for, two briefing sessions, chaired by the EAC Chairman, were held on 18 October 2003 at the Hong Kong International Trade and Exhibition Centre in Kowloon Bay. One was held in the morning for the candidates of the districts in Hong Kong Island and Kowloon and the other in the afternoon for the candidates of the districts in the New Territories. Also present at the two sessions were the CEO/REO, representatives from the DoJ, ICAC and Hongkong Post. Subjects covered included requirements relating to EAs and election expenses, appointment and roles of the various types of agents, conduct of electioneering activities, avoidance of corruption and illegal practices and the arrangement for vote counting at polling stations.

5.9 The EAC Chairman appealed to the candidates and their agents to abide by the requirements laid down in the electoral legislation and guidelines and to co-operate with the authorities concerned to ensure that the election would be conducted in an open, fair and honest manner. He stressed that, to that end, the Commission and all the government departments concerned would make every endeavour to enforce the law and guidelines.

5.10 After each of the briefing sessions the ROs determined, by means of drawing lots, the order of the candidates' names that would appear on the ballot paper and the designated spots to be allocated to the candidates for displaying their EAs.

CHAPTER 6

POLLING AND COUNTING ARRANGEMENTS

Section 1 – Recruitment of Polling/Counting Staff

6.1 As in the previous ordinary election, a service-wide recruitment exercise was launched to call for serving civil servants to work at polling stations on the polling day. For this election, as the polling-cum-counting arrangement was adopted, the staff recruited would have to take up both polling and counting duties. The response was encouraging. As a result 10,413 staff members of government departments succeeded in their applications for taking up jobs as the PRO, Deputy PRO, Assistant PRO, Polling Officer and Polling Assistant.

Section 2 – Training for Polling/Counting Staff

6.2 To equip the recruited staff with the necessary operation know-how for discharging their duties, six half-day training sessions were organised on 5-7 and 11-13 November 2003 in the Arena of the Queen Elizabeth Stadium in Wanchai.

Section 3 – Briefing for PROs

6.3 A series of briefing sessions by district were exclusively held for the PROs and Deputy PROs on 27-29 October 2003 at the Lecture Theatre of the Hong Kong Central Library in Causeway Bay to familiarise them with the

unprecedented requirement for them to shoulder the responsibilities of supervising both the polling and counting functions and determining the validity of ballot papers.

Section 4 – Identifying Venues as Stations

6.4 Of the 837 validly nominated candidates, 74 were the only one nominated for their respective constituency and hence elected uncontested. The remaining 763 candidates had therefore to contest the other 326 seats. The REO had to identify suitable venues as polling-cum-counting stations for these constituencies, with at least one station for each constituency. The overriding principles in identifying these venues were that they should be easily and conveniently accessible to the electors in the constituency and, as far as practicable, be suitable for conducting both the poll and the count.

6.5 Successfully acquiring a suitable venue depended to a considerable extent on the helpfulness and co-operation of the owner or management of the venue and the availability of the venue on polling day. The REO staff had encountered difficulties in securing permission from some owners or management bodies of private premises, including a few schools and a kindergarten, for using their venues. Fortunately, most of the acquisitions were made smoothly. At the end of the day the REO managed to get hold of 423 venues to be designated as stations.

Section 5 – Polling Arrangements

6.6 Of the 423 venues, 4 were designated as small polling stations serving an electorate of less than 200 and 22 were designated as special stations, ie stations suitable for the handicapped to cast their votes. These 26 stations were used for polling only.

6.7 On the day preceding the polling day the recruited station staff, with the assistance of the REO staff, set up the designated venues as stations, in such a way that the place was designed to suit the two functions, ie as a polling station and a counting station. The place was divided into two portions, one as the polling area where the voting compartments, ballot box and ballot paper issuing desks were, and the other as the counting area, temporarily closed till after the close of poll and with markings made on the floor showing the counting zones. In some smaller venues where this arrangement was not practicable the place would be converted to a counting station after the close of poll.

6.8 Outside each station, areas were designated by the RO as NCZs and NSZs to provide the electors with a free and safe environment on their way to the station. A notice was put up at a conspicuous spot at or near the station, notifying the public of the existence of the NCZs and NSZs.

6.9 The sanitary conditions of the stations were well looked after to ensure a hygienic space for the electors to cast their votes as well as the station staff to carry out their duties.

6.10 The staff manning the stations were to work through the polling and counting hours. The EAC had once considered recruiting more staff for deployment to work on two shifts. But this idea was not pursued in view of the considerable amount of extra expenses that would be incurred.

6.11 During the polling hours the PRO, assisted by the Deputy PRO and Assistant PROs, would be the officer in charge of the polling function.

Section 6 – Counting Arrangements

6.12 In the light of the past experience gained from the four recent by-elections, the Commission adopted the polling-cum-counting arrangement for this election. This arrangement had proved to be a success in the previous by-elections, when the election results were available much earlier than before. It also saved manpower and financial resources, and reduced the time and risk involved in the transporting of ballot boxes from the polling stations to counting stations.

