

Section 1 – Background

Cause of the By-election

1.1 A vacancy arose in the Tai Wai Constituency of the Sha Tin District Council (“DC”) on 18 December 2008 as a result of the ruling of the Court on an election petition lodged by Mr Leung Wing-hung, one of the two candidates contesting in the Constituency in the 2007 DC Election held on 18 November 2007. Mr Leung claimed that Mr Yuen Kwai-choi, the elected candidate for the Constituency, was not duly elected because illegal conduct was engaged in by Mr Yuen at or in connection with the election under section 49(1)(a)(ii) of the District Councils Ordinance (Cap 547) (“DCO”). After hearing the aforesaid election petition, the Court determined that Mr Yuen was not duly elected and that no other person was duly elected in accordance with section 55(2) of the DCO. Pursuant to sections 26(d) and 32(1) of the DCO, the Acting Director of Home Affairs declared the existence of a vacancy in the Tai Wai Constituency of the Sha Tin DC by a notice published in the Gazette on 2 January 2009.

1.2 Pursuant to section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC”) was required to arrange for a by-election to return a candidate to fill the vacancy.

The Constituency

1.3 The Tai Wai Constituency is one of the 36 DC constituencies in Sha Tin District, with a registered electorate of 12,164. A map showing the boundary of the constituency is at **Appendix I**.

The polling day and the nomination period

1.4 The Chief Electoral Officer (“CEO”) of the Registration and Electoral Office (“REO”) appointed 29 March 2009 (Sunday) as the polling day for the By-election and specified the period from 13 to 26 February 2009 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 23 January 2009.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr Lai Chi-wah, Andrew, JP, and Mrs Do Pang Wai-yee, JP, District Officer (Sha Tin) were appointed by the EAC Chairman as the Returning Officer (“RO”) for the By-election for the period from 23 January 2009 to 1 February and from 2 February onwards respectively. Mr Hui Kwok-sun, Eric, Assistant District Officer (Sha Tin), was appointed by the EAC Chairman as the Assistant Returning Officer (“ARO”) for the By-election. Their appointments were published in the Gazette on 23 January 2009. Ms Ling Ka-wah, Florence, Senior Government Counsel of the Department of Justice (“D of J”), was appointed by the EAC Chairman as the ARO(Legal) for the By-election on 19 January 2009.

2.2 Mr Ho Bing-kwan, Barrister-at-law, was appointed as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the By-election to provide the RO with the necessary legal advice on the eligibility of candidates being nominated. Mr Ho’s appointment, covering the period from 13 February to 2 March 2009, was published in the Gazette on 23 January 2009.

Nominations

2.3 By the close of the two-week nomination period on 26 February 2009, the RO received a total of five nominations. The nominees were Messrs Yuen Kwai-choi, Leung Wing-hung, Chan Wai-man, Chau Chi-pong and Lee York-fai. All the nominations were confirmed valid by the RO. The NAC(DC) had not received any request from the RO for legal advice on the validity of the nominations. The names of all validly nominated candidates were published in the Gazette on 6 March 2009.

Briefing for the candidates

2.4 The EAC Chairman held a briefing session on 3 March 2009 at the Sha Tin District Office (“STDO”) to draw the attention of the candidates and their agents to the major provisions in the relevant electoral legislation and guidelines. Topics included polling and counting arrangements, requirements relating to election advertisements (“EAs”) and election expenses, appointment and roles of various types of agents and conduct of electioneering activities. The CEO and representatives of the RO, the D of J, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post also attended the briefing. They briefed the candidates present and answered enquiries on subjects within their respective purview.

2.5 After the briefing session, the RO, witnessed by all parties present, drew lots to determine the candidate number to be shown on the ballot paper for each candidate and the designated spots to be allocated to the candidates for displaying EAs. As a result of the lots drawing, Messrs Lee York-fai, Leung Wing-hung, Chau Chi-pong, Yuen Kwai-choi and Chan Wai-man were allocated the candidate number 1, 2, 3, 4 and 5 respectively. A total of 150 spots in the Tai Wai Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated with 30 spots.

EAC Guidelines on election-related activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election updated in August 2008 (“the Guidelines”) were used for this By-election.

