

PART ONE

PROLOGUE

CHAPTER 1

AN OVERVIEW

Section 1 – Introduction

1.1 The third term of the District Councils (“DCs”) with 405 elected members for a four-year term expired on 31 December 2011. An ordinary election was held on 6 November 2011 to return 412 members for the fourth term of four years from 1 January 2012 to 31 December 2015.

1.2 The number of elected seats for the 2011 DC Election increased from 405 to 412 to match the population growth in Hong Kong since the last DC Election held in 2007. The details of this exercise are given in paragraphs 2.5 and 2.6 in Chapter 2.

1.3 There was a record high of 915 validly nominated candidates, 76 of whom were returned uncontested. The remaining 839 candidates ran for the seats in the other 336 constituencies. Competition was most keen in the Sheung Tak and Kwong Ming Constituencies, each with six candidates competing for the seat. In addition, there was a total of seven constituencies (viz Hing Tung, King’s Park, Tsim Sha Tsui East, Lai Chi Kok North, Chui Cheung, Chung Pak, and Cheung Chau South), each with five candidates competing for the respective seat.

1.4 The number of electors turning up at the polls was also a record high with a total of 1,202,544 electors casting their votes, representing 41.49% of the

total electorate of 2,898,180 for the contested constituencies. The turnout was higher than that of the two previous DC Elections held in 2003 and 2007, in which 1,066,373 and 1,148,815 electors had voted respectively. The overall turnout rate of 41.49% was, however, slightly lower than that of 44.10% in the 2003 DC Election.

Section 2 – Legislation Governing the Election

1.5 The supervision and conduct of the 2011 DC Election was governed by the following ordinances:

- (a) the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”), which empowers the Electoral Affairs Commission (“EAC”) to perform its various functions in the supervision and conduct of the election;
- (b) the District Councils Ordinance (Cap 547) (“DCO”), which provides the legal basis for conducting the election;
- (c) the Legislative Council Ordinance (Cap 542) (“LCO”), which lays down the qualification for registration as an elector; and
- (d) the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”), which prohibits election-related corrupt and illegal matters and is administered by the Independent Commission

Against Corruption (“ICAC”).

1.6 These ordinances are complemented by the following eight pieces of subsidiary legislation which provide the detailed procedures for the conduct of the election. They are:-

- (a) the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”);
- (b) the Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation (Cap 541E) (“EAC (NAC) (DC) Reg”);
- (c) the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A) (“EAC (ROE) (GC) Reg”);
- (d) the District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap 547A);
- (e) the District Councils (Election Petition) Rules (Cap 547C);
- (f) the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap 541M) (“PCBP (LC & DC) Reg”);

- (g) the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap 541N) (“EAC (FA) (APP) Reg”); and
- (h) the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap 554C) (“EE (DC) Reg”).

Voting by Imprisoned Persons Ordinance

1.7 The Administration introduced the Voting by Imprisoned Persons Bill (“VIPB”) into the Legislative Council (“LegCo”) in May 2009 to remove the disqualification of imprisoned persons and persons convicted of certain election-related or bribery offences from being registered as electors and from voting in the LegCo, DC, Chief Executive (“CE”), Election Committee Subsector and Village Representative (“VR”) Elections. The VIPB was passed by the LegCo on 24 June 2009.

1.8 The EAC subsequently made eight amendment regulations to provide for the detailed practical arrangements for imprisoned persons to register as electors and for registered electors imprisoned, remanded or detained to vote. These arrangements included the setting up of Dedicated Polling Stations (“DPSs”) for registered electors imprisoned, remanded or detained to vote and Ballot Paper Sorting Stations (“BPSSs”) for sorting ballot papers cast at DPSs before they were delivered to the respective counting stations for counting. With all the provisions of the Voting by Imprisoned Persons Ordinance (“VIPO”) and the amendment

regulations made by the EAC coming into operation on 30 October 2009, the 2011 DC Election was the first DC ordinary election in which DPSs were set up in prisons for registered electors who were serving prison sentences to vote and BPSSs were set up to sort ballot papers cast at DPSs before they were delivered to the respective main counting stations for counting.

Amendment Regulations Made by the EAC

1.9 The EAC is committed to improving the electoral procedures and arrangements and shall propose revisions to the subsidiary legislation under the EACO (Cap. 541) in this regard when necessary. On 9 May 2011, the EAC made nine amendment regulations with proposed legislative amendments to nine regulations under the EACO with a view to fine-tuning or where appropriate aligning the electoral procedures in different elections and refining the voting arrangements for electors in custody. These amendment regulations were published in the Gazette on 13 May 2011 and tabled in the LegCo on 18 May 2011.

1.10 The main amendments to the EAC(EP)(DC)Reg (Cap. 541F) in respect of the DC Election are set out below:

- (a) achieving consistency and removing possible ambiguity in the wording of relevant provisions on the means of serving a copy of authorisation of an election expense agent and the notice of revocation of such authorisation, i.e. by delivery by hand, by post or by facsimile transmission;

- (b) clarifying that in a DC Election where the Returning Officer (“RO”) had terminated an election proceeding under section 40(1) of the DCO upon proof of the death or the disqualification of a candidate given to him on the date of the election and before the close of polling, in directing that the poll be abandoned, such proof would not need to be given to the RO again;
- (c) empowering the EAC to specify the form for candidates in the DC Election to lodge election expense return under section 37 of the ECICO (Cap. 554), so that there would be a clear legal basis for the Chief Electoral Officer (“CEO”) to collect the personal particulars of the donors of election donations and to make available such personal particulars for public inspection;
- (d) clarifying that before displaying an election advertisement (“EA”) for the DC Election in the form of a bill or poster within the meaning of section 104E of the Public Health and Municipal Services Ordinance (Cap. 132), the candidate must deposit with the RO a copy of the permission or other authorisation obtained for the purposes of section 104A(1) of that Ordinance, but such requirement would not apply to the distribution or otherwise use of an EA;
- (e) allowing the candidates of the DC Election to submit, in the manner and format specified by the EAC, a declaration and a copy of electronic EA to the RO electronically;

- (f) empowering the Presiding Officers (“PROs”) in the DC Election to adjourn the count of votes at their respective counting stations if the count is likely to be obstructed, disrupted, undermined or seriously affected by a specified occurrence (the PROs already had the authority to adjourn the poll at their respective polling station); and
- (g) miscellaneous amendments to refine the voting arrangements for electors in custody.

1.11 During the scrutiny of the amendment regulations set out in paragraph 1.10 above, some LegCo Members suggested extending, for the DC Election year, the annual cut-off date for registering particulars relating to candidates on ballot papers, similar to the practice of voter registration. Having carefully considered the aforesaid suggestion, the Administration proposed the following amendments to PCBP(LC&DC)Reg (Cap 541M):

- (a) to amend the annual cut-off date for filing applications for registering the particulars relating to candidates on ballot papers to 15 June for the DC Election years; and
- (b) to amend the annual cut-off date of the applications in the 2011 registration cycle (i.e. ending 31 December 2011) to 15 July 2011 as a transitional arrangement.

1.12 When scrutinising the provisions of the amendment regulations which allow the candidates to submit declarations and copies of electronic EAs to the RO electronically as mentioned in paragraph 1.10(e) above, some LegCo Members also suggested that the candidates should be provided with the flexibility to submit copies of electronic EAs either by electronic means or in hardcopies as the situation requires. The Administration proposed to amend the provisions in four amendment regulations, namely the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), the EAC(EP)(DC)Reg (Cap. 541F); the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) and the Electoral Affairs Commission (Electoral Procedure) (Chief Executive Election) Regulation (Cap. 541J), so that the aforesaid suggested arrangement could be applied to the LegCo, DC, the CE and Election Committee Subsector Elections. The Secretary for Constitutional and Mainland Affairs (“SCMA”) moved motions to amend the aforesaid five amendment regulations at the LegCo meeting held on 6 July 2011. The motion was passed by the LegCo.

1.13 The relevant parts of the amendment regulations mentioned in paragraph 1.9 above and the subsequent amendments set out in paragraph 1.12 above came into operation on 8 July 2011.

Electoral Legislation (Miscellaneous Amendments) Bill 2011

1.14 The Administration introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2011 to the LegCo on 4 May 2011. The Bill proposed to amend various pieces of legislation to introduce changes to the electoral and related

arrangements for the LegCo, DC, CE and VR Elections. The changes relating to the DC Election include the following:

- (a) allowing a party to an election petition concerning a LegCo Election, DC Election or VR Election to lodge an appeal to the Court of Final Appeal (“CFA”) against the determination of the petition by the Court of First Instance (“CFI”);
- (b) increasing the financial assistance to candidates in DC Election. The subsidy rate was increased from the lower of \$11 per vote or 50% of the declared election expenses to the lower of \$12 per vote or 50% of the election expenses limit provided that the subsidy amount did not exceed the amount of the declared election expenses of a candidate; and
- (c) increasing the election expenses limit that could be incurred by a candidate in the DC Election from \$48,000 to \$53,800.

1.15 A Committee Stage Amendment to the Bill was also made to propose a change in the arrangement in handling the election returns with minor errors and/or false statements under the ECICO. A relief mechanism was introduced under which if errors and/or false statements were made in an election return submitted by a candidate and the aggregate amount of which did not exceed an amount specified for each election (\$500 as in the case of the DC Election), the candidate might, subject to certain conditions, seek to have the errors and/or false statements rectified under a simplified relief arrangement without recourse to court order.

1.16 The Electoral Legislation (Miscellaneous Amendments) Bill 2011 was passed by the LegCo on 6 July 2011 and the relevant parts of the bill came into operation on 15 July 2011.

Section 3 – This Report

1.17 The EAC is required under section 8(1) of the EACO to submit a report on an election to the CE within three months after the polling day of the election.

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

PART TWO

BEFORE THE POLLING DAY

CHAPTER 2

THE DEMARCATION EXERCISE

2.1 Under section 4(a) of the EACO, one of the functions of the EAC is to consider and review the boundaries of DC constituencies for the purpose of making recommendations on the boundaries and names of constituencies for a DC ordinary election.

2.2 In accordance with section 18 of the EACO, the EAC is required to submit to the CE a report on its recommendations for DC constituencies not more than 36 months from the preceding DC ordinary election. As the last DC ordinary election was held on 18 November 2007, the EAC was required to submit the report to the CE by 17 November 2010. Due to the reason as set out in paragraph 2.3 below, the aforesaid statutory deadline had been extended to April 2011.

2.3 Delineation of DC constituencies for the 2011 DC Election was based on the total number of elected seats for the election. The Administration focused in the first half of 2010 on the methods for selecting the CE and for forming the LegCo in 2012, including the participation of elected DC members in the two elections, following which the Administration proceeded to deal with the number of elected seats for the 2011 DC Election. To allow the EAC adequate time to formulate DC constituencies delineation proposals, the CE had approved the extension of the submission deadline to April 2011 pursuant to section 18(4) of the EACO.

2.4 The Registration and Electoral Office (“REO”) provided the manpower required for carrying out the demarcation exercise. An Ad Hoc Subgroup, formed under the Working Group on Population Distribution Projections set up under the auspices of the Planning Department, took up the primary task of providing the EAC with the necessary population forecasts. The Ad Hoc Subgroup was requested to project the population distribution figures of the 18 Districts as at a date as close to the polling day as practicable. For the 2011 DC Election this date was 30 June 2011. The Ad hoc Subgroup made available the forecast population figures in late March 2010.