6.13 With the exception of the small polling stations and special polling stations, the polling stations would be converted into counting stations after the close of poll. There would be two categories of counting stations: the dominant counting stations and main counting stations. For a constituency with two or more polling-cum-counting stations, the station where the largest number of electors was to cast their votes would be designated by the CEO/REO as the dominant counting station. For a constituency with two or more polling stations,

one of which was a small polling station or special polling station, a station was to be designated by the CEO/REO as the main counting station where the ballot papers cast at the small polling station and/or special polling station were to be sent and counted.

6.14 When the count started, the PRO would assume the role of the counting supervisor, ie the officer overseeing the counting process. He would also be responsible for determining the validity of questionable ballot papers.

Section 7 – Contingency Measures

6.15 In the event of inclement weather or other emergencies, the following contingency measures were in place, though fortunately unnecessary to be deployed:

- (a) designating additional venues as reserve or replacement stations to take the place of stations which, for one reason or another, could no longer function properly or to which electors were denied access;
- (b) obtaining agreement from the management bodies of the 423 designated venues to use these venues as stations on the following Sunday, ie 30 November 2003, in case the election had to be postponed;

- (c) setting up a Regional Command Post and Emergency Depot in each of the following five regions: Hong Kong Island, Kowloon East, Kowloon West, New Territories East and New Territories West, with a reserve pool of polling/counting staff standing by, a reserve stock of ballot papers and other ancillary items, and vehicles; and

- (d) announcing the implementation of any contingency arrangements on the radio and television and by posting up notices at the stations concerned, wherever necessary.

CHAPTER 7

PUBLICITY

Section 1 – An Introductory Note

7.1 Publicity is an important element in the conduct of an election. It arouses the awareness of the public and appeals to them to actively participate in the election either by registering as electors, seeking candidature or assisting in canvassing/promotional activities. It also serves to disseminate the relevant information to candidates and electors efficiently and most importantly, to remind them to vote on the polling day. In the 2003 DC Election, the EAC and other government departments concerned contributed much to publicising the related events. The media of course played a significant role in the exercise.

Section 2 – The EAC Chairman and the Media

7.2 At the invitation of a number of broadcasters and newspapers, the EAC Chairman attended interviews to talk about the 2003 DC Election in the run-up to the polling day. On 14 November, he was interviewed jointly by Ming Pao and Sing Po and attended another half-hour interview each with the Commercial Radio and TVB. On the next day the Chairman turned up for an interview in the Commercial Radio programme “Hong Kong Economy and Politics”. On 22 November, the day before the polling day, the Chairman attended an interview with the RTHK during which the Chairman also received calls from the public. He

also made a guest appearance in a promotion video produced by the RTHK. The promotion video, which was in the form of a short play featuring some other local artistes, was filmed on 13 November 2003 in the REO's Electoral Information Centre and broadcast at regular time slots on both TVB and ATV on the polling day to remind electors to go to the poll during the polling hours.

Section 3 – Other Means of Publicity by the EAC

7.3 The Chairman's briefings with the candidates were well covered by the media. The Chairman and the two EAC Members also met the media at the various stops during their visits on the polling day.

7.4 One of the polling-cum-counting stations, the one in the Kowloon Park in Tsim Sha Tsui, was open to the public on the day before the polling day to allow members of the public to familiarise themselves with the voting procedure.

7.5 The REO issued press releases to keep the public informed of the various important events at the different stages of the election leading to the polling day.

Section 4 – Publicity Launched by Other Departments

7.6 The Administration, with a budget of \$12 million, launched a comprehensive publicity programme for the 2003 DC Election, with a view to reaching out to as many electors as possible, including TV and radio APIs, posters, buntings and banners hung on streets, special TV and radio programmes,

newspaper advertisements and vantage point advertising, etc. The publicity programme was coordinated by the CAB with the assistance of the HAD, ISD, ICAC, RTHK and the REO.

7.7 The RTHK organised election forums for some constituencies which were broadcast on the TV and radio and could be viewed on the RTHK website.

7.8 The ISD launched a website where all the information relating to the 2003 DC Election could be available for public browsing.

7.9 The ICAC put up posters and stickers carrying the slogans “Don’t be Blinded by Bribes” and “Support Clean DC Election” on most public transport vehicles. Videos on the importance of having a clean election were shown on the video-walls of major shopping arcades.

CHAPTER 8

CENTRAL SUPPORT

Section 1 – The Central Co-ordination Centre

8.1 A Central Co-ordination Centre (“CCC”) manned by REO staff was set up at the Exhibition Hall A2 and B on the ground floor of the Hong Kong International Trade and Exhibition Centre in Kowloon Bay. Its function was to oversee the operation of the polling stations and to liaise with the regional command posts for the provision of back-up support to the stations whenever necessary.

8.2 In the CCC there was a Statistical Information Centre, where the telephones were equipped with the Interactive Voice Response System (“IVRS”) for receiving reports from the PROs on hourly turnout rates and from the ROs, PROs and the Complaints Centre (“CC”) once every three hours. There was also an area for the members of the media to assemble to collect the relevant information. Individual rooms were also provided for the EAC and staff of the CAB, DoJ, Home Affairs Bureau, HAD, ISD and REO.

