

# **PART ONE**

## **PROLOGUE**

## CHAPTER 1

### OVERVIEW

#### Section 1 – Introduction

1.1 A general election was held on 9 September 2012 to return 70 Members of the Legislative Council (“LegCo”) for the fifth term of four years commencing on 1 October 2012, upon the prorogation of the fourth term LegCo on 18 July 2012.

#### *Number of Members Returned*

1.2 The fifth term LegCo is composed of 70 Members, amongst whom 35 were returned by Functional Constituencies (“FCs”) and the other 35 were returned by Geographical Constituencies (“GCs”). The number of members returned for the five GCs and the 29 FCs respectively are listed in **Appendix I**.

#### *This Election*

1.3 The 2012 LegCo Election was keenly contested with 216 candidates of 67 candidate lists nominated for 35 GC seats, 53 candidates nominated for 30 FC (other than the new District Council (second) FC) (“DC (second) FC”) seats and 18 candidates of seven candidate lists nominated for five DC (second) FC seats. For GCs, contest was most keen in the New Territories East (“NTE”) GC where 19 lists totalling 72 candidates contested for nine seats. As for FCs, contest was most keen in the Financial Services FC where five candidates contested for one seat in the FC.

1.4 A total of 1,838,722 GC electors and 151,124 FC (other than the DC (second) FC) electors cast their votes on the polling day, representing 53.05% and 69.65% of the total electorate of 3,466,201 and 216,979 for the contested constituencies respectively. The turnout rates were higher than those in the 2008 LegCo Election (45.20% and 59.76% for GCs and FCs respectively), but lower than those in the 2004 LegCo Election (55.64% and 70.10% for GCs and FCs respectively). For the new DC (second) FC, a total of 1,672,793 electors cast their votes on the polling day, representing 51.95% of the total electorate of 3,219,755.

## **Section 2 – Report to the Chief Executive**

1.5 The Electoral Affairs Commission (“EAC”) is required under section 8(1) of the Electoral Affairs Commission Ordinance, Cap. 541 (“EACO”) to submit a report on an election to the Chief Executive (“CE”) within three months after the polling day of the election.

1.6 This report aims to give a comprehensive picture of how the EAC conducted and supervised the election at its 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 improving the arrangements for future elections in the light of the experience gained from this election.

## **PART TWO**

### **BEFORE THE POLLING DAY**

## CHAPTER 2

### DELINEATION OF GEOGRAPHICAL CONSTITUENCIES

#### Section 1 – The Legal Requirements

2.1 An important task that the EAC had to undertake during the preparation stage of the election was the delineation of constituencies for GCs. According to section 4(a) of the EACO, the EAC has to make recommendations on the boundaries and names of GCs for a LegCo election. Under section 18 of the EACO, the EAC is required to submit to the CE a report on its recommendations not more than 36 months after the preceding general election was held. As the preceding general election was held on 7 September 2008, the EAC was required to submit the report to the CE by 6 September 2011.

2.2 The demarcation exercise commenced in May 2011, and was based on the population forecast prepared by the inter-departmental Ad Hoc Subgroup (“AHSG”) formed under the Working Group on Population Distribution Projections chaired by the Planning Department. In order to achieve a high level of accuracy, it is necessary to project the population distribution figures at a date as close to the election date as practicable. The AHSG was requested to provide a population forecast for 30 June 2012 for the 2012 LegCo Election to be held in September 2012.

2.3 The number of Members of the LegCo to be returned by GCs in the 2012 LegCo Election is 35. According to sections 18 and 19 of the Legislative Council

Ordinance, Cap. 542 (“LCO”),

- (a) there are to be five GCs;
- (b) 35 Members are to be returned; and
- (c) the number of Members to be returned for each GC is to be a number not less than five nor greater than nine.

2.4 Provisional recommendations were then drawn up based on the stipulated number of GCs and Members to be returned by each of them, as well as the statutory criteria stipulated in section 20 of the EACO and the working principles adopted by the EAC. Reference would also be made to the comments expressed by District Officers (“DOs”) of the Home Affairs Department (“HAD”), if any, in drawing up the provisional recommendations.