2.5 After undertaking an overall review on the number of elected seats for each DC in the 18 Districts having regard to the population forecast in Hong Kong in mid-2010, the Administration proposed to add seven elected seats for the 2011 DC Election as follows:

- (a) one more seat for each DC in Kwun Tong, Yau Tsim Mong, Kwai Tsing, North and Sai Kung; and
- (b) two more seats for Yuen Long DC.

2.6 The Government presented the DCO (Amendment of Schedule 3) Order 2010 to the LegCo on 29 September 2010 to implement the proposed addition of seven elected seats on six DCs. After the examination of the Order by a subcommittee, the Order was approved by the LegCo on 1 December 2010 and published in the Gazette on 3 December 2010. Following the LegCo’s approval of the Order, the total number of elected seats in the 2011 DC Election was increased

by seven from 405 to 412 and the total number of DC constituencies to be delineated was increased to 412 as one DC member is to be elected for each constituency.

2.7 Having ascertained the number of constituencies to be delineated, the EAC drew up the provisional recommendations in accordance with the statutory criteria stipulated in section 20 of the EACO and the working principles adopted by the EAC.

2.8 The EAC conducted a public consultation exercise for a period of 30 days on its provisional recommendations from 3 December 2010 to 3 January 2011. The provisional recommendations, with maps, were open for public inspection during the consultation period, in accordance with section 19 of the EACO. Two public forums were held on 14 and 17 December 2010 at the Theatre of the Hong Kong Heritage Museum and the Quarry Bay Community Hall respectively to receive oral representations on the provisional recommendations from members of the public.

2.9 During the consultation period, the EAC received a total of 472 written representations. On the two days of the forums, 102 persons turned up and 45 of them expressed their views on the provisional recommendations. Having carefully considered the public representations, the EAC adjusted its provisional recommendations in respect of the boundaries of 19 constituencies and the names of 2 constituencies. The EAC finalised its recommendations and submitted the report to the CE on 11 March 2011. The report also contained a detailed account of the EAC's work in the demarcation exercise. The CE in Council accepted the

recommendations in their entirety on 22 March 2011 and made the Declaration of Constituencies (District Councils) Order 2011, which was tabled at the LegCo on 30 March 2011 for negative vetting. The EAC published the finalised set of maps of delineations in May 2011 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 to 31 of the LCO. His name should be on the final register (“FR”) of GC electors published on 15 September 2011. The registration of GC electors was conducted in accordance with the provisions of the EAC (ROE) (GC) Reg. To be registered as a GC elector, a person must –

- (a) be aged 18 or above as at 25 September 2011;
- (b) be a permanent resident of Hong Kong;
- (c) at the time of applying for registration, ordinarily reside in Hong Kong and his residential address in the application for registration is his only or principal residence in Hong Kong;
- (d) hold a valid identity document or have applied for a new/replacement identity document; and
- (e) not be subject to any disqualification from registration.

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 – The Registration Campaign

3.3 With the objectives of encouraging the eligible members of the public to register as electors and reminding those already registered to report to the REO any change of their registration particulars (including residential addresses), a large-scale publicity campaign was coordinated by the Constitutional and Mainland Affairs Bureau (“CMAB”) and launched from 11 June to 16 July 2011, while the publicity on change of particulars lasted until 29 August 2011. The campaign was conducted with the joint efforts of the REO, Home Affairs Department (“HAD”), Information Services Department (“ISD”), Radio Television Hong Kong (“RTHK”) and ICAC. Publicity and promotional activities were staged, such as announcements in public interest (“APIs”) on the television and radio, advertisements in newspapers, at major MTR stations and on public transport vehicles, and the display of posters and banners. The details of these activities are set out below.

3.4 A launching ceremony was held on 11 June 2011 to announce the commencement of the Voter Registration Campaign. Throughout the campaign, roving registration counters were set up at popular locations including major MTR stations and shopping malls to help people register or update their particulars.

3.5 To encourage more young people to register, registration counters were also set up at all Registration of Persons Offices of the Immigration Department to assist young people reaching 18 in registering when they turned up at these offices to apply for or to collect their new adult identity cards. Voter registration

assistants were also deployed to station at higher education institutes to encourage eligible students to register.

3.6 Besides, the REO sent appeal letters to those households which had moved into new private developments to remind them to report changes in addresses and if they were not already registered electors, to register before the statutory deadline for registration.

3.7 As an on-going measure, the REO, having obtained the approval from the Privacy Commissioner for Personal Data, conducted cross-matching exercise with the Housing Department (“HD”), the Housing Society (“HS”) and the HAD with a view to updating the addresses of registered electors. Voter registration forms were also made available in the building lobbies with posters reminding local residents to update their addresses, and appealing to those who had not yet registered as electors.

3.8 The Immigration Department continued to provide the REO with information on change of address received by them under the Smart Identity Card Replacement System, subject to the consent given by the persons concerned.

3.9 To facilitate on-line registration, a dedicated voter registration website was also set up, with hyperlinks from Government websites and websites which were popular with young people.

3.10 To reduce paper consumption in elections, REO set up a platform at the GovHK website to facilitate registered electors to provide or update their email

addresses. A dedicated email account was also put in place by the REO to receive requests from registered electors to provide or update their email addresses. In addition, the voter registration assistants at Registration of Persons Offices and roving registration counters had made efforts to encourage registered electors and persons who wished to register as electors to provide their email addresses when filling their registration forms.

3.11 About 425,000 registration forms were received by the statutory cut-off date of 16 July 2011, and about 260,000 of them were received during the six-week voter registration campaign period. There were about 203,000 new electors, and the total number of electors in the 2011 FR reached a record high of 3,560,535.

Section 3 – The Registers

3.12 The REO published the provisional register of electors (“PR”) on 15 August 2011. 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 the electors concerned or obtained from other sources, and the particulars of those eligible applicants who had applied for registration on or before 16 July 2011 (ie the deadline for registration).

3.13 An omissions list (“OL”) was published in conjunction with the publication of the PR on 15 August 2011. This list contained the particulars of the persons who were formerly registered in the 2010 FR but were not included in the 2011 PR and were proposed to be omitted from the 2011 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 (e.g. they had passed away or had changed their principal addresses but the new address was not known to the ERO).

3.14 Both the PR and the OL were made available at the REO and the designated public enquiry service centres of the HAD for public inspection from 15 to 29 August 2011, during which 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 OL might also lodge claims with regard to such cases.

3.15 By the end of the public inspection period, the ERO had received 86 notices of objections lodged by three objectors. The objections were subsequently forwarded to the Revising Officer, who was a member of the Judiciary, for consideration and ruling. After the hearings, the Revising Officer directed that 11 objections be allowed and the remaining 75 objections be rejected. Among these cases, 10 objections were allowed because the electors concerned no longer resided in their registered addresses. The remaining one was allowed because the elector was found deceased overseas. Separately, 1,081 electors originally included in the OL informed the ERO of their updated principal addresses before the statutory deadline for change of particulars on 29 August 2011. They had satisfied all the eligibility criteria for registration as electors and thus had been added to the FR with the Revising Officer’s approval.

3.16 The FR was published on 15 September 2011. An age and sex profile of these registered electors is at **Appendix I**.

3.17 For the recent media reports and complaints about inaccurate or false registered addresses in the register of electors, please refer to paragraphs 12.17 to 12.25 below for the follow-up action taken by the EAC and REO.

Section 4 – Allocation of Electors to Constituencies

3.18 After the EAC's recommendations on the delineation and the names of the DC constituency areas ("DCCAs") were accepted by the CE in Council on 22 March 2011, the REO proceeded to allocate each of the registered electors to a constituency area on the basis of their principal residential addresses as shown in the FR.

3.19 About 194,000 registered electors were affected by the change of DCCA delineation and/or re-naming of the DCCAs. The REO sent a notice to each of these electors in late May 2011 informing them of the new constituencies or the new names of the constituencies to which they had been allocated.

CHAPTER 4

THE GUIDELINES

Section 1 – The Preparatory Work

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 guidance in layman's language on compliance with the relevant electoral legislation.

4.2 The EAC has at all times made its best endeavours in refining the electoral arrangements for elections. Before each ordinary 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 period of consultation will be conducted during which representations are invited from the public and all 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.

4.3 The Guidelines on Election-related Activities in respect of DC Election (“Guidelines”) had been amended two times between 2007 and 2010. The Guidelines were updated and issued in August 2008 by making reference to the LegCo Guidelines issued in July 2008 for the 2008 LegCo Election. In order to reflect the legislative amendments mentioned in paragraphs 1.7 and 1.8 of Chapter 1 concerning the VIPO and to set out the related electoral arrangements, the Guidelines were further updated in January 2010.

4.4 The REO revised the Guidelines in February 2011 for the 2011 DC Election. The proposed Guidelines were prepared on the basis of the most recent version of Guidelines (January 2010 edition) and by making reference to the VR Guidelines for the VR Election published in October 2011. The revisions reflected the proposed legislative amendments in respect of the DC Election as mentioned in section 2 of Chapter 1 and the amendments made in the light of operational experience gained as well as suggestions and complaints received from the public and other parties concerned in the past elections including the 2008 LegCo Election, 2010 LegCo By-election and 2011 VR Election.

Section 2 – The Proposed Guidelines

4.5 The major changes proposed in the proposed Guidelines, as compared with the revised Guidelines issued in January 2010, included the following:

(I) *Changes caused by proposed amendments to electoral legislation*

Subject to the enactment of the relevant legislative amendments,

- (a) adding that the use of sound amplifying device within the no canvassing zone (“NCZ”) for the performance of duties by officers of the Correctional Services Department (“CSD”) at DPSs in prisons is allowed;
- (b) setting out the revised sorting process in the ballot paper sorting stations;
- (c) adding the mechanism to allow appeals to be made direct to CFA against the decisions of the CFI on election petitions, subject to leave being granted by the Appeal Committee of the CFA;
- (d) setting out the arrangements for submitting by electronic means the declaration and copy of EA to be displayed, distributed or otherwise used by electronic means;
- (e) clarifying that before the display of an EA in the form of a bill or poster, the candidate must deposit with the RO a copy of the permission or other authorisation obtained for the purposes of section 104A(1) of the Public Health and Municipal Services Ordinance;
- (f) setting out the revised election expenses limit of \$53,800; and

- (g) revising the subsidy rate of financial assistance for the eligible candidate (who get elected or who have received 5% of valid votes or more) to the lowest of \$12 per vote times the number of valid votes received by the candidate; 50% of the election expenses limit; or the amount of the declared election expenses of the candidate.