Section 3 – Judicial reviews on prisoners’ voting rights

3.1 On 8 August 2008, Mr Chan Kin-sum, Simon, a prisoner, applied for leave to apply for judicial review (“JR”) to challenge the constitutionality of sections 31(1)(b) and 53(5)(b) of the Legislative Council Ordinance (Cap 542)(“LCO”) which disqualify a prisoner from being registered as an elector and from voting (case no. HCAL 79/2008). Chan also sought an order of Mandamus directing the EAC to provide Hong Kong permanent residents who are serving a custodial sentence access to polling stations for the Legislative Council (“LegCo”) Election to be held on 7 September 2008.

3.2 On 11 August 2008, the Hon Leung Kwok-hung lodged another JR application on similar grounds and sought similar relief as Chan’s application (case no. HCAL 82/2008). The Hon Leung also sought an order of Mandamus directing the EAC to provide convicted persons and remanded persons access to polling stations and/or facilities on 7 September 2008.

3.3 On 15 August 2008, Mr Choi Chuen-sun, a prisoner and a registered elector, applied for leave to apply for JR, seeking relief in similar terms as sought by Chan as well as an order of Mandamus directing the EAC to change his address to the prison address in the electoral register (case no. HCAL 83/2008).

3.4 The Court granted leave to the JR applications on 18 August 2008 and the substantive hearing was held from 10 to 13 November 2008.

3.5 On 8 December 2008, the Court handed down its judgement on the three JR cases. The Court declares the existing across-the-board restrictions on prisoners' right to be registered as electors and to vote under section 31(1)(a) – (b) and section 53(5)(a) – (b) of the LCO unconstitutional. The Court also takes the view that the constitutional right to vote of remanded persons is not affected by any law. Arrangements should be made to enable prisoners and remanded persons to vote on polling day. The Court also grants a temporary suspension order in relation to its declaration on the voting right of prisoners up to 31 October 2009.

3.6 In view of the Court's judgment, the Administration conducted a public consultation exercise from 27 February 2009 to 23 March 2009 to seek the public's views on the policy options for relaxing the restrictions on prisoners' voting right and the practical arrangements for prisoners and remanded persons to vote. In the light of the views received in the consultation exercise, the Voting by Imprisoned Persons Bill was introduced to remove the existing restrictions on the right of prisoners and persons convicted of election-related or bribery offences to be registered as electors and to vote under the LCO, the Chief Executive Election Ordinances (Cap 569), the DCO and the Village Representative Election Ordinance (Cap 576). The Bill was introduced into the LegCo

on 6 May 2009. Amendment Regulations would also be introduced into the LegCo as soon as possible to amend the relevant subsidiary legislations to put in place the long-term arrangements for prisoners, remanded persons and the persons detained by the law enforcement agencies (“LEAs”) for investigation (“detainees”) to vote in all public elections in Hong Kong.

3.7 In view of the Court’s ruling as set out in paragraph 3.5 above, the EAC made arrangements for remanded persons and detainees who were registered electors of Tai Wai Constituency to vote in this By-election. Details of these arrangements are set out in paragraphs 4.4 to 4.6 below.

Section 4 – Preparation Work

Appointment and training of polling/counting staff

4.1 The staff of REO were appointed to take up the polling and counting duties. A half-day briefing session on polling and counting duties including a mock session on counting work was conducted on 24 March 2009 to familiarise all the staff concerned with their duties.

Ordinary polling stations

4.2 The polling-cum-counting arrangement was adopted for this By-election at ordinary polling stations. In view of the size of the electorate of this By-election and for the convenience of the electors, two polling-cum-counting stations were set up at the Buddhist Wong Wan Tin College and the TWGHs Sin Chu Wan Primary School. The CEO designated the polling station at the Buddhist Wong Wan Tin College as the dominant counting station and the main counting station (“the dominant and main counting station”), where the votes cast in the dedicated polling stations (“DPSs”) (details of which are in paragraphs 4.4 – 4.7 below) were to be counted and where the result of the election was to be announced. Both stations were accessible to the disabled.