## **Section 2 – Provisional Recommendations and Public Consultation**

2.5 After considering a number of options, the EAC decided to adopt the boundaries and names of the existing GCs, and the number of Members to be returned by each GC was determined as follows:

<u>GC</u>	<u>No. of Members to be Returned</u>
Hong Kong Island	7
Kowloon West	5
Kowloon East	5
New Territories West	9
New Territories East	9
Total:	<u>35</u>

2.6 The above provisional recommendations, together with the corresponding maps, were made available for public consultation from 23 June 2011 to 22 July 2011 in accordance with section 19 of the EACO. A public forum was held on 4 July 2011 to receive oral representations on the provisional recommendations from the public.

### **Section 3 – The Final Recommendations**

2.7 During the public consultation period, representations, which mainly raised concerns on the following issues, were received:

- (a) a number of representations considered that the population and geographical coverage of both NTE and New Territories West (“NTW”) were very large, rendering electioneering activities or liaison work difficult in these GCs. They proposed that NTW be split up into two GCs or the New Territories be re-delineated into three GCs. These proposals would however lead to delineation of more than five GCs and, therefore, contravene section 18(1) of the LCO;

- (b) some representations proposed that NTW should be allocated ten seats according to its population. As the proposal, if adopted, would exceed the statutory maximum number of seats of a GC (i.e. nine seats), it was not legally acceptable under the LCO; and
- (c) some other representations proposed that Islands District be transferred to Hong Kong Island (“HKI”) from NTW in order to reduce the deviation percentages of NTW and HKI. As stipulated in section 20(3) of the EACO, the EAC shall have regard to the community identities, the preservation of local ties and physical features in delineating GCs. The EAC considered the proposal undesirable having regard to the need to preserve community identities. Firstly, Islands District and all existing districts in HKI belonged to different communities and the proposal, if adopted, would have the undesirable effect of marrying a district into a GC with distinctly different local characteristics and community identities. Secondly, the northern part of Lantau Island fell within Tsuen Wan District while the rest of it belonged to Islands District. If the latter was transferred to HKI from NTW, Lantau Island would be split into two parts and put in two different GCs, thus adversely affecting its community identity. Besides, the proposed transfer did not comply with the established working principle that HKI, Kowloon and the New Territories should be treated separately. On the other hand, there were views objecting to such proposal. Hence, the EAC considered that the proposal should not be accepted.



Having carefully considered all the public representations, the EAC decided that it was not necessary or appropriate to make any alteration to its provisional recommendations and they should be adopted as its final recommendations. In accordance with section 18 of the EACO, the EAC submitted a report on its recommendations for delineation of the GCs and the names proposed for each constituency to the CE on 5 September 2011.

2.8 The report contained a detailed account of the EAC's work in the demarcation exercise, representations received during the public consultation period and EAC's deliberations on them. The recommendations in the report were accepted and approved by the CE in Council on 18 October 2011. The CE in Council made the Declaration of Geographical Constituencies (Legislative Council) Order 2011, Cap. 542K on 18 October 2011 which was then tabled in LegCo for negative vetting on 26 October 2011. The finalised set of maps with the delineations was published by the EAC in February 2012 for general information of the public.

## CHAPTER 3

### REGISTRATION OF ELECTORS

#### Section 1 – Qualification for Registration

3.1 Only a registered elector, i.e. a person whose name appears on the final register which is in force at the time of the election, is eligible to vote at a LegCo election. The qualifications for registration as electors for the GCs and FCs are provided in the LCO.

#### *Geographical Constituencies*

3.2 An individual is eligible to be registered as a GC elector if he:

- (a) is aged 18 or above as at 25 July 2012;
- (b) is a permanent resident of Hong Kong;
- (c) at the time of applying for registration, ordinarily resides in Hong Kong and his residential address provided in the application for registration is his only or principal residence in Hong Kong;
- (d) holds a valid identity document or has applied for a new/replacement identity document; and

- (e) is not disqualified from being registered as an elector.

3.3 Section 24(2) of the LCO provides that a person is not, by virtue of being registered as an elector in an existing final register of GCs, entitled to be included as an elector in any subsequent register if the Electoral Registration Officer (“ERO”) is satisfied on reasonable grounds that the person no longer resides at the residential address recorded against the person's name in that existing register and the ERO does not know the person's new principal residential address (if any) in Hong Kong. While it is widely recognised that it is an elector’s civil duty to report changes in his or her residential address for the purpose of updating the register, the law currently does not impose a criminal sanction on an elector for not reporting changes in the registered residential address. Notwithstanding that an elector has failed to report changes in the registered residential address but so long as his or her registration remains in the register, the elector remains eligible under the law to vote in the GC constituency according to the principal residential address as recorded against his or her name in the register.