(II) Changes made in the light of operational experience and suggestions/ complaints received from past elections

- (a) adding that the “Introduction to Candidates”, if considered to contain information not relating to the direct promotion of the candidature of the candidate concerned will be subject to alternation or edition;
- (b) lifting the restriction on display of joint EAs in the common parts of private premises in order to align with the existing arrangement for the display of joint EAs allowed at designated spots;
- (c) setting out the advice of the ICAC that apart from the cost of refurbishing old publicity boards (which will be re-used for an election), their estimated value will also be counted towards the concerned candidate’s election expenses;
- (d) reminding candidates that they should carefully study the requirements governing free postage for EAs and that they should submit their EA specimens to the respective Manager of the post office for approval as early as possible before mass production so as to allow sufficient time

for revising the contents of their EA specimens, if necessary;

- (e) reminding candidates and their election agents to read carefully the guidance notes on personal data privacy in respect of electioneering activities (prepared by the Office of the Privacy Commissioner for Personal Data (“OPCPD”) at Appendix F to the proposed Guidelines) before they undertake such activities;
- (f) extending the existing guidelines on electioneering on licensed TV/radio to TV and radio broadcast on the Internet; (see also paragraph 4.7(a) below)
- (g) drawing broadcasters’ attention to the observations made by the Court in an election petition as set out in Appendix I to the proposed Guidelines, and advising them, where appropriate, to follow the arrangement therein to give a clear message to audience on the total number and the names of all candidates in the same constituency and to give equal treatment to all candidates concerned when producing multi-episode programmes which are election-related;
- (h) reminding candidates that if the EAC receives a complaint about a candidate taking unfair extra publicity and it is subsequently found that the candidate has failed to make his best endeavours in accordance with the guidelines to avoid taking the aforesaid extra publicity, the EAC may make a reprimand or censure in a public statement against him;

- (i) setting out the Transport Department's updated requirements for the display of EAs on public light buses and taxis;
- (j) reminding candidates that they should give the unspent or unused election donations to charitable institutions or trusts before lodging the return and declaration of election expenses and donation in accordance with section 37 of the ECICO;
- (k) reminding candidates and other persons that any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication; and
- (l) reminding candidates to observe the relevant data protection principle as set out in the guidance notes issued by the OPCPD at Appendix F to the proposed Guidelines before using an image of an identified person for the purpose other than the original purpose of collection.

4.6 In accordance with the EACO and as an established practice, the EAC conducted a 30-day public consultation exercise from 24 May 2011 to 22 June 2011. As in the past, the changes set out in paragraph 4.5 above were highlighted in a Message from the Chairman enclosed in the proposed Guidelines, explaining the consultation mechanism and to provide a more focused basis for the public to give their comments. During the consultation period, members of the public were invited to give their views on the proposed Guidelines and lodge their written representations with the EAC. The EAC held a forum in the afternoon of 9 June 2011 in the Community Hall, Causeway Bay Community Centre to receive oral

representations. 45 oral representations were received. Before the close of the public consultation period, the proposed Guidelines were discussed by the LegCo Panel on Constitutional Affairs and the views of the LegCo Members were taken into account in finalising the Guidelines. A total of 749 written representations were received through the public consultation exercise. An overwhelming part of the views received was related to the proposed changes mentioned at paragraph 4.5(II)(f) above, expressing either reservation or objection.

Section 3 – Changes after Public Consultation

4.7 After considering the representations and views of the LegCo Members and the public and to reflect the enactment of the proposed legislative amendments as mentioned in paragraph 4.5 (I) above and the legislative amendments made after the issue of the proposed Guidelines, the EAC made a number of changes to the proposed Guidelines. The major ones included:

- (a) not pursuing the proposal to extend the existing guidelines on electioneering on licensed TV/radio to TV and radio broadcast on the Internet as set out in the proposed Guidelines;
- (b) refocusing on the “fair and equal treatment” principle as the foremost principle in Chapter 10 of the Guidelines: Election Broadcasting, Media Reporting and Election Forums;

- (c) adding the newly introduced statutory simplified relief arrangements for rectifying minor errors and/or false statements in election return of election expenses and donations received;
- (d) extending the deadline for filing applications for registering emblems and other particulars relating to candidates in ballot papers for DC Election year; and
- (e) allowing the submission of hard copies of electronic EAs to ROs, as an alternative to electronic means.

4.8 Explaining its decision in paragraph 4.7(a), the EAC noted that it had put forward the proposal as set out in paragraph 4.5(II)(f) with an aim to ensure that all candidates were treated fairly and equally in elections. In light of the increasing popularity of the Internet, the Internet programmes relating to candidates contesting in elections could have substantial impact on elections. The EAC, therefore, intended to bring up for discussion through the Proposed Guidelines whether these programmes should also abide by the guidelines. However, after carefully considering the views collected, the EAC took the view that it was not appropriate to take forward the aforesaid proposal. Licensed TV and radio broadcast their programmes using public broadcasting spectrums and had profound influence on society. As the broadcasting platform was not an open one, they had to abide by the guidelines. However, Internet was an open platform. Everyone could broadcast programmes on the Internet and no one could monopolise its use. Hence, the guidelines should not apply on these programmes. It is considered that, given the existing regulations on election advertisements and election expenditure,

the decision to exclude such Internet programmes from the application of the guidelines will not have any adverse implications for the overall fairness of elections.

4.9 The EAC held a press conference on 6 September 2011 to announce the publication of the finalised version of the Guidelines, and a press release was issued on the same day. The Guidelines were made available for public access at the EAC's website and for distribution at a number of venues, including District Offices and the REO. Each candidate of the election was provided with a copy of the Guidelines when he or she submitted the nomination form.

CHAPTER 5

APPOINTMENTS AND NOMINATIONS

Section 1 – Appointment of Nominations Advisory Committees

5.1 In accordance with the established practice in previous ordinary elections, free legal advice on the eligibility of the candidates for nomination was available to the ROs and candidates in the DC ordinary election, when necessary. In the 2011 DC Election, four legal professionals were appointed as members of Nominations Advisory Committees (“NACs”) under the EAC (NAC) (DC) Reg to provide the ROs and candidates with the necessary legal advice on the eligibility of the candidates. Members of the NACs, including Mr Wong Ching-yue, Senior Counsel, Messrs Kevin Chan, Ho Bing-kwan and Lui Kit-ling were experienced members of the legal profession and were not affiliated with any political organisations. Their appointment covered the period from 17 June to 30 September 2011 (both dates inclusive), and was published in the Gazette on 17 June 2011. During their appointment period, the NACs received six requests from the candidates for legal advice and one request from the ROs.

Section 2 – Appointment of, and Briefing for, ROs

5.2 The District Officers (“DOs”) of the 18 districts were appointed as ROs by the EAC on 19 August 2011. Each DO served his own district.

5.3 The EAC Chairman conducted a briefing session for all the ROs on 7 September 2011 in the Hong Kong Cultural Centre. Also present at the briefing session were the CEO and representatives of the Department of Justice (“D of J”) and the ICAC. The EAC Chairman highlighted the major electoral arrangements for the attention of the ROs, 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 the Guidelines governing EAs and election expenses, and handling of complaints. Representative from the ICAC briefed the participants on the major provisions of the ECICO and the procedures for the referral of complaints related to the Ordinance to the ICAC.

Section 3 – Appointment of Assistant ROs

5.4 To provide assistance to the ROs, 30 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 PROs during the count, 23 AROs (Legal) were also appointed. They were all legally qualified persons, the majority of whom came from the D of J and the rest came from the Land Registry and Legal Aid Department.

Section 4 – Nominations of Candidates

5.5 The validity of the nomination of candidates is governed by the DCO and the nomination procedure is set out in the EAC (EP) (DC) Reg.

5.6 Nomination of candidates commenced at 9 am on 15 September 2011 and closed at 5 pm on 28 September 2011, during which candidates were required to submit their nomination forms in person to the respective ROs. This two-week period was published in the Gazette on 19 August 2011. By the close of nomination the ROs received 935 nominations, of which 915 were confirmed valid by the ROs, 11 were ruled as invalid and nine had been withdrawn before the close of nomination. The lists of all validly nominated candidates for each constituency were published in the Gazette Extraordinary on 10 October 2011.

Section 5 – Briefing for Candidates

5.7 The EAC Chairman held two briefing sessions on 3 and 4 October 2011 at the Kowloonbay International Trade & Exhibition Centre (“KITEC”) to draw the attention of the candidates and their agents to the major provisions of the relevant electoral legislation and the Guidelines. The first briefing session was held for the candidates of the constituencies in Hong Kong Island or Kowloon, and the second one was for the candidates of the constituencies in the New Territories. Also present at the two sessions were the CEO, representatives from the D of J, ICAC and Hongkong Post. Topics included polling and counting arrangements, requirements relating to EAs in particular the new arrangement regarding declaration of electronic 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 need to protect the privacy of electors with respect to personal data used for electioneering purpose. All the candidates and

their agents were reminded to peruse the electoral legislation and Guidelines in detail.

5.8 Candidates and their agents were reminded 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. The EAC Chairman stressed that the EAC and all the government departments concerned would strictly enforce the law and the Guidelines.

5.9 Immediately after the briefing sessions, the ROs, witnessed by the parties concerned, drew lots to determine the order of the candidates' name 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 and Counting Staff

6.1 In line with the past practice, a service-wide recruitment exercise was launched to invite serving civil servants from various government bureaux/departments to serve as electoral staff. As polling-cum-counting arrangement was adopted, the staff recruited would have to take up both polling and counting duties. Some 21,000 applications were received. About 13,700 civil servants from various government bureaux/ departments were appointed as PRO, Deputy PRO (“DPRO”), Assistant PRO (“APRO”), Polling Officer and Polling Assistant to carry out polling and counting duties.

6.2 Those who were appointed PROs, DPROs and APROs were selected from senior government officers. Other junior polling staff were appointed from the ranks of relatively junior government officers. To avoid any actual or perceived conflict of interests, they would not be deployed to work in the polling station(s) of the constituency in which they are registered electors. Each appointee was also required to disclose if they had any close relationship with any candidate, and if so, he or she would not be assigned to work in any polling station in the constituency concerned. This arrangement would help maintain the neutrality and independence of the electoral system and avoid the perception of collusion which might compromise the integrity of the election.

Section 2 – Briefing for PROs

6.3 Given the important role played by PROs and DPROs in the election, three management training sessions were organised on 11 and 12 October 2011 at the Queen Elizabeth Stadium to strengthen the quality of polling management of PROs and DPROs. Topics included crisis management, quality polling service, training on emotional quotient and experience sharing workshop.

Section 3 – Training for Polling and Counting Staff

6.4 Ten training sessions were organised from mid-October to early November 2011 at the Queen Elizabeth Stadium to equip the general polling staff with the necessary knowledge for discharging their duties. Topics included polling and counting procedures, contingency arrangements and mock counting demonstration and exercise. Polling staff tasked to perform statistical compilation duties were required to attend one additional workshop to provide them with hands-on exercise. A total of ten workshops were organised at the Queen Elizabeth Stadium.

6.5 There were also general briefings for all staff of the DPSs and the BPSSs on the operation of these stations. The general briefing for DPSs was conducted at Quarry Bay Community Hall on 1 November 2011, while that for BPSS was conducted at the Kowloon Park Sports Centre on 3 November 2011.

Section 4 – Poll Cards

6.6 A poll card, together with the “Introduction of Candidates”, a location map of the polling station, a voting guide and an ICAC leaflet reminding electors of the importance of clean election, were mailed to the electors at least ten days before the polling day in accordance with section 34 of the EAC(EP)(DC) Reg. For the sake of environmental protection, these documents were printed on recycled papers or paper made from wood-pulp derived from sustainable forests. Furthermore, environmentally friendly ink was used in the printing.

Section 5 – Identifying Venues as Stations

6.7 Of the 915 validly nominated candidates, 76 of them were the only one validly nominated for their respective constituencies and were hence elected uncontested. The remaining 839 candidates contested the other 336 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 as polling stations were their convenience and accessibility. Another essential factor in the selection of venues was that they should be sufficiently spacious for conducting both the poll and the count. Where possible, venues which had been used previously as polling stations were selected for the election.