Section 2 – The Complaints Centre

8.3 At the REO office in Harbour Centre, a CC was set up to receive and process election-related complaints from the public who could lodge their

complaints by phone, by fax or through the Internet. The CC was manned by staff of the Complaints Unit of the EAC secretariat and operated from 7.30 am to 10.30 pm.

8.4 A total of 299 complaints were received and handled by the CC on polling day.

CHAPTER 9

THE POLL

9.1 On the polling day, 423 polling stations including 22 special polling stations particularly designated for voting by the disabled electors were opened.

9.2 Polling hours started at 7.30 am and ended at 10.30 pm. Generally speaking, the poll went on smoothly throughout, though there were some individual complaints against polling staff, conduct of exit polls and locations of the stations.

9.3 The turnout rate was unprecedentedly high. A total of 1,066,373 electors were recorded to have turned up at their respective stations to cast their votes for the contested constituencies, which represented 44.10% of the voting electorate of 2,418,078. The rate at the last ordinary election was 35.82%. A breakdown of the turnout rate by district for this election is shown at **Appendix II.**

CHAPTER 10

THE COUNT

10.1 After the close of poll, all the polling stations were closed and, with the exception of the small polling stations and special polling stations, they were converted into counting stations. Candidates, their agents, members of the media and members of the general public were then admitted into the station. The time of the conversion process varied from station to station. Some took less than an hour but others needed a much longer time. On the average the time needed was about an hour.

10.2 The ballot boxes containing cast ballot papers from the small polling stations and special polling stations were transported to the related main counting stations. These ballot papers together with those cast at the main stations were mixed and counted. At the same time the counting of the ballot papers at the dominant counting stations was also under way.

10.3 The PRO was solely responsible for determining the acceptance or rejection of questionable ballot papers. An analysis of the rejected ballot papers is shown in **Appendix III**.

10.4 When the count was completed the PROs of the main counting stations and dominant counting stations reported the results of the count conducted in their respective stations to the respective RO on the phone and then to the CCC through

the IVRS. The CCC then requested the RO to check whether the results obtained by the CCC tally with that received by the RO. After the RO had verified the results, he would declare the election results by posting up a notice in his office. Thereafter he would fax a copy of the notice to the CCC and asked the PROs to make known the election results to the candidates, their agents, members of the media and members of the general public at the counting station.

10.5 [**This paragraph is obliterated for publication pending determination of an election petition.**]

10.6 The results of the election from the stations and the ROs were reported later than anticipated. The Commission had expected that the election results from all the stations and the ROs would be made available for announcement at the CCC at sometime around 2.00 am of the following day. In fact, 273 counting stations had reported in by 2.30 am on 24 November 2003, and the remaining ones, with the exception of Ping Shek, also reported in by 3.30 am.

10.7 Despite the hiccup at Ping Shek station, the Commission is generally satisfied that the overall vote counting process had only taken 6 hours to complete after the close of poll as compared to the 14½ hours in the 1999. This was attributed to the polling-cum-counting arrangements.

10.8 The election results of the 18 districts were published in the Gazette on 29 November 2003 and are now re-produced at **Appendix IV** for easy reference.

CHAPTER 11

EAC VISITS

11.1 As in previous elections the three Members of the EAC paid personal visits to the polling and counting stations to gain first-hand information about what was happening on the spot. Each of the Members had his/her individual itinerary throughout the day, which together covered a total of 20 polling stations and four counting stations in the 18 Districts. Early in the morning on the polling day they first cast their votes at the polling station to which they were allocated. Then they assembled at the CCC in the Hong Kong International Trade and Exhibition Centre in Kowloon Bay to meet the media before embarking on their tours. Before noon they met again at the Kowloon Park Sports Centre, a polling station in the Yau Tsim Mong District, where they briefed the media on their views about the polling arrangements observed during their morning visits. After lunch they started with the visits again and gathered together again at the Hong Kong Park Sports Centre, a polling station in the Central and Western District, to meet the media to round up their day-time round of visits.

11.2 In the evening of the polling day the EAC Members joined together slightly before 11 pm at the Wong Nai Chung Sports Centre, a counting station in the Wan Chai District, where the Chief Executive, EAC Chairman, Secretary for Constitutional Affairs and Secretary for Home Affairs opened and emptied the ballot box. Thereafter the EAC Chairman and Members each went on their visits to a dominant counting station and then assembled at the CCC after midnight to

wait for the election results from the dominant counting stations. After the close of count the EAC met the media in the CCC to give their views on the count.

11.3 As far as the Commission observed, the poll generally went on smoothly. The Commission would, however, like to record one incident that took place at a polling station where its Members assembled for meeting the media. The Chairman was informed that some candidates' EAs were displayed on the exterior walls of some shop premises within the NCZ. He told the RO that it was the RO's responsibility to remove them but the RO pointed out that it was not clearly spelt out in the electoral guidelines that the RO should be responsible for this job. The Chairman subsequently sought the advice from the legal adviser, who shared his view that the RO should be. The Chairman was also later advised by the legal adviser that under the law the RO must comply with the Commission's instructions.

11.4 As regards the count, the Commission was of the view that the announcement of the election results was slower than expected, partly because it was the first time that the new procedure for the transmission of the counting results was adopted and partly because there were communication problems among the CCC/ROs/PROs.