4.3 The polling stations were set up in the afternoon of the day preceding the polling day. They were converted into counting stations after the close of poll. Within the counting area, there was a counting

zone, a seating area for the candidates and their agents, a press area and a public area where members of the public might stay and observe the count. Candidates and their election/counting agents were allowed to stand around the counting table to observe the count from a close distance.

Dedicated polling stations

4.4 Three DPSs were planned to be set up in this By-election for remanded persons and detainees. The DPS at the Lai Chi Kok Reception Centre and the DPS at the Tai Lam Centre for Women were provided for male remanded persons and female remanded persons under the custody of the Correctional Services Department (“CSD”) respectively. The DPS at the Tin Sum Division Police Station in Sha Tin District was provided for registered electors who were remanded or detained by the LEAs (other than the CSD) including the Police, the ICAC, Customs and Excise Department, Immigration Department, etc. The venue set-up at the DPS would be basically the same of that of an ordinary polling station, except that some of the polling materials had to be specially designed for security reasons.

4.5 As advised by the CSD on 28 March 2009, no female registered elector of the Tai Wai Constituency would be remanded under their custody on the polling day. Hence, there was no need to set up a polling station at the Tai Lam Centre for Women. The DPS at the Lai Chi Kok Reception Centre was, however, required to be set up as male registered electors would be remanded by the CSD on the polling day.

Since the LEAs might make arrests any time on the polling day, the DPS at the Tin Sum Division Police Station was required to be open.

4.6 As only a small number of electors would cast their votes at the DPSs, the votes cast therein would be transferred to the dominant and main counting station at the Buddhist Wong Wan Tin College and mixed with the other ballot papers cast in that station before counting in accordance with section 76 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”).

4.7 The designation of the aforesaid venues as the polling stations and, where appropriate, counting stations was published in the Gazette on 6 March 2009. Candidates were informed that having gone through the required security clearance, they or their election agents could enter the DPSs to observe the poll and witness the Presiding Officers (“PROs”) concerned to deliver the ballot boxes to the dominant and main counting station in accordance with the existing electoral regulation.

Polling and Counting Arrangements

4.8 During the polling hours, the PROs of the ordinary polling stations, assisted by Deputy Presiding Officer (“DPRO”) and Assistant Presiding Officers (“APROs”), were responsible for ensuring the smooth and efficient operation of the polling stations. The PROs worked closely with the RO. When the count started, the PROs of the Buddhist

Wong Wan Tin College and the TWGHs Sin Chu Wan Primary School assumed the role of Counting Supervisors in overseeing the counting process and were responsible for determining the validity of questionable ballot papers, while the DPRO and APROs of the two stations performed the duties of Assistant Counting Supervisors.

4.9 In view of the very small electorate size of the two DPSs, the PROs were either supported by one APRO and one Polling Officer (for the DPS at the Tin Sum Division Police Station) or by one Polling Officer (for the DPS at Lai Chi Kok Reception Centre). The PROs delivered, under the escort of the Police, the sealed ballot boxes to the dominant and main counting station after the close of poll.

4.10 Outside all the polling stations, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO to provide the electors with a hindrance-free access to the station. A notice was put up at a conspicuous spot outside each polling station, showing the area of the NCZ and the NSZ.

Notification to electors

4.11 The REO sent a poll card to each registered elector of the Tai Wai Constituency on 16 March 2009 notifying him/her of the date, time and place of the poll. The poll card was sent together with other election-related materials, including the “Introduction to Candidates”, a guidance note on voting, a location map of the polling-cum-counting station and a leaflet on clean and fair elections issued by the ICAC. The

“Introduction to Candidates” which included the candidates’ election platform was also uploaded to the EAC’s website. Remanded persons and detainees who informed the LEAs that they were registered electors of the Tai Wai Constituency would be provided with a copy of the “Introduction to Candidates” and the guidance note on voting.

Publicity

4.12 The REO issued press releases covering the major events of the By-election which included the commencement and the close of the nomination period, the poll, the count, the setting up of DPSs for remanded persons and detainees and the EAC’s visits to the polling and counting stations. Besides, all relevant information on the By-election (including press releases, the hourly electors’ turnout rate, election result, etc) was uploaded to the EAC’s website for public information.