### ***Functional Constituencies***

3.4 The LCO provides for the qualification for registration as electors of the 29 FCs. The electorates of the 28 traditional FCs (i.e. the FCs (other than the DC (second) FC)) are generally composed of members of professional or trade organisations, representative bodies of the relevant sectors, or holders of licences/franchises. The electorate of the new DC (second) FC is composed of persons who are registered as electors for GCs but are not registered as electors for

any of the other 28 traditional FCs. (Please also see paragraph 3.25 below for compilation of the first register of electors for the DC (second) FC).

3.5 The FC electorate consists of both natural persons and corporate bodies. A requirement for a natural person to be an FC elector is that the person must be a GC elector. Among the 29 FCs, 18 of them consist of corporate electors. A corporate elector is required to cast its vote through an authorised representative (“AR”) who is a natural person and a GC elector appointed by the corporate elector to vote on its behalf.

3.6 The appointment or replacement of the AR must be registered with the ERO. A FC elector cannot be an AR for the same FC, but can be an AR for another FC. An AR of a corporate elector cannot be appointed as the AR of another corporate elector at the same time. A person who is qualified to be an elector of more than one FC can only become an elector of one of the FCs of the person’s choice. If a person is eligible to be registered as an elector for the DC (first) FC, the person can only be registered as an elector of that FC. If a person is eligible to be registered as an elector in one of the four special FCs, namely Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport, the person can only be registered as an elector of that special FC unless he or she is eligible for registration in the DC (first) FC.

3.7 With the introduction of the new DC (second) FC, most of the electors would have for the first time one vote for a GC and one vote for a FC to cast in the 2012 LegCo Election. In accordance with the relevant statutory provisions and as a one-off transitional arrangement for 2012, all GC electors who were not registered

in any FC would be automatically registered as an elector for the DC (second) FC, unless they elected not to be so registered. FC electors (except for those for the Heung Yee Kuk FC, Agriculture and Fisheries FC, Insurance FC, Transport FC, and DC (first) FC) might choose to be registered as an elector for the DC (second) FC instead of the FC in which they were currently registered. In February 2012, the Registration and Electoral Office (“REO”) issued a letter to all registered electors to inform them of the voter registration arrangements for the new DC (second) FC for the 2012 LegCo Election as mentioned above. The letter also appealed to electors to inform REO if their addresses or other registration particulars were incorrect or had changed. Electors were also encouraged to provide their email addresses, which would be provided to candidates of the constituencies concerned for sending election advertisements (“EA”).

## **Section 2 – Registration Regulations**

3.8 Two sets of regulations are in place for the purpose of setting out the procedure relating to the registration of electors. The Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation, Cap. 541A (“EAC (ROE) (GC) Reg”) governs the registration of GCs electors, whereas the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation, Cap. 541B (“EAC (ROE) (FCSEC) Reg”) caters for the registration of FCs electors.

### **Section 3 – The Registration Campaign**

3.9 Under the co-ordination of the Constitutional and Mainland Affairs Bureau (“CMAB”) and with the joint efforts of the REO, HAD, Information Services Department (“ISD”), Radio Television Hong Kong (“RTHK”) and Independent Commission Against Corruption (“ICAC”), a territory-wide campaign for new registration was conducted from 31 March to 16 May 2012 while the publicity to remind registered electors to update registration particulars lasted until 29 June 2012. The overall objectives of the voter registration campaign were to:

- (a) promote general awareness of the 2012 LegCo Election;
- (b) call upon eligible electors of all age groups to register and to stress the importance of providing true and correct information when applying for registration;
- (c) impress upon registered electors the importance of updating their particulars (especially their residential addresses) with the REO;
- (d) encourage registered electors and persons who would like to register as electors to provide their email addresses so that they could be provided to the candidates of the constituencies concerned for sending EAs; and
- (e) encourage registered electors to cast their votes in the 2012 LegCo Election.

3.10 The launching ceremony of the 2012 Voter Registration Campaign was held on 31 March 2012. Throughout the campaign period, a wide range of publicity activities were staged to achieve the objectives set out in paragraph 3.9 above. They included announcements in public interest (“APIs”) on television, radio, roadshow and buspak on buses; mini-concerts; placement of advertisements in newspapers/trade journals, at major MTR stations, on public transport vehicles and popular websites; display of posters, buntings and banners; and election messages broadcast through MTR InfoPanels. To create greater impact, celebrities were appointed as Voter Registration Ambassadors who were featured in the APIs on the television and radio. To enhance public awareness of the voter registration arrangements for the DC (second) FC, publicity materials including TV and radio API, posters and newspaper advertisements began to roll out in mid-February 2012.