CHAPTER 12

THE COMPLAINTS

Section 1 – A General View

12.1 Complaining is a universal form of expression of dissatisfaction about certain deeds, phenomena or practices which are perceived to be wrong, unfair or unlawful. Complaints in elections are common. The complaints-handling mechanism is one of the means adopted by the EAC to safeguard the fairness and integrity of the electoral system.

12.2 With its experience gained from processing complaints in the past years, the EAC noticed that some complaints revealed deficiencies or errors in certain areas of electoral arrangements where improvements were necessary. This prompted the EAC to look for remedial measures to bring about better arrangements for future elections.

12.3 Complaints also provide a monitoring system to candidates to exercise mutual checks among themselves and through these complaints, they understand the electoral law and guidelines better. The EAC has all the time been endeavouring to vet the complaints received efficiently and fairly to ensure that the complaints-handling mechanism is not abused and to let the public know that justice is safeguarded.

Section 2 – The Complaints-handling Period

12.4 The complaints-handling period started from 2 October 2003, ie the day when the nomination period commenced, and ended on 7 January 2004, ie 45 days after the polling day.

Section 3 – The Complaints-handling Parties

12.5 During the complaints-handling period there were five parties involved in the task of processing complaints: 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. Each of these parties had their respective area of responsibilities for handling complaint cases. A committee, known as the Complaints Committee (“CCm”), was set up under the EAC to deal with cases that were within its jurisdiction and not covered by any statutory provisions involving criminal liability. The CCm comprised all three Members of the EAC and a District Court Judge. It was supported by the Complaints Unit of the EAC secretariat. The ROs were responsible for handling complaint cases of a minor nature under the authority delegated to them by the EAC, eg those relating to EAs, electioneering activities conducted on private premises, use of sound amplifying devices, etc. The Police handled cases that involved criminal liability, eg breaches of the EAC (EP) (DC) Reg and criminal damage of EAs. The ICAC attended to cases that involved breaches of the ECICO, Prevention of Bribery Ordinance and ICAC Ordinance. The PROs received complaints on the polling day at the polling stations and took action on the spot on those cases which required immediate

attention, eg use of sound amplifying devices in the vicinity of the station, unlawful activities carried out in the NCZ or NSZ, etc.

Section 4 – The Complaints: Number and Nature

12.6 By the end of the complaints-handling period a total of 5,147 cases were received and processed by all of the five parties: the CCm (1,002 cases), ROs (2,262 cases), Police (971 cases), ICAC (398 cases) and PROs (514 cases). This is a record high figure, surpassing all the numbers of complaint cases previously received and processed in the local election history. The majority of the cases concerned EAs (1,410 cases), disturbances to electors caused by loudspeakers/canvassing activities over the phone or at the electors' residence (781 cases) and electioneering activities on private premises (452 cases). A detailed breakdown of these cases by the receiving party and nature is shown on **Appendices V (A) – (F)**.

Section 5 – Handling of Complaints on the Polling Day

12.7 On the polling day, as mentioned in para 8.3, a CC was set up in the REO office in Harbour Centre to handle the complaints received. There were designated police officers on duty in the police stations in the 18 Districts to attend to complaints. There were also ICAC officers designated to man a complaints hotline during the polling hours. The PROs received complaints on the spot.

12.8 The number of complaint cases received on the polling day amounted to 1,869. The majority of these cases concerned on-the-spot incidents and they were

expeditiously dealt with and resolved, for there would be no point in taking action on these cases on the following day when the issues under complaint had long been overtaken by events or the people concerned had vanished, eg in cases of electioneering activities taking place in NCZs, noise nuisances caused by the use of sound amplifying devices, etc.

12.9 Non-stop action was taken on complaints received on the polling day. Phone calls kept on coming in at the CC without any pause. The cases were given prompt and thorough attention and referred immediately to the appropriate authority for action. Cases received by the ROs and PROs were also handled without delay.

12.10 There were cases which could not possibly be resolved on the spot, eg cases which involved breaches of the ECICO and required ICAC investigation. Follow-up action on these cases took a longer time.

12.11 Of the 1,993 cases handled by all parties on the polling day (including those they received themselves and those referred to one another among themselves), 1,612, or 80.88 %, were resolved before the close of poll.

12.12 The CC received a total of 299 cases on the polling day. 93 complicated cases were submitted to the CCm for vetting in the same manner as those received during the rest of the complaints-handling period. A summary of the remaining 206 straightforward cases which were resolved on the polling day by the CC were submitted to the CCm for information.

12.13 A breakdown of the complaint cases received on the polling day is shown in **Appendices VI (A) – (F)**.

Section 6 – The Outcome of Investigations

12.14 As at 7 January 2004, of the 1,273 cases handled by the CCm (including those it received and those referred to it by the other parties), 128 were ruled as substantiated or partially substantiated. The offenders were penalised by being issued warning letters. Altogether the CCm issued 154 warning letters. There was a case, pending the advice from the DoJ, which might necessitate the issue of a public censure against the offender for treating the candidates of the same constituencies in an unequal and unfair manner. The legal advice was still awaited at the time of finalising this report.