Contingency plan

4.13 To cater for the unforeseen situations in which the By-election might not be held as scheduled (such as inclement weather conditions), fall back arrangements were made with the venue management of the polling stations to reserve the same venues on the following Sunday on 5 April 2009. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc) was put in reserve. Two dedicated vans were also provided to the polling stations to cater for any necessary transportation needs.

Section 5 – The Poll

Polling hours

5.1 The polling hours for the two ordinary polling stations (i.e. Buddhist Wong Wan Tin College and TWGHs Sin Chu Wan Primary School) and the DPS at the Tin Sum Division Police Station were scheduled from 7:30 a.m. to 10:30 p.m. on 29 March 2009. In view of the security and operational considerations of the Lai Chi Kok Reception Centre, the polling hours for the DPS set up there ran from 9:00 a.m. to 4:00 p.m. The CEO announced the polling hours of the By-election by a notice in the Gazette published on 6 March 2009.

Logistical arrangements

5.2 A central command centre was set up by the REO to oversee the operation of the poll and to provide logistical support to the staff in the polling station on the polling day. The centre was also responsible for handling enquiries and complaints and disseminating statistical information on the hourly electors' turnout rate, election result, number and types of complaints received. The centre operated at the REO office in Guardian House from 7:00 a.m. on the polling day until 1:00 a.m. on 30 March 2009. A media enquiry hotline was set up from 7:30 a.m. until the announcement of the election result to handle press enquiries and to disseminate information to the public through the media at regular intervals. The election enquiry hotline operated from 7:00 a.m. to

11:00 p.m. to handle general enquiries from the electors and to provide information to the polling station on the identity and eligibility of electors.

5.3 A complaints centre was set up at the REO office in Harbour Centre to receive and process election-related complaints. It was manned by the staff of the Complaints Unit of the EAC Secretariat and operated throughout the polling hours from 7:30 a.m. to 10:30 p.m.

5.4 At the district level, a district command centre, manned by the staff of the Home Affairs Department (“HAD”), was set up at the STDO to serve as the contact point between the RO and the PROs. The PROs were responsible for keeping the RO and ARO informed of all significant events which occurred within the polling stations and for handling election-related complaints. Under the direction of the district command centre, a district team took action against unauthorised EAs and illegal canvassing activities in or around the NCZs and the polling stations.

5.5 The Hong Kong Police Force and the Civil Aid Service rendered support in maintaining law and order in the NCZs, the NSZs and inside the polling-cum-counting stations. Police officers were also stationed at the two DPSs to provide support to the PROs.

Turnout of electors

5.6 Out of 12,164 registered electors for the Tai Wai Constituency, 5,963 (including a remanded person) cast their votes. The overall turnout rate was 49.02%.

	Number of registered electors (a)	Total number of elector turnout (b)	Turnout Rate (b)/(a) x 100%
Polling Station (Buddhist Wong Wan Tin College)	10,936	5,587	51.09%
Polling Station (TWGHs Sin Chu Wan Primary School)	1,226	375	30.59%
Dedicated Polling Station (Lai Chi Kok Reception Centre)	2	1	50%
Dedicated Polling Station (Tin Sum Division Police Station)	N.A.	0	–
Total	12,164	5,963	49.02%

A breakdown of the hourly turnout rate of electors in respect of this By-election is shown in **Appendix II**.

Visits

5.7 Mr Justice Pang, the EAC Chairman, and Mr Lawrence Lok and Professor Andrew Chan, the EAC Members, visited the polling stations in the morning of the polling day. They first visited the polling station at Lai Chi Kok Reception Centre, then the Tin Sum Division Police Station, followed by the TWGHs Sin Chu Wan Primary School and finally the Buddhist Wong Wan Tin College. They concluded the visit by briefing the press on the latest progress of the poll. They also encouraged the electors to cast their votes.

5.8 Mr Stephen Lam, Secretary for Constitutional and Mainland Affairs, also visited the polling stations on the polling day.

Section 6 – The Conversion

6.1 The poll at the Lai Chi Kok Reception Centre was closed at 4:00 p.m. and that at the Buddhist Wong Wan Tin College, the TWGHs Sin Chu Wan Primary School and the Tin Sum Division Police Station were closed at 10:30 p.m. as scheduled.