6.8 Successful acquisition of a suitable venue depends on the willingness and co-operation of the owner or management body of the venue and the availability of

the venue on the polling day. In general, the process of identifying venues as polling stations was conducted smoothly. The REO staff however had encountered difficulties in securing permission from some owners or management bodies of private premises, including a few schools and kindergartens, for using their venues. The majority of the reasons put forward for rejecting the REO's requests was that activities had already been scheduled on the polling day. In the end, the REO managed to secure 452 venues to be designated as polling stations.

Section 6 – Polling Arrangements

Operation of Polling Station

6.9 Of the 452 polling stations, seven were designated as small polling stations pursuant to section 31(1C) of the EAC (EP) (DC) Reg as they served an electorate of less than 200. These stations were used for polling only. 425 polling stations were accessible to the disabled, representing approximately 94% of the total number of venues, as compared with approximately 74% of the 2007 DC Election. 22 polling stations were also designated as special polling stations to be used for voting by persons with a disability who had difficulties in accessing the polling stations originally assigned to them.

6.10 On the day preceding the polling day, the polling staff set up the designated venues as stations, in such a way that the stations would suit the function of a polling-cum-counting station. Voting compartments, ballot boxes and ballot paper issuing desks were provided in all the polling stations. Except for the seven small polling stations with less than 200 registered electors and 25 DPSs,

all polling stations were converted into counting stations immediately after the close of poll.

6.11 Outside each polling station, areas were designated by the RO as NCZs and NSZs to provide the electors with a hindrance-free access to the station. A notice was put up at a conspicuous spot at or near the station, notifying the public of the designation of the NCZs and NSZs.

Polling Hours

6.12 Same as the past ordinary elections/ by-elections, the poll started at 7:30 am on the polling day and ended at 10:30 pm on the same day, except for the DPSs situated in prisons which had shorter polling hours as detailed in paragraph 6.14 below.

Design of Ballot Paper and Ballot Box

6.13 Same as in the 2007 DC Election, candidates were allowed to have their photographs and certain specified particulars relating to them printed on the ballot paper in the 2011 DC Election. To ensure that sufficient ballot boxes were provided to the polling stations, the REO had carefully and thoroughly tested the ballot boxes for use in the 2011 DC Election.

Special Polling Arrangements for Imprisoned, Remanded and Detained electors

Dedicated Polling Stations

6.14 To enable registered electors who were imprisoned or remanded by the CSD on the polling day to vote, 22 DPSs were set up in the penal institutions of the CSD. Owing to security reasons, the poll at these DPSs was conducted from 9:00 am to 4:00 pm. Three DPSs were set up at police stations for the registered electors who were remanded or detained by the law enforcement agencies (“LEAs”) (other than the CSD) on the polling day and expressed their wish to vote. Since the LEAs might arrest persons who happened to be registered electors any time on the polling day, these DPSs were opened from 7:30 am to 10:30 pm as with other ordinary polling stations. Each elector of DPSs was provided with an envelope (on which the name and the code of the relevant DCCA as well as the code of the DPS were marked by the polling staff on issue of the ballot paper) for enclosing his marked ballot paper before putting the aforesaid envelope into the ballot box. This arrangement was to facilitate the subsequent sorting of the ballot paper in a BPSS while preserving the secrecy of vote.

6.15 The venue set-up at all the DPSs was basically the same as that of the ordinary polling stations, except that the polling materials were specially designed for security reasons.

6.16 The REO issued all poll cards and other related electoral documents such as the “Introduction to Candidates” to the imprisoned registered electors at their prison addresses. Address labels were provided to candidates upon request for

mailing EAs to this group of electors at prisons if the concerned registered electors had provided the prison addresses as their correspondence address.

Ballot Paper Sorting Stations

6.17 A BPSS was set up at Kowloon Park Sports Centre for the sorting of ballot papers cast at the DPSs at the penal institutions of the CSD according to each constituency before they were delivered to the respective counting stations through emergency depots. Another three BPSSs were set up at REO Office at Caroline Hill Road, Mei Foo Community Hall and Shek Wai Kok Community Hall for the sorting of ballot papers cast at the DPSs in police stations according to each constituency before they were delivered to the respective counting stations. The ballot papers were then mixed with those at the respective counting stations before they were counted to preserve the secrecy of votes. The whole process was open for observation by the public.

Section 7 – Counting Arrangements

6.18 Having regard to the successful implementation of the polling-cum-counting arrangement in the 2003 and 2007 DC Elections, the EAC adopted the same arrangement for this election. This arrangement had proved to be more cost-effective in terms of both manpower and financial resources, and the overall election results could be announced earlier than before. It also reduced the time and risk involved in transporting ballot boxes from the polling stations to the counting stations.

6.19 With the exception of the small polling stations, special polling stations and DPSs, as explained in paragraph 6.20 below, the polling stations would be converted into counting stations after the close of poll. For a constituency with two or more polling stations, the station serving the largest number of electors was designated by the CEO as the dominant counting station according to section 31(1B) of the EAC (EP) (DC) Reg. In accordance with section 31(1D) of the EAC (EP) (DC) Reg, for a constituency with two or more polling stations, and one of which was a small polling station or special polling station, a station was designated by the CEO as the main counting station to which the ballot papers cast at the small polling station and/or special polling station would be sent for counting to be conducted.

6.20 To protect the secrecy of votes, ballot papers of the small polling stations, special polling stations as well as all the DPSs (after sorting by DCCAs at the BPSSs) were delivered to the respective main counting stations for mixing with other ballot papers therein before counting.

6.21 An ARO (Legal) was stationed at each District Office to provide advice to the PROs in the district and to maintain consistency in handling questionable ballot papers by different PROs. A candidate might appoint counting agents to observe the count and might raise objections to the PRO's decisions on the validity of questionable ballot papers. Samples of valid and invalid ballot papers were posted at each counting station to enhance transparency and ensure fair and consistent determination by the PROs.

6.22 To ensure openness and transparency of the counting process, candidates, their election agents, polling agents and counting agents were allowed to stay to witness the conversion of the polling stations into counting stations. Candidates, their agents, members of the public and the media were then permitted to observe the counting process at a close distance from the counting table.

6.23 At the commencement of the count, the PRO of a polling station assumed the role of the counting supervisor. He was assisted by the polling staff, who then took up the role of counting staff. He was also responsible for determining the validity of questionable ballot papers in the polling station pursuant to section 79 of the EAC (EP) (DC) Reg.

Section 8 – The Fast Response Team (“FRT”)

6.24 In line with the practice since the 2008 LegCo Election, a FRT comprising experienced personnel was appointed to conduct random checks on the operation of the polling and counting stations and the performance of the polling and counting staff to ensure that the stipulated electoral procedures and requirements were strictly followed.

6.25 The FRT comprised seven members. Each member of the FRT would take care of polling stations in two to four districts. Apart from conducting audit inspection of polling stations and advising PROs to take remedial or improvement measures where necessary, the FRT was also tasked to deal with enquiries on electoral arrangements made by the ROs and PROs, and to render immediate

advice and assistance to them. The FRT had to report to the Central Command Centre (“CCC”) on any major irregularities and problems observed, and to handle emergency cases relating to polling stations as directed by the CCC.

Section 9 – Contingency Measures

6.26 The following arrangements were adopted to cater for inclement weather or emergencies:

- (a) postponement or adjournment of the poll or the count in one or more polling/counting stations;
- (b) extension of polling hours if a substantial portion of the polling hours was lost because of flooding, power failure or other emergencies in one or more polling/counting stations;
- (c) designation of alternative polling/counting stations to serve as replacement or additional polling/counting stations in the event that the original stations, for one reason or another, could no longer function properly or to which electors were denied access;
- (d) setting up an Emergency Depot in each of the 18 districts to provide logistic support to respective polling stations in each district; and setting up of a fall-back Statistical Information Centre (“SIC”) in Rumsey Street Carpark to compile statistical returns

collected from polling/counting stations; and

- (e) preparation of public announcement notices in the event that any of the contingency arrangements as set out in paragraphs 6.26 (a), (b) and (c) above had to be implemented.

6.27 Since most of the polling stations were schools and organisations operating at normal business hours such as post offices, the REO had to vacate these premises before they resumed operation in the morning of 7 November 2011. A detailed contingency plan was drawn up to cater for the event that the counting votes could not be completed by 6:00 am on 7 November 2011 and had to take place in a reserve counting station.

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 2011 DC Election, the EAC and government departments concerned contributed much to publicity of the election.

7.2 Apart from the voter registration campaign described in Chapter 3, other publicity activities organised are detailed in the following paragraphs.

Section 2 – The EAC and the Media

7.3 A kick-off ceremony for the Voter Turnout Publicity Campaign for the 2011 DC Election was organised by the RTHK on 3 September 2011. The objectives of the Campaign were to promote general awareness of the 2011 DC Election and to call upon registered electors to vote. It also encouraged nominations of candidates, publicised the electoral procedures, and promoted clean and fair election.

Section 3 – Other Publicity by the EAC

7.4 On 3 and 4 October 2011, the EAC Chairman conducted two briefing sessions for the candidates at the KITEC. The event received wide coverage by the media. The EAC Chairman and the two EAC Members also met the media and updated them with the progress of the election at various intervals on the polling day.

7.5 Mock polling stations, set up at Leighton Hill Community Hall, Henry G. Leong Yau Ma Tei Community Centre, Tai Po Community Centre and Tuen Mun Town Hall, were open to the public from 3 to 5 November 2011 to allow members of the public to familiarise themselves with the station set up and the voting procedure. The EAC Chairman met the media on 2 November 2011 to introduce the arrangements of the 2011 DC Election and demonstrate the voting procedure at Leighton Hill Community Hall.

7.6 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 by Other Government Departments

7.7 The Administration launched a nine-week Voter Turnout Publicity Campaign from 3 September 2011 to the polling day on 6 November 2011. The objective of the Campaign was to call on all registered electors to cast their votes and to promote public awareness of electoral arrangements. Publicity activities

included APIs on the television and radio, special TV and radio programmes, dedicated website, posters, banners, buntings and vantage points advertising. Two APIs, aiming at reminding electors to follow the proper voting procedures and the disabled electors to apply in time for re-allocation to a special polling station if the designated polling station was not accessible, were produced. To provide electors of ethnic minorities with information of the Election and the voting procedures, election briefs and voting procedures in six ethnic minority languages were uploaded to the dedicated website for the 2011 DC Election. Similar information was also sent to six Support Centres for ethnic minorities to enhance their awareness of this election. A radio API in ethnic minority language on voting procedures was also broadcast. The publicity programme was coordinated by the CMAB with the assistance of the HAD, ISD, ICAC, RTHK and the REO.

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

7.9 The ISD launched a dedicated website containing all the information relating to the 2011 DC Election.

7.10 To promote the importance of clean election, the ICAC launched a “Support Clean Elections” educational and publicity programme for the 2011 DC Election which included:

- (a) briefing sessions were conducted to explain major provisions of the ECICO to candidates, their election agents/helpers and

electors ;

- (b) information booklets were produced to explain the legal requirements, common corrupt and illegal pitfalls in conducting electioneering activities for candidates and their election agents;
- (c) leaflets were produced and distributed to electors with the assistance of the REO to remind them of the importance of clean election;
- (d) new TV and radio APIs on the theme of “Don’t sell your vote” were launched and over 30,000 related posters were displayed at government offices, public bodies, mass transportation etc.;
- (e) press feature articles, TV, radio and web programmes were produced to remind candidates and electors of the need to abide by the ECICO;
- (f) a series of filmlets, which highlighted the important points-to-note for candidates and electors to support clean election, were broadcast on public transport facilities and various other venues;
- (g) a dedicated website with all the educational and publicity materials was launched;
- (h) an Election Enquiry Hotline was set up to answer public enquiries on the ECICO and the ICAC’s educational and publicity activities;
and
- (i) a mobile exhibition vehicle and roving exhibitions were arranged to disseminate clean election messages.