12.15 Of the 2,680 cases handled by the ROs (including those they received and those referred to them by the other parties), 1,047 were found substantiated or partially substantiated as at 7 January 2004. Under the authority delegated by the EAC, the ROs issued warning letters to the offenders. There were 472 of these letters.

12.16 Of the 1,120 cases they handled, the Police had, as at 7 January 2004, investigated and found 247 substantiated, and prosecuted one offender. As at the same date, of the 688 cases they handled the ICAC had investigated and found none substantiated. There were still 759 cases under investigation by these two parties.

12.17 A breakdown of the outcome of investigations as at 7 January 2004 is detailed in **Appendices VII (A) – (D)**.

Section 7 – The Ping Shek Case

12.18 There was a complaint case in which 60 persons complained against –

- Mr CHAN Kam-lam, one of the two candidates of the Ping Shek Constituency, for opening the ballot box, putting his hand into the box and touching the ballot papers;
- Mr MAK Sai-king, the PRO of the station in that constituency (the Ping Shek Estate Catholic Primary School), for treating the two candidates unfairly by favouring only Mr Chan and being incompetent in determining the validity of questionable ballot papers; and
- Mr Albert LAM Kai-chung, the RO(Kwun Tong), for being negligent in supervising the counting process.

12.19 Mr LAM Sum-shing, the other candidate, also lodged a complaint with the RO(Kwun Tong), against the PRO's unfairness in determining the validity of the questionable ballot papers.

12.20 The CCm vetted the case and asked all the parties concerned, ie the RO, the unit in the REO responsible for overseeing the operation of the polling/counting functions and the HAD, to conduct investigation on their part into the case. The CCm also sought advice from the DoJ.

Section 8 – Election Petitions

12.21 Mr LAM Sum-shing eventually lodged an election petition with the Court of First Instance, pursuant to section 49 of the DCO, questioning the result of the election on the ground that material irregularities might have occurred in relation to the counting of votes. As the matter is sub judice, the EAC's findings and actions regarding the incident are set out in the epilogue to this chapter, which should not be revealed to the public until after the Court has determined on the petition.

12.22 Apart from Mr LAM's election petition, two other candidates also lodged election petitions, namely Messrs CHU Hon-wah (a candidate of the Fort Constituency in the Eastern District) and CHUNG Ming (a candidate of the Hoi Bun Constituency in the Tsuen Wan District). The former alleged that there might be material irregularities with the counting of votes and the latter accused the opponent of making false statements.

Section 9 – Epilogue

[Paragraphs 12.23 and 12.24 are obliterated for publication pending determination of an election petition.]

12.23

12.24

CHAPTER 13

THE REVIEW AND RECOMMENDATIONS

Section 1 – The Scope of the Review

13.1 After the 2003 DC Election was completed, the EAC, together with other departments concerned, conducted a comprehensive review of all aspects of the electoral arrangements, from the start of the demarcation exercise to the close of the complaints-handling period, also taking into consideration suggestions from the public and the subject raised in the complaints. The EAC put forth its recommendations for improvements in areas where deficiencies and drawbacks were identified. This chapter details what the EAC has observed and recommended.

Section 2 – Matters relating to Preparation Work

(A) Delineation of Constituency Areas

13.2 The EAC received views from the electors during the election period on the delineation of their constituency boundary, long after the conclusion of the public consultation period for the demarcation exercise early last year. Nonetheless the EAC did not disregard them and have put them on record.

13.3 **Recommendation:** The EAC would take these views into consideration in the next demarcation exercise.

(B) Electors – Change of Address

13.4 The EAC has received a number of complaints from the electors who found their names missing from the register at the ballot paper issuing desk in the polling station, and from some candidates who alleged that the information relating to some registered electors was incorrect.

13.5 **Recommendation:** The REO should ensure that more focussed publicity programmes be launched to appeal to electors to promptly report their change of address and relevant particulars.

(C) Different Polling Dates

13.6 The EAC received a suggestion from the public that the poll for the constituencies in Hong Kong Island, Kowloon and the New Territories be preferably held on different dates to facilitate closer supervision.

13.7 **Recommendation:** On the whole the polling was smoothly conducted but the EAC would examine scope for further improvement, taking into account the availability of resources and public response.

(D) Information on the Introductory Leaflet and Poll Card

13.8 The EAC received a suggestion from the public of including the means of contacting candidates in their introductory leaflets, and a description of the boundary of the constituency concerned in the poll card.

13.9 **Recommendation:** The REO would consider this suggestion.

(E) Information on the REO Website

13.10 While a complaint against a candidate for making a false statement about his occupation in his nomination form was being investigated, the candidate's occupation was still shown on the REO website. The complainant was of the view that this should not be shown on the website after the complaint had been lodged. To reflect the true picture, the REO subsequently added a "Source of Information" note on the website to denote the time when the REO received the information concerned.

13.11 **Recommendation:** This practice of including the note of "Source of Information" onto the REO website should continue.

(F) Polling/Counting Stations

13.12 Quite a number of electors expressed dissatisfaction about the station to which they were allocated for casting their vote. They found the polling station

either too far away from their home or not easily accessible. While noting the complainants' grievances, the EAC understands the difficulties encountered by the REO staff, and appreciates that they had done their best in identifying suitable venues as stations.