6.2 The PROs of the DPSs at the Lai Chi Kok Reception Centre and the Tin Sum Division Police Station sealed the respective ballot box in the presence of a police officer. The PROs delivered, under the escort of the Police, the sealed ballot boxes to the main counting station after the close of poll.

6.3 After the close of poll at the polling stations at the Buddhist Wong Wan Tin College and the TWGHs Sin Chu Wan Primary School, a notice was promptly displayed at the entrance of each station, notifying the public of the close of poll and the temporary closure of the station to facilitate its conversion into a counting station. The telephone numbers of the APROs concerned were also shown on the notices to facilitate communication between the candidates' agents and the station's staff. Before the counting of the votes began, another notice was displayed outside each of the stations, announcing the approximate time when the polling station would be open again for the public to observe the count.

6.4 The PROs sealed the ballot boxes in the presence of the candidates and their agents, while the polling staff were preparing for the conversion of the station. The conversion was completed smoothly within 30 minutes.

6.5 Mr Justice Pang, the EAC Chairman, and Professor Andrew Chan, the EAC Member, observed the conversion process of the polling station at the Buddhist Wong Wan Tin College. Mr Lawrence Lok, the other EAC Member, observed the conversion process of the station at the TWGHs Sin Chu Wan Primary School. They were satisfied with the smooth conduct of the conversion at the two polling-cum-counting stations.

Section 7 – The Count

Start of the count

7.1 At about 11:00 p.m., the stations at the Buddhist Wong Wan Tin College and the TWGHs Sin Chu Wan Primary School were re-opened for admission of the public and the media to observe the count. In the presence of all candidates and their agents, the PROs and DPRO transferred the sealed ballot boxes to the counting tables. At the Buddhist Wong Wan Tin College, the dominant and main counting station, the PRO unsealed the ballot boxes which were jointly emptied by Mr Justice Pang, Professor Andrew Chan and Mr Stephen Lam. As for the other counting station at the TWGHs Sin Chu Wan Primary School, the ballot box was emptied by Mr Lawrence Lok and the PRO. The count then commenced immediately.

Invalid and questionable ballot papers

7.2 Out of 5,963 ballot papers cast into the ballot boxes, 16 ballot papers were determined as invalid (including seven unmarked, four not marked with the chop provided by the REO and five containing votes for more than one candidate) and therefore not counted in accordance with section 78 of the EAC (EP) (DC) Reg. Another 80 ballot papers were identified as questionable.

7.3 In the presence of the candidates and their agents, the PROs, with the assistance of the ARO(Legal), examined carefully the questionable ballot papers to determine their validity. Four questionable ballot papers were ruled invalid by the PROs and were not counted. Among them, one bore a writing or mark by which the elector could possibly be identified and three were voided for uncertainty. The remaining 76 questionable ballot papers were ruled valid by the PROs and were counted. The total number of ballot papers not counted was 20. A summary of the ballot papers not counted is at **Appendix III**.

Election result

7.4 Upon completion of the count at the dominant and main counting station at the Buddhist Wong Wan Tin College and the counting station at the TWGHs Sin Chu Wan Primary School, the PROs verified the number of ballot papers counted at their counting stations with their ballot paper accounts. The figures were found consistent. The PRO of the counting station at the TWGHs Sin Chu Wan Primary School made known the result of the counting of votes to the candidates and their agents who were present at the counting zone and reported the counting results to the PRO of the dominant and main counting station immediately. The PRO of the dominant and main counting station subsequently informed the RO of the results of the count conducted at both stations. There was no request for a re-count of votes at either of the counting stations from the candidates or their agents.

7.5 At about 12:35 a.m., as there was no request for a re-count from the candidates, the RO declared the election result. Mr Leung Wing-hung was elected with 2,820 valid votes, representing 47.45% of the total number of 5,943 valid votes cast. The other four candidates, Messrs Lee York-fai, Chau Chi-pong, Yuen Kwai-choi and Chan Wai-man, received 790, 13, 2,301 and 19 votes respectively. The election deposit of two of the candidates, i.e. Messrs Chau Chi-pong and Chan Wai-man, were forfeited in accordance with section 4(2) of the District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap 547A) because the number of valid votes they obtained was less than 5% of the total number of valid votes cast. The election result for the Tai Wai Constituency was published in the Gazette on 3 April 2009 and is now reproduced at **Appendix IV**.