PART THREE

ON THE POLLING DAY

CHAPTER 8

CENTRAL SUPPORT

Section 1 – The Central Command Centre

8.1 The CCC was set up at the REO office in Caroline Hill Road on the polling day to oversee electoral arrangements for the purpose of providing a wide range of services to electors, candidates/agents, ROs/PROs and members of the public. Except for the Hotline services which continued to operate at the REO Office at Guardian House, all other relevant sections of the REO and bureau/departments concerned were accommodated in the CCC to facilitate communication and coordination. The CCC was put under direct supervision of the CEO who was deputised by the Principal Electoral Officer (“PEO”). This command structure significantly enhanced the ability of the CCC in responding swiftly to problems associated with the election on the polling day.

8.2 At the district level, District Liaison Officers from the District Offices were responsible for liaison work between individual polling stations, the respective ROs and the CCC.

Statistical Information Centre

8.3 A SIC, which was set up inside the CCC, was responsible for compiling and collating the hourly voter turnout statistics and the counting results from all the polling and counting stations. The voter turnout figures were made available to the public through press release and the dedicated website for the 2011 DC Election on an hourly basis.

Section 2 – The Complaints Centre

8.4 A Complaints Centre (“CC”) was set up at the REO office in Harbour Centre to handle complaints.

8.5 Complainants could lodge their complaints by telephone, by fax or through e-mail. The CC was manned by staff of the EAC Secretariat and operated throughout the polling hours. Details on the work of the CC and the complaints received on the polling day and during the complaints-handling period were set out in Chapter 12.

CHAPTER 9

THE POLL

Section 1 – Polling Stations, Polling Hours and Electors' Turnout

9.1 On the polling day, 452 ordinary polling stations, of which 425 (94%) were accessible to disabled electors, were opened for electors to cast votes. In addition, a total of 25 DPSs were set up for registered electors imprisoned or remanded under the custody of the CSD and registered electors who were remanded or detained by the LEAs other than the CSD to cast their votes. Polling hours started at 7.30 am and ended at 10.30 pm except for the DPSs set up at the penal institutions of the CSD, the poll of which was conducted from 9:00 am to 4:00 pm owing to security reasons. In general, the poll was conducted smoothly and efficiently.

9.2 On the electors' turnout, a total of 1,202,544 electors cast their votes for the contested constituencies, including around 700 electors who cast their votes at the DPSs. They represented 41.49% of the voting electorate of 2,898,180. Both the electors' turnout and the overall turnout rate were higher than those in the 2007 DC Election (1,148,815 electors or 38.83%). A breakdown of the aforesaid figures by district for this election is shown at **Appendix II**.

Section 2 – Exit Poll

9.3 A total of ten applications for conducting exit polls on the polling day had been received. In considering these applications, the REO followed the established principles set out in Chapter 14 of the Guidelines. Approval would normally be given to applications provided that the conduct of exit polls by the organisations concerned would not compromise the fairness and impartiality of the election. Having considered the aforesaid applications in accordance with the established principles, nine of them were approved. The list of these nine organisations approved for conducting exit polls was uploaded to the website for the 2011 DC Election and was also displayed in a prominent place outside the relevant polling stations for public inspection. One application was rejected because some of the candidates contesting in the relevant constituencies were affiliated with the applicant and approval of the exit polls under application might give rise to the public perception of unfair advantage being offered to the candidates, therefore undermining the fairness and impartiality of the election.

CHAPTER 10

THE COUNT

10.1 In light of past experience, the polling-cum-counting arrangement was adopted for this election. Under this arrangement, all polling stations, with the exception of the small polling stations with less than 200 registered electors and the DPSs, were converted into counting stations immediately after the close of poll.

10.2 To ensure openness and transparency of the counting process, candidates, their election agents, polling agents and counting agents were allowed to stay to witness the conversion of the polling stations into counting stations. The time of the conversion process varied from station to station, and the average was about one hour. Members of the media and the general public were admitted into the station after the conversion. Candidates, their agents, members of the public and the media were then permitted to be present in the counting station to observe the count.

10.3 While the ballot boxes containing ballot papers cast in the small polling stations and the special polling stations were directly transported to and counted at the respective main counting stations, the ballot papers cast at a DPS were sent to the relevant BPSS for sorting according to each constituency before they were placed inside a receptacle and delivered to the respective main counting stations for counting. The sorting process was open to the public for observation. These ballot papers were then mixed with those at the respective counting stations before they were counted in order to preserve the secrecy of the votes.

10.4 As in the 2007 DC Election and subsequent DC by-elections, the invalid ballot papers as defined under section 78 of the EAC (EP) (DC) Reg were set aside during the counting process and were not counted. Candidates, their election agents and counting agents could examine these invalid ballot papers but they were not allowed to make representations. Ballot papers with doubtful validity were set aside as questionable ballot papers, the validity of which would be decided by the PRO.

10.5 The PRO was responsible for determining the acceptance or rejection of questionable ballot papers. The ARO(Legal) would offer assistance to the PROs in determining the validity of these questionable ballot papers. An analysis of the ballot papers not counted (including those which were invalid and questionable ones which were rejected by the PROs after consideration) is shown in **Appendix III**. In addition, an analysis of invalid ballot papers kept by the PROs is shown at **Appendix IV**.

10.6 Upon completion of the count, the PROs of all counting stations made known the counting results to candidates or their agents present at the counting station. The candidates or their agents were then given the opportunity to request a recount of votes. After it had been ascertained that there was no request for recount or further request for a recount¹, the PROs reported by fax the results of the count conducted in their respective stations to the respective RO through the SIC. The SIC then verified the results and, when the results for all the counting stations of a constituency were available, passed the results to the RO. The RO would declare the election results by posting up a notice in his office. Thereafter he

¹ Or if such request is rejected by the PRO as being unreasonable in accordance with section 80A(5) or 80B(5) of EAC (EP)(DC) Reg (Cap 541F).

would fax a copy of the signed notice to the SIC, and the SIC would inform the PROs who would display a notice of the counting results outside the counting stations to inform the candidates, their agents, members of the media and members of the general public of the counting results of the counting stations.

10.7 The count and the determination of questionable ballot papers were generally conducted smoothly in the counting stations.

10.8 The whole vote-counting process took about four hours to complete after the close of poll. This was faster than that in the 2007 DC Election when counting was completed about five hours after the poll closed. The first result came out at 00:09 am on the day following the polling day and the last result was announced at 3:45 am. The EAC considered that the vote counting process was efficiently completed and was generally satisfied with the overall electoral arrangements for this election.

10.9 The election results of the 18 districts were published in the Gazette Extraordinary on 10 November 2011 and are now re-produced at **Appendix V** for easy reference.

CHAPTER 11

EAC VISITS

11.1 The EAC Chairman and two Members visited a total of 19 polling stations covering all 18 districts, four DPSs at Stanley Prison, Lai Chi Kok Reception Centre, Pik Uk Correctional Institution and Cheung Sha Wan Police Station and the BPSS at Kowloon Park Sports Centre. The EAC Chairman and Members first cast their votes at their assigned polling stations before they visited polling stations in different districts according to their respective visit programmes. Two media briefing sessions were held, one in the morning at the Hong Kong Park Sports Centre and one in the afternoon in the Kowloon Park Sports Centre, to provide election statistics and answer questions from the media. The EAC closely monitored the progress of the poll on the polling day.

11.2 At around 11:45 pm, the Chairman and a Member of the EAC, the SCMA and the Secretary for Home Affairs accompanied the CE to open and empty the ballot boxes at the Wong Nai Chung Sports Centre. The Chairman and a Member of the EAC attended a media briefing afterwards to brief the media on the completion of the poll and the overall elector turnout. After the close of the count at about 3:45 am on 7 November 2011, the EAC Chairman met the media at the CCC to conclude the election. The EAC considered that the count of this election was conducted smoothly and efficiently and was satisfied with the overall electoral arrangements and that the election was organised in an open, fair and honest manner.

PART FOUR

VOICES FROM THE PUBLIC

CHAPTER 12

THE COMPLAINTS

Section 1 – A General View

12.1 The complaints-handling mechanism is one of the means adopted by the EAC to safeguard the fairness and integrity of the electoral system. Some complaints revealed deficiencies in a number of areas of electoral arrangements and helped the EAC to bring about better arrangements for future elections. It also provides a monitoring system for candidates to exercise mutual checks among themselves and through these complaints, they will better understand the electoral law and guidelines. The EAC is committed to handling complaints received fairly and efficiently and ensuring that the complaints-handling mechanism is not abused.

Section 2 – The Complaints-handling Period

12.2 The complaints-handling period started from 15 September 2011, ie the day when the nomination period commenced, and ended on 21 December 2011, ie 45 days after the polling day.

Section 3 – The Complaints-handling Parties

12.3 Five different parties were designated for handling and processing

complaints. They were the EAC, ROs, Police, ICAC and, on the polling day, the PROs as well. Complainants could lodge their complaints with any of the above parties. Each of these parties had their respective areas of responsibilities depending on the nature of the complaint. A 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 Judge nominated by the Chief Justice. The CCm was supported by the EAC Secretariat. The division of work was as follows:

- (a) the ROs were responsible for handling complaint cases of a minor nature under the authority delegated to them by the EAC, e.g. those relating to EAs, electioneering activities conducted in private premises, use of sound amplifying devices, etc;
- (b) the Police handled cases that involved possible criminal liability, breaches of the EAC (EP) (DC) Reg and criminal damage of EAs;
- (c) the ICAC attended to cases that involved possible breaches of the ECICO, Prevention of Bribery Ordinance (Cap 201) and ICAC Ordinance (Cap 204); and
- (d) the PROs handled 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

12.4 By the end of the complaints-handling period a total of 7,962 cases were received:

Complaints-handling Party	No. of Complaints Received
CCm	1,253
ROs	3,663
Police	2,089
ICAC	399
PROs	558
	Total: 7,962

The majority of the cases concerned, EAs (2,875 cases), disturbances to electors caused by loudspeakers/ broadcasting vehicles/ telephone canvassing/ others (1,654 cases) and electioneering activities on private premises (435 cases). A detailed breakdown of these cases by the receiving party and nature is shown on **Appendices VI (A) – (F)**.

12.5 The EAC notes that, as a general observation, complaints received in the election are, as in past elections, predominantly related to EAs and these complaints are also prevalent on the polling day. This phenomenon is understandable since the use of EAs constitute a major part of candidates' electioneering activities. In this regard, built on past experience, the existing Guidelines on Election Related Activities have already laid down detailed guidelines for candidates to follow and observe. Despite this, there remains a need to continue to monitor the situation closely and to be vigilant of any areas requiring particular attention or improvement.

As always, the EAC will have regard to the experience gained in the election when next reviewing the guidelines.