13.13 **Recommendation:** The REO should try as far as practicable to allocate an elector to a polling station most suitable to him/her but this would always be subject to the availability of the venue in question.

13.14 The EAC also noted that some electors were not aware of the fact that they had been allocated to a polling station different from the one to which they had been allocated in the previous election. This caused them confusion.

13.15 **Recommendation:** The REO should consider that a note be made in the poll card sent to these electors drawing their attention to the fact that they have been allocated to a different station.

13.16 As observed during the visits to the stations and as viewed by the CAB staff, some of the stations were not quite suitable to serve as a counting station, as they were either too small in size, too noisy or too exposed.

13.17 **Recommendation:** The REO would take the above into account in identifying venues of polling stations for future elections.

(G) Training for the PROs/Deputy PROs

13.18 The EAC considered it necessary to enhance the training programme for the PROs/Deputy PROs for future elections. As experience from the 2003 DC Election showed, some PROs/Deputy PROs were not very familiar with the electoral legislation, guidelines and the directives laid down in the operational manual, as revealed by the following observations –

- (a) In the Ping Shek incident, the PRO asked the candidates to open the ballot box and have physical contact with the ballot papers inside the box. (The details of the case were described in para 12.18 of Chapter 12.)
- (b) Some PROs (as well as polling staff) did not allow children to follow their accompanying adults to enter the polling station. This ran contrary to para 4.10(k) of the EAC's guidelines and section 47 of the EAC (EP) (DP) Reg.
- (c) In some cases the PRO did not know how to handle complaints against interviewers conducting exit polls as it seemed that they were not familiar with Chapter 14 of the EAC's guidelines on "Exit Polls" regarding the requirement for the party intending to conduct exit polls to furnish the REO with the necessary information and the requirement for the interviewers to wear identification devices when conducting exit polls (paras 14.3 and

14.9 of the guidelines).

- (d) Some PROs were not conversant with the counting procedures and practices, eg one PRO asked the candidates/agents present whether they would object to a certain questionable ballot paper, before announcing or explaining his own decision; another had not confirmed that all figures were tallied before announcing the result; some did not put up samples of questionable ballot papers inside the station; one PRO moved the ballot box from the counting table to another just for the sake of facilitating photo-taking by the media, etc.
- (e) The premature departure of some PROs from their counting stations made it difficult and time-consuming for the ROs to get in touch with them for verifying figures. This caused delays in the announcement of the counting results.

13.19 **Recommendation:** The training offered to the PROs, Deputy PROs and the polling/counting staff should be intensified, with more mock exercises and workshops. Handy reference materials, such as a list of “Do’s and Don’ts” should be provided.

(H) Publicity

13.20 The EAC is of the view that enhanced publicity would help remedy some

of the drawbacks identified, eg appealing to the electors to report to the REO any change in their address or other personal particulars (as recommended in para 13.5). Publicity could also help to remind the electors that on receipt of the poll card, they should pay special attention to the polling station allocated so that they would not go to the wrong station in case the station allocated for this election is different from the one allocated to them in the last election.

13.21 **Recommendation:** Publicity programmes should be enhanced so that they not only disseminate the necessary information with regard to the election but also alert the electors on matters of their concern.

Section 3 – Matters relating to Operational Aspects

(A) Exposure of Personal Data at the Ballot Paper Issuing Desks

13.22 The EAC has come across complaints from some electors that their personal data were easily exposed to the person standing behind them in the queue in the course of waiting for the issue of the ballot paper.

13.23 **Recommendation:** Consideration could be given to drawing a line, say, one metre or so, away from the ballot paper issuing desks so as to create a distance between the person standing at the desk for the issue of his/her ballot paper and the one standing next behind in the queue.

(B) Exit Polls

13.24 There was misunderstanding on the part of the electors at the polling stations that the conduct of exit polls was unlawful and caused harassment.

13.25 **Recommendations:**

- (a) Consideration should be given to putting up at the polling station a list of organisations or persons permitted to conduct exit polls.
- (b) Consideration should also be given to uploading such information onto the REO website for public information.
- (c) The exit poll interviewers should be reminded that they must wear their identification device and they must make it clearly known to the interviewees that they have the full discretion of answering the interviewers' questions or not.
- (d) The subjects for briefing the PROs and polling staff should include what exit polls are and the points that require the attention of the interviewers.

(C) Conversion Time

13.26 Both the EAC and CAB staff noted that, in most cases, it had taken quite

an unnecessarily longer time to complete converting the polling station into a counting station. Probably it was because the PRO had to complete too many forms after the close of poll.

13.27 **Recommendations:**

- (a) Consideration should be given to relieving the PROs of mundane administrative duties (eg signing claim forms for the purchase of stationery) by assigning some of the PRO's duties to be taken up by the Deputy PRO and/or Assistant PRO.
- (b) The relevant forms would be simplified to facilitate quicker completion.
- (c) More back-up support should be given to the PROs.

(D) Handling of the Media and Maintaining of Order inside the Station

13.28 While in most stations the PROs managed to maintain order during the counting process, the EAC and CAB staff noted that in some cases the PROs had a difficult time in handling the crowd when the counting staff were harassed by the candidates' agents and supporters, the crowd getting excited on the announcement of the result forced their way into the counting zone, and the crowd became restless while waiting for the announcement of the result. PROs of keenly contested constituencies faced extra difficulties due to the presence of a large number of press.