Meeting the media

7.6 The Chairman and Members of the EAC met the press immediately after the announcement of the election result to conclude that the EAC was content with the polling arrangements, including those for remanded persons and detainees, and the efficient completion of the counting process. They were satisfied that the principle of fairness, openness and honesty was upheld throughout the process of this By-election. The EAC undertook to continue to review the electoral procedures and arrangements with a view to refining and improving them for public elections in future. The Chairman also took the opportunity to thank all parties concerned for the smooth conduct of the By-election.

Section 8 – Complaints

Complaints-handling period

8.1 The EAC took up the responsibility of handling complaints in relation to the By-election. Five different parties were designated for handling and processing complaints: the EAC, the RO, the Police, the ICAC and, on the polling day, the PROs as well. Complainants could lodge their complaints with any of the above parties.

8.2 The complaints-handling period started on the day when the nomination period commenced on 13 February 2009, and ended 45 days after the polling day on 13 May 2009. By the end of the complaints-handling period, a total of 158 complaints were received from the public by the five complaints-handling parties. The majority of these complaints concerned disturbances to electors caused by canvassing activities. A breakdown of the complaints is at **Appendix V**.

Complaints received on the polling day

8.3 The REO complaints centre, the RO, the PROs, the Police and the ICAC received altogether 52 complaint cases on the polling day. A breakdown of these cases is as follows:

Complaints-handling party	Number of complaints received on the polling day
REO complaints centre	11
RO	13
Police	27
ICAC	0
PROs	1
Total	52

8.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned disturbances to electors caused by canvassing activities. A breakdown of the complaint cases received on the polling day is at **Appendix VI**. These 52 complaints are also included in **Appendix V**.

Outcome of investigation

8.5 Of the 158 complaints received during the complaints-handling period, 28 were found substantiated, 19 unsubstantiated, 93 requiring no further action and 18 under investigation.

Complaints about noise nuisance

8.6 There were 72 complaints received from the general public about noise nuisance caused by amplifying devices when candidates conducted electioneering activities. It was noted that majority of the complaints were lodged against one particular candidate.

8.7 The EAC had provided candidates with guidance in the use of loudspeakers in paragraphs 11.2 to 11.5 of the Guidelines. The candidates were reminded that some members of the public found the sound or noise emitted by loudspeakers annoying and intrusive. When using loudspeakers, candidates should particularly bear in mind possible annoyance caused to other people. In order to reduce the nuisance caused to members of the public, the EAC had imposed a restriction that candidates were required not to use loudspeakers in electioneering between 9:00 pm and 9:00 am. Candidates and their agents were reminded to observe the aforesaid guidelines at the EAC Chairman's briefing held on 3 March 2009. For this by-election, the EAC had issued a warning to a candidate for failing to comply with the time restriction for the use of loudspeakers for electioneering. The EAC will continue to draw candidates' attention to the need to comply with the aforesaid guidelines in future elections.

Allegations about offering advantages to electors

8.8 During the election period, allegations that a candidate had offered electors with advantage including treating, free gifts and services had attracted public and media attention. The ICAC is conducting an investigation into the matter.

8.9 On the polling day, it was alleged that a candidate had arranged through an organisation free transportation services for electors to go to the polling station at the Buddhist Wong Wan Tin College. There had

been allegations that the candidate also offered advantages (e.g. tours and lunch at low prices) to the electors. As the alighting point of the coaches was close to the entrance of the polling station, some members of the public (who were believed to be canvassers of other candidates) gathered outside the polling station and hustled the electors getting off from the coaches to cast their votes fairly. To maintain order at the area, the RO enlarged the NSZ to ensure free and safe passage for electors (please also refer to paragraphs 9.4 and 9.5 below).