3.11 Roving registration counters were set up at various popular locations with high pedestrian flow (such as major MTR stations and shopping malls etc), where voter registration assistants assisted the public in registering as electors or updating their registration particulars. The voter registration assistants also distributed to the public a leaflet prepared by the ICAC on the importance of providing the REO with true and correct information when applying for registration as electors or reporting changes in registration particulars, as well as the consequences of voting at an election after knowingly or recklessly giving false or misleading information to the REO.

3.12 To encourage more young people to register as electors, registration counters were also set up at all Registration of Persons Offices of the Immigration Department to assist young people reaching 18 years of age in registering when

they turned up at these offices to apply for or to collect their adult identity cards. Voter registration assistants were also deployed at higher education institutes to encourage eligible students to register. The REO continued the school visit programme in the 2011-12 school year for senior-class students of secondary schools. Moreover, the REO sent voter registration forms to secondary schools and higher education institutions and sought their assistance in collecting completed forms from students who were eligible for registration. In addition, particular efforts were made to reach out to the young people through new media such as Facebook and YouTube to encourage them to register as electors.

3.13 The REO sent letters to appeal 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. The REO also sent notification letters to the registered electors in households which were identified to have moved into new public housing estates through cross-checking of records with the Housing Department (“HD”) and the Housing Society (“HS”) to update their registered addresses.

3.14 In addition, the REO sent letters to encourage eligible persons to register as FC electors. The REO also appealed to specified bodies under the LCO to encourage eligible members to register in FCs.

3.15 With the objective of reducing paper consumption in elections, the 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 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 the Registration of Persons Offices and roving registration counters encouraged registered electors and persons who wished to register as electors to provide their email addresses when filling in their registration forms. The message on provision of email addresses was also disseminated through a dedicated radio API and included in all posters for the promotion of voter registration.

#### **Section 4 – Enhancement of Checks on Voter Registration**

3.16 Furthermore, in the light of the public concern on the accuracy of the residential addresses recorded in the register of electors following the 2011 District Council Election, the CMAB conducted a public consultation from 16 January 2012 to 2 March 2012 on a number of improvement measures related to voter registration. Having regard to the views received, the REO stepped up efforts in enhancing the inquiry checks on the registration particulars. Furthermore, in the interest of greater transparency and easy identification of registration irregularities in respect of residential addresses in the registers, legislative amendments were introduced, by way of a Committee Stage Amendment to the Electoral Legislation (Miscellaneous Amendments) Bill 2012, to provide for the publication of an additional version of the voter registers to set out electors in accordance with their principal residential addresses. Previously, the entries of registered electors were only arranged according to the names of the electors in voter registers.

3.17 As part of the established process to maintain the integrity of the voter registration system, the REO would conduct:

- (a) follow-up inquiry on undelivered poll cards;
- (b) verification checks on electors' registered residential addresses through cross-matching of data with other government departments (e.g. HD and HAD);
- (c) sample checks on multiple electors registered with the same residential address; and
- (d) checks on addresses in buildings already demolished or to be demolished.

In the light of the public concern over the accuracy of registered addresses in the GC register following the 2011 DC Election, the REO had since January 2012 implemented a series of measures to widen the scope of checking to verify the accuracy of registered addresses as follows:

- (a) follow-up inquiry on suspected vote-rigging complaints received during or after the 2011 DC Election;
- (b) follow-up checks on undelivered information letters sent to existing electors concerning the new DC (second) FC;
- (c) sample checks on multiple surnames of electors registered with the same residential address;
- (d) random sample checks on existing electors; and

- (e) checks on addresses in incomplete/commercial non-residential addresses.

Through the above enhanced checking measures, the REO conducted checks on 1.7 million electors between January and April 2012, which was equivalent to about 48% of the number of electors (i.e. 3.56 million) in the 2011 Final Register of Electors (“FR”) for GCs.