Section 5 – Handling of Complaints on the Polling Day

12.6 On the polling day, as mentioned in paragraph 8.4, a CC was set up in the REO office at Harbour Centre to handle the complaints received. Designated police officers were on duty in the police stations in the 18 Districts to attend to complaints. The ICAC officers also manned a complaints hotline during the polling hours. The PROs received complaints at the polling/counting stations.

12.7 The CCm, ROs and PROs received 2,214 complaint cases on the polling day. Cases involving on-the-spot incidents (e.g. illegal canvassing in NCZs, noise nuisances to electors caused by loudspeaker, etc.) were expeditiously dealt with and resolved where possible. For cases which could not possibly be resolved on the spot, follow-up action on these cases would take a longer time. In any case, all the complaints were given prompt attention and referred immediately to the appropriate authority for action.

12.8 Of the 2,214 cases handled by the CCm, ROs and PROs on the polling day, 1,756, or 79.3%, were resolved before the close of poll.

12.9 The CCm handled a total of 351 cases on the polling day. 207 of these cases required further investigation. The remaining 144 cases were resolved on the polling day.

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

Section 6 – The Outcome of Investigations

ROs and CCm

12.11 As at 21 December 2011, of the 1,517 cases handled by the CCm, 122 were found substantiated or partially substantiated. Of the 4,211 cases handled by the ROs, 1,337 were found substantiated or partially substantiated. A total of 729 warning letters had been issued to the infringing parties. There were still 940 cases under investigation by CCm and ROs.

12.12 On 5 November 2011, the EAC publicly censured the two Mutual Aid Committees (“MACs”) of the Mei Tao House and the Mei Fung House for breaching paragraph 8.30 of the Guidelines by providing unfair and unequal treatment to candidates of Tai Wai constituency. The RO of Tai Wai Constituency reported to the EAC that a complaint had been received from Mr Leung Wing-hung, a candidate of the constituency. He alleged that these two MACs had treated him unfairly and unequally by not considering his request for displaying his EA at each of the MACs’ offices, while the other candidate of the same constituency, Ms Tung Kin-lei, was allowed to do so.

12.13 The Chairman of the EAC issued a letter to all chairmen of Owners’ Corporation, Owners’ Committee and MACs on 6 September 2011 appealing to

them to provide equal opportunity to all candidates competing in the same constituency for the purpose of electioneering in accordance with the Guidelines. Although the staff of the RO had subsequently advised the two MACs that they were required to observe the Guidelines to provide fair and equal treatment to both candidates, the two MACs refused to take any rectification action. In spite of the appeal made by the Chairman of the EAC and the advice given by the staff of the RO, the two MACs still blatantly breached the Guidelines and slighted the importance of a fair election. The breach was not excusable. The EAC strongly deplored their acts and, therefore, publicly censured them to uphold the fairness of the election. On the other hand, the EAC did not find any evidence to suggest that Ms Tung as a candidate had knowingly accepted unfair advantage in the incident. The censure statements issued against the two MACs are at **Appendices VIII (A) to (B)**.

12.14 In issuing warning letters and censures, the EAC aimed at upholding the principle that elections should be held in an open, fair and honest manner. The EAC could not tolerate blatant disregard of the electoral law and the Guidelines.

Police and ICAC

12.15 The Police handled 2,402 cases. After investigation, 247 were substantiated. The ICAC handled 748 cases and none was found substantiated. There were still 1,017 cases under investigation by these two parties.

12.16 A breakdown of the outcome of investigations as at 21 December 2011 is detailed in **Appendices IX (A) – (D)**.

Section 7 – Matters Attracting Public and Media Attention

Registration of Electors

12.17 There were a spate of media reports and a number of complaints concerning inaccurate or false registered addresses in the register of electors. In some of the cases, it was claimed that electors with an unusual number of surnames had used the same residential address for registration. Some electors were reported to have used non-residential units, non-existent addresses or units of demolished buildings as their residential addresses for registration. For rural areas, some registered addresses provided by the electors were found to be incomplete. There were calls in the community for thorough investigations into these cases and a critical review of the existing voter registration system in order to maintain the fairness of the elections and to preserve the integrity of the voter registration system.

12.18 The existing voter registration system is built on three core elements. Firstly, the current arrangement for voter registration is based on a self-declaration mechanism. A person is required to make a declaration that his registration particulars are true and accurate when he applies for registration as a GC elector or when the person as a registered elector applies for change of his principal residential address. A person commits an offence under section 22 of the EAC(ROE)(GC)Reg if he makes any statement which the person knows to be false in a material particular or recklessly makes any statement which is incorrect in a material particular or knowingly omits any material particular when furnishing the ERO with information regarding his application for registration. The maximum

penalty is a fine of \$5,000 and imprisonment of 6 months. If the person subsequently votes in an election, he may have engaged in corrupt conduct under section 16 of the ECICO, and is liable to a maximum penalty of a fine of \$500,000 and imprisonment of 7 years.

12.19 The aforesaid self-declaration mechanism aims to facilitate the public to register as electors. As far as the requirement of principal residential address is concerned, a person is only required to satisfy the ERO on application for registration as an elector that the residential address as notified in the person's application is the person's only or principal residence in Hong Kong. It is however worth noting that, under the existing electoral law, no statutory duty is placed on the person, once registered as an elector, to report change of his principal address whenever he has subsequently moved, and the ERO may only omit the name of the elector from the next final register of electors ("FR") when such information has come to his notice and he is satisfied on reasonable grounds that the registered address is no longer the elector's only or principal residence in Hong Kong. The electoral law further stipulates that a person registered as an elector may not be prevented from voting at an election only because the person's name should not have been included in the FR. Therefore, it is clear that the current system seeks to facilitate registration and preserve the voting rights of registered electors. Despite this, it has checks and balances designed to safeguard against abuse as explained in paragraphs 12.20 and 12.21.

12.20 Secondly, the existing voter registration system is transparent for the public to monitor. Every year, the REO will make available the Provisional Register of electors ("PR"), Omissions List ("OL") and FR for public inspection.

During the inspection period of the PR, the public can lodge a notice of objection to the ERO against the registration of an elector on the PR. The cases will be referred to the Revising Officer for consideration and ruling. The FR, after publication, is also available for public inspection at the Office of the REO and the District Offices of the HAD.

12.21 Thirdly, the ERO has also put in place different forms of checking to ensure the accuracy of the self-declared addresses in the voter registers. Where necessary, the ERO will report irregularities to the relevant law enforcement agencies for investigation. All along, the following checks are performed:

- (a) the ERO will send written enquiries to the applicant to seek further information or proof if he has doubt when processing an application. If the applicant fails to provide the required information or the ERO is not satisfied with the information provided, the ERO may decide not to consider the application further;
- (b) the ERO will send by mail a registration notice to inform the applicant of his registration result after the ERO has approved an application. Where the registration notice cannot be delivered because of problems associated with the accuracy or completeness of the registered address, the ERO will take follow-up actions such as seeking clarification from the electors concerned;
- (c) stringent control on the use of postal address in respect of new registration has been put in place since 2009. Postal address is

normally not allowed when an applicant applies for registration or when an elector reports change of his residential address, unless there is no postal service available for his residential address. To ascertain whether an address has postal service, the ERO will seek confirmation from the Hongkong Post if necessary;

- (d) after every major election, the ERO has received a considerable number of undelivered poll cards. The ERO will first make telephone calls to the electors reminding them of the need to submit an application for change of registered address. For those who fails to do so or cannot be contacted, inquiry letters will be issued to them by registered post. Their names will be put in the OL if they fail to update their registered residential addresses before the statutory deadline;
- (e) the ERO will conduct checks on addresses carrying 7 or more electors. Telephone enquiries will first be made to ascertain their current residential addresses. For those who cannot be contacted, letters will be issued to confirm their present residential addresses. If the letters are undelivered or the electors confirm that they have moved out, inquiry letters will be issued. Their names will be put in the OL if they fail to update their registered residential addresses before the statutory deadline;
- (f) as a standing arrangement with the Immigration Department, the ERO matches the addresses of registered electors with addresses of

the applicants for the smart identity cards, with the consent of the individuals concerned;

- (g) every year, the ERO has conducted cross data-matching with the HD and the HS (in respect of new tenancy) since 1997 and 2007 respectively and the HAD (in respect of the FR of the VR (Resident Representative) Election) since 2008 concerning addresses of registered electors, with the approval of the Privacy Commissioner for Personal Data;
- (h) for newly established private estates, the ERO will send letters together with voter registration forms to the new tenants reminding them to update their residential addresses before the statutory deadline; and
- (i) the ERO will take appropriate follow-up actions with relevant registered electors after receiving reports from the Rating and Valuation Department on instances of addresses no longer in existence (such as demolished buildings). If the relevant electors do not reply by the specified deadline, their names will be included in the OL to be published in the voter registration cycle.

12.22 The EAC and REO are very concerned about the suspected vote-rigging cases and handled them in a serious manner. As at 27 January 2012, there were about 8,500 electors involved in about 180 suspected vote-rigging cases handled by the EAC and the REO. About 2,200 electors had been found to contain no

suspicious grounds for further follow-up action. The REO had issued inquiry letters to about 3,900 electors requesting them to provide recent address proof. Depending on the outcome of the inquiry, cases in which there was prima facie evidence of inaccurate or false addresses and, therefore were immediately referred to the relevant law enforcement agencies for investigation. Although the inquiry into all the 8,500 electors mentioned above had yet to be completed, the general observation so far was that, for many of them, the alleged inaccuracy of registered addresses had been a result of failure to report changes of address on the part of electors. As at 27 January 2012, the Police and ICAC had arrested 16 and 53 persons respectively after investigating into the reported vote-rigging cases. Among these 69 arrested persons, 15 were charged with offences related to false registration of electors and seven were charged with offences related to engaging in corrupt conduct with respect to voting at an election. The EAC noted that the current checking system had all along placed much emphasis on the preservation of the voting rights of registered electors. Although checks had been conducted on addresses carrying 7 or more electors, the process relied largely on the self-affirmation of the electors concerned and production of address proofs was rarely required. The correctness of the FR was crucial to ensure the fairness of the elections and the repeated reports and complaints about the false or inaccurate addresses had unavoidably raised genuine concern in the society. In this light, there is room for enhancing the existing checking system. The EAC appreciated prompt actions taken by the REO in following up on the suspected cases and by the Police and ICAC in pursuing investigation and prosecution as needed. In addition, in consultation with the EAC, the CMAB proposed the following improvement measures in mid December 2011:

- (a) introducing a requirement that address proof should be provided as standard supporting evidence at the same time when a person applies for registration as a GC elector or when a registered elector applies for change in his residential address;
- (b) enhancing the existing checking performed by the ERO by extending the coverage based on additional parameters, such as when the number of surnames of electors in an address exceeds a certain number and by introducing random sample checks to verify the correctness of residential addresses in the register;
- (c) considering the introduction of legislative amendments to require electors to report change of registered addresses and to introduce sanction for registered electors who fail to report change of addresses before the statutory deadline and vote at an election afterwards;
- (d) enhancing publicity on reporting change of address to the REO and the offence on corrupt conduct under the ECICO if any person votes in an election after having furnished false information in voter registration; and
- (e) expediting checks by the REO on the lists of demolished buildings and expanding checks to include buildings to be demolished in the near future.

12.23 The LegCo Panel on Constitutional Affairs was consulted on the proposed improvement measures at its meeting held on 19 December 2011. At the Council meeting held on 21 December 2011, the LegCo also discussed the issue during a motion debate. While LegCo Members supported the implementation of measures to improve the existing voter registration system, a number of them raised concerns that stringent measures (e.g. imposing a requirement for address proof when applying for voter registration, penalties for electors who fail to report a change of address, etc) could deter people from registering as electors.