The PROs would have got thrown off their balance but for the prompt response of the Police and Civil Aid Service (“CAS”) in executing their crowd control duties.

13.29 **Recommendation:** More back-up support should be given to the PROs. The ISD may be approached to consider offering assistance in handling the media at the stations.

(E) Communication between the PROs and ROs

13.30 The EAC noted that in some cases the communication between the PRO and the RO seemed not as smooth as expected. For instance, in one station the PRO’s repeated attempts to contact the RO were in vain as the latter failed to return his call. In another the PRO was in urgent need to seek guidance from the RO but in vain, probably because the RO’s line was too busy. And, as mentioned in para 13.18(e), some PROs left the station early and the ROs had to take quite some time to locate them for verifying figures. These hiccups might have also led to the belated announcement of the election results.

13.31 **Recommendation:** At the briefings/training sessions, the ROs and PROs should be reminded to adhere strictly to the agreed line of communication and of the importance in keeping each other in close communication at all times, particularly during and after the count.

(F) Roles of ROs/PROs

13.32 The EAC observed that the PROs might have been too heavily burdened and no active assistance was provided by the responsible RO. The ROs should play a more active role in overseeing and monitoring the overall conduct of elections in the constituencies within his District, including the count. He should provide advice to the PRO and help to solve their problems.

13.33 **Recommendation:** The ROs' duties would be closely examined to see if there is room for them to take over some of the PROs' duties and to see how their AROs could share their burden.

(G) Long Working Hours

13.34 Both the EAC and the CAB staff noticed that the polling/counting staff were overcome by fatigue after having worked for such a long time since 7.30 am in the morning of the previous day till the small hours of the day following. This is a point worthy of attention.

13.35 **Recommendation:** The REO should consider adopting a shift or staggered-hours system so as to enable the staff to take turns to have some rest during the day. If necessary, the manning scale of each station may have to be reviewed to provide adequate manpower to facilitate smooth operation of the stations.

Section 4 – Matters relating to the Guidelines

13.36 The EAC has noted public criticisms, some from candidates and political organisations, that the EAC's electoral guidelines were too complex and restrictive in areas relating to EAs and election expenses. Some candidates felt that their hands were tied in conducting their electioneering activities. One notable example was the issue of providing entertainment at canvassing gatherings. When political parties intending to enliven their canvassing gatherings by staging singing or similar performances approached the REO for advice and were reminded by the latter to refer to the provisions of section 12 of the ECICO on the provision of entertainment at election, they considered it too harsh.

13.37 The EAC wishes to remind candidates and their supporters that the ECICO has been in force since March 2000 and applied to the 2000 LegCo elections and the 2003 Village Representative election. The guidelines only explain the provisions of the ECICO and other related legislation, and remind candidates and their supporters on the need to comply with the various provisions of those pieces of legislation so that they may not breach them due to inadvertence.

13.38 The EAC is also aware of suggestions to amend section 12 of the ECICO so that situations like canvassing gatherings may be exempted. While this is outside the purview of the EAC, it is of the view that amendments to the ECICO should only be made after careful consideration of the implications involved.

13.39 As regards the non-statutory code of conduct laid down in the Guidelines, the EAC's experience from the handling of complaints during the 2003 DC Election shows that improvements or clarifications need be made. The major subject areas which require improvements or clarifications are set out in the following paragraphs. The EAC will include these improvements and clarifications in the next issue of its guidelines for the 2004 LegCo Election.

(A) Electoral Officers' Obligation to Comply with EAC's Directives

13.40 To avoid any misunderstanding or ambiguity between the EAC and ROs or any other parties recruited for the conduct of an election, consideration should be given to making an express regulation that the ROs and any other parties recruited for the purpose of conducting an election must comply with the EAC's directives or instructions. This should be made clear in the Manuals for ROs and PROs.

(B) Electioneering/Canvassing Activities

(1) *Joint canvassing activities*

13.41 There was a case which involved two candidates contesting in different constituencies, both of whom were assigned candidate No.1. They were conducting canvassing activities jointly in one of the constituencies. This invited complaints as their appearance at the same time and same place caused confusion among the electors. Although para 7.27 of the guidelines sets out the requirements for display joint EAs, there are no provisions covering joint

canvassing activities. An additional provision should be included in the guidelines to cover this area.

(2) *Definition of “electioneering activity”*

13.42 In the course of processing some complaints very often the case officers had to face the question of “what is an electioneering activity” or “what sort of activities fall into the category of electioneering activity”. It was noted that the proper definition of this term is neither found in any electoral legislation nor in the EAC guidelines. It may be desirable to make an attempt to better define the scope of electioneering activities in the guidelines, if there are difficulties in drawing a definition of the term.

(3) *Electioneering activities on private premises*

13.43 There were a few complaints about unfair treatment of candidates by bodies having the right to manage the common parts of private premises. While the bodies processed an application from candidate A for electioneering at the private premises promptly and granting the application, a later application from candidate B contesting in the same constituency had been held in abeyance for a long time (which resulted in the complaints) on the bases that a meeting would need to be called and that subsequently there were insufficient persons attending the meeting to form the required quorum. The guidelines will need to spell out expressly that the EAC considers these delaying tactics as indicative of an unfair and unequal treatment which will be denounced.