3.18 In accordance with the checking results, the REO subsequently issued inquiry letters to about 296,000 electors according to the relevant electoral law, requesting them to confirm whether their registered addresses in the FR were still their only or principal residential addresses. Specifically, the inquiry letters stated that if an elector failed to give a reply by the specified date to confirm his only or principal residential address, his name would be included in the Omissions List (“OL”) to be published together with the 2012 Provisional Register of Electors (“PR”) on 15 June 2012 for public inspection. In this connection, entries of about 231,000 electors who had failed to respond under the inquiry process were included in the OL. In accordance with the electoral law, electors whose names were included in the OL and wished to reinstate their voter registration had to update their registered residential addresses or lodge a claim by the statutory deadline of 29 June 2012 for consideration and, if justified, approval by the Revising Officer. Otherwise, their names could not be included in the FR to be published in July 2012. To tie in with the publication of the PR and OL, a massive publicity campaign was specifically mounted from May 2012 to appeal to electors to update their residential addresses or lodge claims for reinstatement of their registration as needed before the afore-mentioned statutory deadline. Out of the 231,000 electors

in the OL, about 13,600 electors confirmed or updated their latest residential addresses to the satisfaction of the Revising Officer by the statutory deadline and their names were eventually put back onto the 2012 FR published on 18 July 2012. The entries of the remaining 217,400 electors were not included in the FR because the electors had failed to provide the information in accordance with the electoral law. Despite the concern expressed in some quarters of the society over possible vote-rigging, the outcome of the checking exercise showed that the inaccuracies detected in respect of registered addresses were mostly because of the failure on the part of electors to provide an updated address in a timely manner after moving home.

3.19 Apart from enhancing the accuracy of electors' registered addresses for the GCs, the REO had also reviewed the procedures for the registration of electors in the traditional FCs (i.e. FCs other than the DC (second) FC)). The electorate of traditional FCs consists of individual and corporate electors who are:

- (a) listed bodies;
- (b) holders of licences/franchises/registration under specified ordinances;
- (c) staff employed by specified institutions; or
- (d) members of specified bodies.

For electors under (d), the relevant persons or organisations must be members of about 230 bodies as specified under the LCO in order to be eligible for registration

as electors in the relevant FCs. As part of the voter registration campaign in the registration cycle preceding a LegCo election, the REO wrote to some 350 relevant bodies to collect the latest information on existing electors and eligible persons or organisations for registration in their respective FCs.

3.20 As the eligibility for registration under (d) is usually tied to designated membership with the specified bodies, there has been concern on the lack of due process and sufficient transparency in membership administration of some of the specified bodies, and hence there might be room for manipulation in the membership of these bodies for registration in respective FCs. While there are clear provisions governing registration of FC electors under the LCO, membership administration is essentially a matter falling squarely within the internal corporate governance of the specified bodies concerned. To address the concern, CMAB and the REO exchanged views on the matter with the Corruption Prevention Department of the ICAC in February 2012. It was considered that, given the present statutory regime for FCs, the key is for the specified bodies under (d) to strengthen their internal corporate governance, ensure due compliance with their constitutions, and enhance the procedural transparency of their membership administration. Under the electoral law, it is an offence to provide false or incorrect information to the REO for the purpose of voter registration, and hence it is the primary responsibility of the specified bodies to maintain an effective and creditable membership mechanism to cater for the purpose of voter registration. In this regard, it would be useful to remind the specified bodies regularly of this function and the importance of making sure that their membership administration was sufficiently transparent and compliant with their constitutions and the procedures stipulated under the law.

3.21 Having regard to the advice of the ICAC, the REO wrote to all the 230 specified bodies under (d) in March 2012 to appeal for their specific support to enhance transparency of their membership administration through publicising their membership schemes with reference to eligibility for voter registration in the corresponding FCs for public and electors' reference and exercising due diligence in compiling their membership lists to the REO. Separately, the ICAC arranged briefing sessions on supporting clean elections to help stakeholders in FCs understand the requirements of the Elections (Corrupt and Illegal Conduct) Ordinance, Cap. 554 ("ECICO") and appealed to the specified bodies for the dissemination of the messages of clean and fair election through feature articles or e-banners carried in the publications or their web-pages respectively.