12.24 Having considered the views of the LegCo Members, the CMAB launched a public consultation on 16 January 2012 on a number of issues regarding voter registration. Meanwhile, REO had put in place a number of measures since 1 January 2012 to improve the voter registration system, including:

- (a) on top of checking addresses with multiple electors under the existing arrangements, the REO has also commenced checks on addresses with multiple surnames of electors. Inquiry letters will be issued to the electors concerned to ascertain whether they still reside at their registered address. In addition, the REO has started to perform random sample checks on voter registration and to require the electors registered with an address under checking to provide address proofs. Should there be any cases arising from these checking measures that the REO considers to be suspicious, the cases will be referred to the LEAs for investigation and the names of the electors concerned will be included in the OL;

- (b) publicity efforts will be stepped up in arousing registered electors' awareness of updating their registered addresses. During the election years, there will be territory-wide publicity campaigns promoting voter registration. With the assistance of the ICAC, future campaigns will feature messages relating to corrupt conducts in elections, which include voting at an election after having furnished the REO with false information. Also, a letter will be sent to all registered electors in early 2012 to appeal to them to update their residential addresses if there is any change. It will be complemented by other publicity measures such as APIs and newspaper advertisements; and

- (c) with the assistance of the Buildings Department and the Rating and Valuation Department, the REO has started to conduct checks on lists of buildings which have been demolished recently and buildings which will be demolished soon. This will help identify electors who may not have reported change in their addresses.

12.25 In view of the concerns raised by the public over the deficiencies in the existing voter registration system and the far-reaching effect that the proposed improvement measures would have on the system, the registered electors and eligible persons, the EAC agrees there is a need to look at every possible option thoroughly and to listen fully to the views of the public before implementing the improvement measures. The EAC notes in particular that there is concern that the proposal of requiring address proof, which appears to be a reasonable and effective

measure to guard against fraudulent use of addresses for voter registration, could have a negative impact on the willingness of the public to get registered as electors. The EAC will keep in view the public views expressed in the aforesaid public consultation exercise. The EAC is of the view that when finalising the improving measures, it is necessary to strike a balance between the need to preserve the integrity of the voter registration system without creating undue nuisance and disturbance to the public and the need to safeguard the voting rights of the Hong Kong permanent residents enjoyed under the Basic Law and the Hong Kong Bill of Rights. The EAC will be in close liaison with the CMAB on how the matter should be taken forward.

Section 8 – Election Petitions

12.26 Ten election petitions regarding the 2011 DC Election had been lodged by 10 January 2012, the deadline for lodging election petitions. The details are set out in the ensuing paragraphs.

12.27 Mr Lam Kin-man, one of the five candidates of the King's Park Constituency, filed an election petition against Mr Leung Wai-kuen, Edward, the elected candidate of the same constituency, and the RO on the grounds of the occurrence of material irregularity, general prevalence of corrupt conduct and engagement in illegal conduct by Mr Leung in relation to the election.

12.28 Mr Lam Ho-yeung, one of the three candidates of the Cherry Constituency, lodged an election petition questioning the election result on the

grounds of the occurrence of material irregularity and engagement in corrupt or illegal conduct by Mr Wong Chung, the elected candidate of the same constituency, in relation to the election.

12.29 Mr Ching Lok-suen, whose nomination form was not accepted by the RO due to insufficient number of qualified subscribers, lodged an election petition questioning the election result of the Aberdeen Constituency on the grounds of the general prevalence of corrupt or illegal conduct and engagement in corrupt and illegal conduct by someone in relation to the election.

12.30 Mr Wong Tak-chuen, one of the three candidates of the Mei Foo South Constituency, lodged an election petition against Mr Wong Tat-tung, the elected candidate of the same constituency, and the RO on the grounds of the occurrence of material irregularity, general prevalence of corrupt conduct and engagement in corrupt and illegal conduct by Mr Wong in relation to the election.

12.31 Mr Chan Hin-chung, John, one of the two candidates of the Sai Wan Ho Constituency, lodged an election petition against, Mr Kong Chack-ho, the elected candidate of the same constituency, and the RO on the grounds of the occurrence of material irregularity, general prevalence of corrupt or illegal conduct and engagement in corrupt or illegal conduct by Mr Kong in relation to the election.

12.32 Mr Yu Chi-shing, Paul, one of the four candidates of the Tin Ping East Constituency, lodged an election petition against Tin Ping Estate Proprietor Concernment Association (“TPEPCA”) and Ms Or Sin-yi, Windy, the elected

candidate of the same constituency, on the grounds of illegal conduct engaged by the TPEPCA and Ms Or in relation to the election.

12.33 Mr So Chun-man, one of the three candidates of the Po Lai Constituency, lodged an election petition against Mr Leung Yau-fong, the elected candidate of the same constituency, on the grounds of the general prevalence of corrupt or illegal conduct and engagement in corrupt or illegal conduct by Mr Leung in relation to the election.

12.34 Mr Chong Wing-fai, one of the two candidates of the Sai Wan Constituency, lodged an election petition against Mr Cheung Kwok-kwan, the elected candidate of the same constituency, and the RO on the grounds of the general prevalence of corrupt conduct and occurrence of material irregularity in relation to the election.

12.35 Mr Wong Shing-kwong, one of the three candidates of Tanner Constituency, lodged an election petition questioning the election result on the grounds of the general prevalence of corrupt or illegal conduct and engagement in corrupt or illegal conduct by Mr Lee Yu-tai and Ms Yim Fung-chi, the other two candidates of the same constituency, in relation to the election.

12.36 Mr Tsang Kin-shing (Bull), one of the three candidates of the Lok Hong Constituency, lodged an election petition against Ms Li Chun-chau, the elected candidate of the same constituency, and the RO on the grounds of corrupt and illegal conduct engaged by Ms Li in relation to the election.

12.37 The hearing dates for these cases are yet to be fixed by the court.

PART FIVE

AFTER THE POLLING DAY

CHAPTER 13

THE REVIEW AND RECOMMENDATIONS

Section 1 – A General Remark

13.1 The EAC is generally satisfied with the smooth conduct of the 2011 DC Election, which was organised in an open, fair and honest manner. After completion of the election, the EAC, following past practices, conducted a comprehensive review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The EAC also took into consideration suggestions from the public and issues raised in the complaints received. The areas reviewed and the related recommendations are set out in the ensuing paragraphs.

Section 2 – Matters relating to Preparation Work

(A) Setting up of Dedicated Polling Stations and Ballot Paper Sorting Stations

13.2 In the 2011 DC Election, a total of 22 DPSs were set up in the penal institutions of the CSD for electors who were imprisoned or remanded by the CSD and three DPSs were set up at police stations for electors who were remanded or detained by the LEAs (other than the CSD) on the polling day to cast their votes. In addition, four BPSSs were set up for sorting the ballot papers cast at the DPSs. Since the implementation of the VIPO in 2009, this was the first DC ordinary

election in which DPSs and BPSSs were set up.

13.3 Although the number of DPSs set up in this election (25 DPSs) was close to that in the 2010 LegCo By-election (27 DPSs), the number of constituencies which the electors of each DPS of the 2011 DC Election belonged to greatly exceeded that in the 2010 LegCo By-election because the total number of constituencies in the 2011 DC Election were 412 while there were only five geographical constituencies in the 2010 LegCo By-election. Hence, necessary arrangements had to be made to ensure that the ballot papers cast at the DPSs, which involved a large number of constituencies, would be delivered correctly and efficiently to the respective counting stations for counting. As mentioned in paragraph 6.14 above, each elector of the DPSs was provided with an envelope (on which the name and code of the relevant constituency as well as the code of the DPS were marked by the polling staff on issue of the ballot paper) for enclosing his marked ballot paper before putting the aforesaid envelope into the ballot box to facilitate the subsequent sorting of the ballot paper at a BPSS while preserving the secrecy of vote. The EAC noted that the operation of the DPSs and BPSSs was smooth and that the ballot papers were delivered correctly and efficiently from the BPSSs to the respective counting stations.

13.4 **Recommendation:** The EAC appreciates the meticulous planning and efforts made by the REO for putting in place necessary arrangements to ensure the smooth operation of the DPSs and BPSSs as well as the correct and efficient delivery of the ballot papers from the BPSSs to a large number of counting stations. They included drawing up the necessary procedures, providing sufficient training to staff on voting procedures in the DPSs and sorting of ballot papers in the BPSSs

and making logistical arrangements for the delivery of ballot papers from the DPSs to BPSSs, and finally to the respective counting stations. The EAC considers that the aforesaid arrangements were appropriate and should continue to be adopted in future DC ordinary elections.

(B) Enhanced Accessibility of Polling Stations and Accommodation Measures

13.5 The REO has all along been making every effort to identify suitable venues which are accessible to electors with disabilities for use as polling stations. The REO secured 425 (94%) out of the 452 ordinary polling stations which were accessible to electors with disabilities in the 2011 DC Election. This is an improvement over the 2008 LegCo Election and the 2010 LegCo By-election, in which 434 (82%) and 443 (85%) polling stations respectively were accessible to electors with disabilities. It is noteworthy that in some constituencies, though the REO had identified accessible venues, the owners declined to make available these venues as polling stations. The REO, therefore, could only use inaccessible venues and, if necessary, reallocate electors with mobility difficulties to alternative polling stations which were accessible.

13.6 In some constituencies, in order to provide electors with disabilities with accessible polling stations, the REO instead of setting up polling stations at inaccessible venues which had been used in previous elections used other accessible venues as polling stations. Some electors were not satisfied with the new polling stations assigned to them as these venues were considered less convenient than those allocated to them in previous elections.

13.7 In addition to enhancing the accessibility of polling stations for electors with disabilities, the REO implemented a number of accommodation measures² in the 2011 DC Election after taking into account the advice of the Equal Opportunities Commission (“EOC”). These measures included providing at polling stations easy-to-comprehend photo cards on voting procedures to help electors, particularly persons with hearing impairment and those with speech/print disabilities or language barriers to better understand the procedures. The REO also provided information on the 2011 DC Election in six minority languages (Thai, Hindi, Bahasa Indonesia, Nepali, Urdu and Tagalog) on the dedicated website for the 2011 DC Election and at the polling stations.

13.8 The EOC was pleased that more than 90% of the polling stations in the 2011 DC Election were accessible to wheelchair users and publicly appreciated the REO’s efforts in putting in place the accommodation measures mentioned in paragraph 13.7 above.

13.9 **Recommendation:** The EAC appreciates the efforts made by the REO in further enhancing the accessibility of the polling stations for electors with mobility difficulties and adopting the aforesaid accommodation measures. The REO should continue its efforts and work closely with the EOC with a view to identifying more barrier-free venues for setting up polling stations in future elections and exploring further accommodation measures to facilitate electors with disabilities and ethnics minorities electors to vote. At the same time, the EAC would like to take the opportunity to appeal to electors for their understanding of

² Accommodation measures are measures taken in order to provide equal opportunities for people with disabilities, such as the provision of aids, facilities or services to meet his or her individual needs.

the need to change venues for setting up polling stations in some constituencies in order to provide accessible polling stations for electors with disabilities to vote. REO should continue to make every effort in identifying venues which are both convenient and accessible to electors with disabilities for setting up polling stations in future elections.