(C) EAs

(1) *Attaching government publications to one's EAs*

13.44 In one case the candidate attached to his own EA a leaflet published by the HAD, which, as the complainant alleged, gave the electors a false impression that he had the support of the HAD, if not the whole Government. For this case legal advice was sought, which suggested that the relevant sections in Chapter 7 of the EAC guidelines should be amended to the effect that candidates are prohibited to attach to their EAs any materials published by the Government.

(2) *Area and number of spots for display of EAs at designated spots*

13.45 In another case the candidate considered that as each of his EAs displayed at each of the 10 designated spots allocated to him was smaller than the permitted size (ie 2.5m² each), so he had a certain remaining “balance” of area for displaying his EAs and would like to put up joint EAs (with another candidate of another constituency) at some other designated spots with this remaining “balance”. In that case the EAC was inclined to disallow that candidate to do so on the ground that it would mean the candidate concerned would have been allocated additional display spots. But DoJ was of the view that the term “area” was used in para 7.26 of the guidelines insofar as joint EAs were concerned and no reference to the number of spots allocated was mentioned. DoJ therefore advised that para 7.26 should be amended to reflect the element of “number of spots”, if the EAC wished to mean number of spots as well as the area in question.

(3) *EAs displayed on both sides of a designated spot*

13.46 A candidate displayed his EA on both sides of a designated spot and this invited complaints. The EAC would seek the views of the ROs and other parties concerned to decide whether candidates could be allowed to display their EAs on both sides of a designated spot allocated to them.

(4) *Display of publicity materials which look non-election related on private premises*

13.47 The EAC has come across a complaint case in which two persons (who happened to be incumbent DC members at that time) asked the management body of a private building to display an article extracted from a newspaper publicising their previous achievement in securing the construction of a canopy over the passageway between the building and a nearby public transport station. The article mentioned nothing about the DC election or about the candidature of two persons in question. But the complainant, who somehow knew of their intention to seek candidature in the election, accused them of making use of this display to promote themselves. The EAC considers it necessary to include a provision in the guidelines requiring all persons who put up any publicity materials, including those which do not look election-related, in the nomination period on private premises should declare to the management body concerned whether they are candidates or intend to stand as candidates in the election.

Section 5 – Recommendation to Publish the Report

13.48 The Commission would like to recommend that this report be made public, at a time the Chief Executive thinks fit, so that the public may be kept posted fully in the picture as to how the Commission conducted and supervised the 2003 DC Election. Para 10.5 and the epilogue to Chapter 12, however, should not be published until after the relevant election petition has been disposed of by the Court of First Instance.

CHAPTER 14

ACKNOWLEDGEMENT

14.1 The 2003 DC Election has been successfully conducted, with a phenomenal record-high turnout rate. The Commission attributes this success to the dedicated and concerted efforts of all parties involved in the preparation for and conduct of the election.

14.2 The Commission would like to express its gratitude towards the following units of the Administration: the CAB, CAS, DoJ, Electrical and Mechanical Services Department, FEHD, Home Affairs Bureau, HAD, Hong Kong Police Force, Hongkong Post, Housing Authority and HD, Immigration Department, ICAC, Information and Technology Services Department, ISD, LAD, Lands D, LCSD, Marine Department, Official Languages Division (of the Civil Service Bureau), Planning Department, Government Logistics Department, RTHK, Social Welfare Department and Transport Department.

14.3 The Commission is particularly grateful for the unflagging assistance of the staff of the REO, who spent scores of months in the preparation work and were deeply engaged in the implementation of the electoral arrangements.

14.4 The Commission is also thankful to the officers serving as ROs, the legal practitioners serving on the NACs and those polling and counting staff who

conscientiously performed their duties and dutifully followed the relevant operational procedures.

14.5 The Commission would like to thank members of the media who have helped substantially to enhance the transparency of the election by giving the key events a wide and in-depth coverage.

14.6 The Commission shows appreciation towards those candidates, their helpers, building management bodies and members of the general public who complied with the electoral legislation and guidelines.

14.7 The last but not the least, the enthusiasm of the electors who participated in the poll is the prime element in making the election a success as well as a meaningful event in the community.

CHAPTER 15

LOOKING FORWARD

15.1 Immediately facing the Commission now are two major tasks: the first round of the Village Representative by-elections, following the ordinary election held in July-August 2003 which will commence sometime in mid-February, and the 2004 LegCo general election. The Commission has been well prepared for these two tasks and has in fact completed the demarcation exercise for the latter, ie the delineation of the geographical constituencies, and is now preparing the guidelines and working on the polling and counting arrangements for the election.

15.2 Despite the heavy workload and the tight time-frame, the Commission remains committed to fulfilling its mission on the way ahead and will make its every endeavour to keep a vigilant watch over the conduct of the elections to maintain the transparency, fairness and cleanliness of each election. The Commission will not be hesitant in accepting positive and constructive comments from the public to bring about improvements to future elections.