3.22 In August 2012, as a further measure to maintain the integrity of the election, the REO wrote to all the 350 relevant bodies again to request them to keep the REO updated on any latest changes concerning the registration eligibility of their staff/members and to remind their staff/members not to vote in the 2012 LegCo Election in case they had lost their registration eligibility for any reasons subsequent to the publication of the FR in mid July. In this updating exercise, the REO identified some 1,120 FC electors who might have been disqualified from voting at the election owing to the loss of registration eligibility. These electors were mainly from the Information Technology FC, Education FC, Social Welfare FC and the Engineering FC. With the updated information from the specified bodies, the REO wrote to the electors concerned to inform them of the change in their eligibility for registration and remind them of the statutory provision that it would be an offence for engaging in corrupt conduct under the ECICO if a person votes at an election knowing that he was not entitled to do so. These electors

should not vote in the 2012 LegCo Election unless their eligibility for registration in their respective FCs could be clarified before the poll. Should any of the electors turn out to cast vote on the polling day without proving to the satisfaction of the REO that they were eligible for registration, such cases would be referred to the law enforcement agencies for investigation as appropriate.

3.23 Following the 2012 LegCo Election, the REO, CMAB and the ICAC met again in October 2012 to review the measures implemented in connection with the voter registration in FCs since the February 2012 meeting. The meeting concluded that the measures implemented had made some impact in impressing upon the specified bodies under (d) their obligation in maintaining a proper and transparent membership administration system so as to maintain the integrity of the voter registration system for FCs. It was agreed that sustained and more rigorous efforts were required to continue driving home the message of the importance of a transparent membership administration regime for voter registration and providing specified bodies with suitable advice or assistance.

## **Section 5 – The Registers**

3.24 Of the 364,759 registration forms received as at the statutory cut-off date on 16 May 2012, 248,174 (68.04%) were received during the thirteen-week campaign period. The total number of electors recorded in the 2012 FR for GCs and FCs (other than the DC (second) FC), published on 18 July 2012, was 3,466,201 and 240,735 respectively, among which 148,085 (4.27%) and 19,509 (8.10%) were newly registered electors. The total number of electors recorded in the 2012 FR for the DC (second) FC was 3,219,755.

3.25 The REO published the PR for GCs and FCs on 15 June 2012. Information in the PR for GCs and FCs (other than the DC (second) FC) included the names and principal residential addresses of those whose names were included in the previous FR, updated by the REO on the basis of information reported by electors or obtained from other sources, and similar particulars of eligible applicants who had successfully applied for registration on or before 16 May 2012. Regarding the new DC (second) FC, as a one-off transitional arrangement, the ERO had prepared the first PR for the DC (second) FC by using the 2011 FR for GCs as the basis, and deleting from it the FC electors and those GC electors who elected not to be registered in the DC (second) FC. For any person who, in accordance with the voter registration procedures, elected to be registered in the DC (second) FC during the 2012 voter registration cycle, and any FC electors who elected to be registered in the DC (second) FC, they were included in the first PR for the DC (second) FC. However, the arrangement for FC electors to choose to be registered in the DC (second) FC is not applicable to the electors in the Heung Yee Kuk, Agriculture and Fisheries, Insurance, Transport, and DC (first) FCs.

3.26 An OL was published in conjunction with the publication of the PR in June 2012. This list contained the particulars of the persons who were formerly registered in the 2011 FR but were not included in the 2012 PR and proposed to be omitted from the 2012 FR on the grounds that the 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, they had changed their principal residential address but the new address was not known to the ERO, or they were no longer qualified members of the organisations specified for the relevant FCs.



3.27 Both the PR and the OL were made available for public inspection at the REO and all District Offices (that section of the register relevant to the district) between 15 and 29 June 2012. Members of the public might lodge with the ERO objections to any entries in the PR during the period. People whose applications for registration had been rejected or whose names had been put on the OL might also lodge claims to reinstate their registrations.

3.28 By the end of the public inspection period, the ERO received eight notices of claims and one notice of objection. The hearings in respect of these claims and objection cases were held on 26 June, 3 July and 9 July 2012. After the hearings, the Revising Officer allowed five claims and dismissed the other three. Regarding the objection case, the Revising Officer directed that the objection be allowed because there was evidence to show that the elector concerned no longer resided in his registered address.

3.29 The FR was published on 18 July 2012. For the 2012 LegCo Election, the total number of electors who were eligible to cast vote was 3,466,201 electors. A breakdown by GCs and FCs (other than the DC (second) FC) is at **Appendices II to IV**.