13.10 On a related front, the EAC notes that, in response to a question raised by a LegCo Member at the LegCo meeting held on 23 November 2011 to request special arrangements for hospital in-patients electors who have made prior application to vote in elections, the SCMA has stated that CMAB would, together with the REO, examine the feasibility of the suggestion of setting up a polling station adjacent to or in the vicinity of the hospital for such in-patients. The EAC considers that the proposal involves operational and wider implications and should only be taken forward when all the relevant issues can be thoroughly examined and resolved. The EAC will keep in view the outcome of the feasibility study when giving consideration to the detailed polling arrangements for the next round of general/ordinary elections.

(C) Allocation of some Electors to Incorrect Polling Stations

13.11 In the election, poll cards were sent to 2.9 million registered electors in the contested constituencies to inform them of their assigned polling stations. Upon receipt of some enquiries/complaints from electors on their assigned polling stations as shown on the poll cards, the REO found that some registered electors of four constituencies (about 20,000), namely Siu Tsui constituency in Tuen Mun, San Tin Wai constituency in Sha Tin, Wang Tau Hom constituency in Wong Tai Sin and

Hiu Lai constituency in Kwun Tong had been allocated to an incorrect polling station which was within the respective constituencies but not the one close to the electors' registered addresses. Subsequent investigation revealed that such misallocation of polling stations was in a large part due to the inputting of incorrect information into the relevant computer system and the failure to spot the mistakes during the subsequent accuracy checks performed by the staff concerned.

13.12 Immediately after the incident had been brought to the REO's notice, the REO quickly conducted a full scale check and ascertained that there was no other similar case. The ROs and candidates of the four constituencies concerned were subsequently informed of the incident and a press statement was issued to maintain the transparency of the election. In addition, the following remedial measures had been taken immediately:

- (a) a replacement poll card was mailed to each of the electors concerned informing the elector of the correct polling station allocated to him/ her to vote and a location plan of the polling station was also provided;
- (b) notices and banners were put up near the premises of the electors concerned to remind and direct them to go to the correct polling station allocated to them;
- (c) more polling staff were deployed to the eight polling stations in question to assist the electors concerned and special briefing was provided to the relevant PROs; and

- (d) on the polling day, transportation service was provided to convey the electors to the correct polling stations in case they were mistaken by the wrong information shown on the first poll cards sent to them and went to the incorrect polling stations.

13.13 **Recommendation:** After the occurrence of the incident, the REO had taken prompt and appropriate remedial actions. As a result, the poll in the polling stations concerned was conducted smoothly and no hiccups relating to the voting of the electors concerned were reported. The EAC considers that the incident shows that there is room for improvement in the existing mechanism for the allocation of polling stations to electors. To forestall the recurrence of similar incidents in future, the REO should critically review the existing allocation mechanism with a view to implementing necessary improvement measures, such as enhancing the training provided to the staff concerned and conducting more rounds of accuracy checks on the information inputted into the computer system by officers at different levels. The EAC is pleased to note that the REO has in the light of the incident taken immediate steps to overhaul the checking procedures for all important electoral documents including ballot papers and gazette notices on nominations of candidates and election results.

Section 3 – Matters relating to Operational Aspects

(A) Reduction of Paper Consumption on Election-related Materials

13.14 For environmental protection reasons, the EAC is pleased to note that the REO has continued adopting various measures to reduce paper consumption in the election including:

- (a) providing address labels of electors (except those who have provided the REO with their email addresses) to candidates only upon request;
- (b) providing email addresses of electors, if available, to candidates and encouraging candidates to send their EAs by electronic means to electors who have provided their email addresses;
- (c) encouraging electors/registered electors to register their email addresses with the REO. A dedicated website GovHK and an email account were set up to facilitate registered electors to provide or update their email addresses through the website or email;
- (d) using recycled paper or paper made from wood-pulp derived from sustainable forests to print electoral documents as far as practicable; and
- (e) issuing to candidates a CD, instead of the previous bulky printed copy, containing the relevant electoral legislations.

13.15 **Recommendation:** The EAC considers that sustained efforts should continue to be made by the REO in exploring other possible measures to further

reduce paper consumption in future elections. For the address labels mentioned in paragraph 13.14(a) above, the EAC recommends that in order to reduce the number of EAs sent to electors, candidates should be provided with a choice between “individual” and “household” address labels when using free postage to mail EAs to electors. Candidates can therefore choose to send their EAs to electors on a household rather than individual basis, thereby cutting down the paper consumption. Besides, the REO should continue its efforts in encouraging electors to provide their email addresses which will facilitate candidates to send their EAs by electronic means to more electors.

(B) Use of Electors’ Email Addresses by Candidates

13.16 The EAC has received some complaints from electors that the candidates had inadvertently disclosed their email addresses to other recipients when sending them EAs. Some complainants question the source from which candidates have obtained their email addresses.

13.17 At present, applicants are invited to provide their email addresses on a voluntary basis when they apply for voter registration. It is clearly stated in the voter registration form that the email address will be provided to the candidates for the purpose of sending EAs. When collecting electors’ email addresses, the candidates of the 2011 DC Election were required in accordance with the existing practice to sign an undertaking to confirm that the electors’ information should only be used for the election-related purposes relating to the 2011 DC Election and measures should be taken by the candidates to ensure that the information was protected from unauthorised access or leakage. Candidates had also been given a

“User Guide of Candidate Mailing Label System” which reminded them of the need to enter electors’ email addresses in the b.c.c. field when sending out EAs through email so that the email address of individual elector would not be disclosed to others. The EAC was disappointed that some candidates had apparently failed to take heed of the aforesaid reminder and, as a result, issued a warning letter to them.

13.18 **Recommendation:** The EAC considers it necessary to include a more eye-catching reminder in “User Guide of Candidate Mailing Label System” and, at the candidates’ briefing sessions to be held for future elections, to strongly remind candidates and agents on the proper use of electors’ email addresses, including entering electors’ email address in the b.c.c. field when sending out EAs via email.

Section 4 – Matters relating to the Guidelines

Canvassing by Telephone and Short Message Service

13.19 There were a number of complaints about the nuisance caused by canvassing telephone calls and short message service (“SMS”) sent by candidates and their supporters. Some complainants questioned how the candidates concerned obtained their personal data (including names and telephone numbers) as they did not know the candidates. They raised concerns about possible abuse of their personal data.

13.20 In accordance with section 38 of the EAC (EP) (DC) Reg, the REO provided the candidates of the 2011 DC Election with an extract from the FR which contained the names, gender and addresses of electors of the relevant constituency. But the extract did not include the telephone numbers of electors. All candidates had signed an undertaking to confirm that the aforesaid information would only be used for the 2011 DC Election.

13.21 The existing electoral legislation does not prohibit canvassing for votes by telephone. Paragraph 8.18 of the Guidelines has reminded all candidates, *inter alia*, that:

- (a) privacy of the electors should be respected;
- (b) they should read carefully the guidance notes on personal data privacy in respect of electioneering activities at Appendix F to the Guidelines, prepared by the OPCPD, before they undertake such activities; and
- (c) some members of the public do not like or detest being called over the telephone and their disapproval may be reflected in their choice of candidates on the polling day.

13.22 In light of the enquiries and complaints relating to electioneering activities received since January 2011, the OPCPD issued in October 2011 a revised guidance note to each candidate of the 2011 DC Election with a view to providing them with updated practical guidance on the requirements of the Personal Data (Privacy) Ordinance (“PDPO”) in relation to electioneering activities.

According to the updated guidance note, the act of canvassing for votes is not in contravention of the PDPO provided that handling of personal data is in compliance with the data protection principles in schedule 1 to the PDPO. The aforesaid guidance notes have also reminded candidates, inter alia, that:

- (a) individuals should be informed of the purpose of use of their personal data is for electioneering when collecting the data directly from them;
- (b) personal data should not be collected by deceptive means or by mis-representing the purpose of the collection (e.g. collecting personal data in the pretext of opinion poll or assisting citizens to apply for government welfare); and
- (c) before using personal data from sources other than the extract from the FR for electioneering purpose, express and voluntary consent from the data subjects should be obtained unless the original purpose of collection of the data is directly related to the electioneering purpose.

The EAC has referred the complaints which might involve breaches of the PDPO to the OPCPD for investigation.

13.23 **Recommendation:** In view of the complaints received about the abuse of personal data of electors for electioneering purpose, the EAC considers it necessary to give candidates and their supporters a stronger reminder in the Guidelines for

future elections on the need to strictly follow the guidance provided by the OPCPD in the aforesaid notes when conducting electioneering activities. Consideration should also be given to giving the subject more emphasis in the candidates' briefing sessions to be conducted for future elections.

Section 5 – Recommendation to Publish the Report

13.24 The EAC would like to recommend this report be made public, at a time the CE thinks appropriate, so that the public may be kept posted as to how the EAC conducted and supervised the 2011 DC Election.

PART SIX

CONCLUSION

CHAPTER 14

ACKNOWLEDGEMENT

14.1 The successful conclusion of the 2011 DC Election was attributable to the dedicated and concerted efforts of all parties involved.

14.2 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

Correctional Services Department

Customs and Excise Department

Constitutional and Mainland Affairs Bureau

Department of Justice

Drainage Services Department

Efficiency Unit of the Chief Secretary for Administration's Office

Electrical Mechanical Services Department

Food and Environmental Hygiene Department

Government Logistics Department

Highways Department

Home Affairs Bureau

Home Affairs Department

Hong Kong Observatory

Hong Kong Police Force

Hongkong Post

Housing Authority

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Land Registry

Lands Department

Legal Aid Department

Leisure and Cultural Services Department

Marine Department

Office of the Government Chief Information Officer

Official Languages Division of the Civil Service Bureau

Planning Department

Radio Television Hong Kong

Social Welfare Department

Transport Department

14.3 The EAC is grateful to the staff of the REO for their dedicated efforts and contribution at all stages of the 2011 DC Election.

14.4 The EAC is also grateful to the officers serving as ROs, the legal practitioners serving on the NACs, the PROs and those polling and counting staff who conscientiously performed their duties and dutifully followed the relevant operational procedures.

14.5 The EAC is thankful to the CSD and other LEAs for their assistance provided to the REO in making arrangements for registered electors who were imprisoned, remanded and detained on the polling day to vote.

14.6 The EAC would like to thank members of the media who helped substantially to enhance the transparency of the election by giving all key events wide and in-depth coverage.

14.7 The EAC expresses appreciation towards those candidates, their helpers, building management bodies and members of the general public who complied with the electoral legislation and Guidelines.

14.8 The EAC is also grateful to the PROs, polling and counting staff who worked long hours and fulfilled their duties in a professional manner.

14.9 The EAC also recognises the support of the electors who exercised their civic duties and participated in the poll.

CHAPTER 15

LOOKING FORWARD

15.1 The 2011 DC Election held on 6 November 2011 was smoothly concluded in an open, honest and fair manner. The EAC was satisfied with the overall electoral arrangements.

15.2 At the time of finalising this report, the EAC is heavily engaged in the preparation of the 2012 Chief Executive Election to be held on 25 March 2012 and drawing up the Proposed Guidelines on Election-related Activities in respect of the 2012 LegCo Election for public consultation. As for voter registration, in addition to the measures implemented by the REO, the Government is conducting public consultation on a number of other improvement measures. The EAC will work with the Government on the improvement measures to be adopted to safeguard a honest and fair voter registration system.

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