8.10 To uphold fair and clean elections and prevent corrupt and illegal conducts at elections, the District Council Elections/By-elections and other public elections are regulated by the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”), which is enforced by the ICAC. An “Information Folder on Clean Elections” prepared by the ICAC had been given to individual candidates to help them and their agents to get acquainted with the major provisions of the ECICO. The EAC has also provided guidance against corrupt and illegal conduct in conducting election-related activities in Chapter 16 of the Guidelines.

8.11 For complaints received that may involve possible breach of the ECICO, the EAC or the RO, with the consent of the complainants, had referred them to the ICAC for investigation.

Section 9 – Review and Recommendations

9.1 After the By-election, the EAC conducted an overall review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The EAC found the polling and counting arrangements generally satisfactory. The operations of the two DPSs were also smooth. The area that has been reviewed and the related recommendation are set out in the ensuing paragraphs.

Setting-up of dedicated polling stations

9.2 Two DPSs were set up for remanded persons and detainees who were registered electors of Tai Wai Constituency to cast their votes in this By-election.

9.3 **Recommendation:** The EAC considers that the experience in setting up and operating the two DPSs is invaluable. The REO and LEAs should draw on the experience gained in this By-election to develop the long-term arrangements to facilitate prisoners, remanded persons and detainees to vote in all public elections held in Hong Kong.

Delineation of NSZ

9.4 The competition of this By-election was very keen and canvassers of some candidates were quite aggressive in conducting their electioneering activities on the polling day. A number of canvassers had been found gathering outside the NSZ of the polling station at the

way which caused obstruction to electors' access to the polling station. In this connection, the RO had exercised her authority under section 43(6) of the EAC (EP) (DC) Reg to extend the boundaries of the NSZ with the assistance of the Police and PRO to maintain free passage for electors.

9.5 **Recommendation:** The EAC appreciates the actions taken by the parties concerned and considers that ROs and polling staff should, in the future, closely monitor the situations in NSZ and NCZ and take prompt actions to deal with any unexpected incidents.

Allegations about offering advantages to electors

9.6 As set out in paragraphs 8.8 to 8.11, the EAC and the RO received a number of complaints alleging that a candidate had offered advantages to electors.

9.7 **Recommendation:** The EAC considers that the ICAC and EAC should continue to remind candidates to strictly observe the provisions of the ECICO when conducting election-related activities.

9.8 The EAC also takes this opportunity to remind all parties of the importance of keeping Hong Kong's elections clean.

Section 10 – Acknowledgement

10.1 The successful conclusion of the By-election was attributable to the dedicated and concerted efforts of all parties involved.

10.2 The EAC would like to thank the following government bureaux and departments for their support and assistance:

Agriculture, Fisheries and Conservation Department

Civil Aid Service

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Justice

Drainage Services Department

Electrical and Mechanical Services Department

Food and Environmental Hygiene Department

Government Logistics Department

Home Affairs Department

Hong Kong Police Force

Hongkong Post

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Leisure and Cultural Services Department

Marine Department

Official Languages Division (of the Civil Service Bureau)

10.3 The EAC is grateful for the efforts of all officers and REO staff serving as RO, AROs, PROs, DPRO and APROs, and the legal practitioner serving on the NAC(DC) in the By-election.

10.4 The EAC is also grateful to the CSD and other LEAs for their assistance provided to the REO in setting up DPSs to facilitate the remanded persons and detainees to cast their votes in this By-election.

10.5 The EAC would like to thank members of the media who had helped substantially to enhance the transparency of the By-election by giving a wide coverage.

10.6 The EAC would also like to express its appreciation to the electors who turned up to cast their votes and all those who complied with the electoral legislation and guidelines in the By-election.

Section 11 – Looking Forward

11.1 The EAC remains committed to fulfilling the mission of safeguarding the integrity of public elections in Hong Kong. It will continue to make its efforts in keeping a vigilant watch over every election to ensure openness, fairness and honesty. The EAC welcomes positive and constructive comments to bring about improvements to the arrangements for future elections.

11.2 The EAC recommends that this report be made public, at a time the Chief Executive thinks appropriate, so that the public may be kept posted as to how the EAC conducted and supervised the By-election.