## CHAPTER 4

### LEGISLATION GOVERNING THE ELECTION

#### Section 1 – Ordinances and Subsidiary Legislation

4.1 The supervision and conduct of the 2012 LegCo Election was governed by the following ordinances:

- (a) the EACO which empowers the EAC to perform its various functions in supervising the conduct of the election;
- (b) the LCO which provides the legal basis for conducting the election; and
- (c) the ECICO which prohibits election-related corrupt and illegal activities and is administered by the ICAC.

4.2 These ordinances are supplemented by nine pieces of subsidiary legislation which provide for the detailed procedures for the conduct of the election. They are –

- (a) the EAC (Electoral Procedure) (LegCo) Regulation, Cap. 541D (“EAC (EP) (LC) Reg”);
- (b) the EAC (Nominations Advisory Committees (LegCo)) Regulation, Cap. 541C (“EAC (NAC) (LC) Reg”);

- (c) the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation, Cap. 541A (“EAC (ROE) (GC) Reg”);
- (d) the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation, Cap. 541B (“EAC (ROE) (FCSEC) Reg”);
- (e) the LegCo (Subscribers and Election Deposit for Nomination) Regulation, Cap. 542C;
- (f) the Legislative Council (Election Petition) Rules, Cap. 542F;
- (g) the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation, Cap. 541M (“PCBP (LC & DC) Reg”);
- (h) the EAC (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation, Cap. 541N (“EAC (FA) (APP) Reg”); and
- (i) Maximum Amount of Election Expenses (Legislative Council Election) Regulation, Cap. 554D (“EE (LC) Reg”).

## **Section 2 – The Legislative Council (Amendment) Bill 2010**

4.3 On 24 and 25 June 2010, the LegCo passed by a two-thirds majority the motions put forth by the Government concerning the draft amendments to the method for the selection of the CE and the method for the formation of the LegCo in 2012. On 29 June 2010, the CE gave consent to the draft amendments. On 28 August 2010, the Standing Committee of the National People's Congress approved and recorded respectively the amendments to Annexes I and II to the Basic Law concerning the methods of the two elections. The Administration introduced the Legislative Council (Amendment) Bill 2010 to the LegCo for first reading and commencement of second reading debate on 15 December 2010. The Bill sought to amend the LCO to implement the proposals approved and recorded respectively by the Standing Committee of the National People's Congress on 28 August 2010, update the names of certain bodies and delete bodies which are inoperative in FCs, increase the financial assistance to candidates in the LegCo Election, and prescribe the maximum amount of election expenses for the new DC (second) FC.

4.4 The major provisions of the Bill are set out below:

- (a) implementing the proposal that 35 members are to be returned for the five GCs and that the number of members to be returned for each GC is to be a number not less than five nor greater than nine;
- (b) updating the names of certain bodies and delete the bodies which are inoperative in certain FCs;

- (c) amending the electorate of the existing DC FC (which is re-named as the DC (first) FC) to provide that the FC is composed of elected DC members only. Appointed and ex-officio DC members are not eligible to be electors under the FC;
- (d) providing for the electorate of the new DC (second) FC which includes persons who are registered as electors for GCs but are not registered as electors for any other FC and specifying the number of LegCo Members to be returned by the new DC FC as five;
- (e) providing that a person eligible to be registered as an elector for the DC (first) FC and another FC may be registered only for the DC (first) FC and not for that other FC;
- (f) subject to (e) above, providing that a person who is registered in any FC (except for the Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport FCs) may choose to register in the DC (second) FC instead;
- (g) providing that consular posts (including those headed by career consular officers and honorary consular officers) specified in the Consular Relations Ordinance (Cap. 557) and the international organisations under the International Organisations (Privileges and Immunities) Ordinance (Cap. 558) and the International Organisations and Diplomatic Privileges Ordinance (Cap. 190) are no longer eligible to be registered as an elector;

- (h) providing for the revised criterion for nomination as a candidate in the DC (first) FC, i.e. only an elected DC member, who has been registered as an elector of the DC (first) FC, is eligible for nomination in the DC (first) FC;
- (i) providing for the criterion for nomination as a candidate in the DC (second) FC, i.e. only an elected DC member, who has been registered as a GC elector, is eligible for nomination in the DC (second) FC;
- (j) providing for the arrangement for returning members from the DC (second) FC in accordance with the “list system of proportional representation”;
- (k) providing for the transitional voter registration arrangement for the DC (second) FC under which the first register of electors for the DC (second) FC is compiled by using the 2012 PR for GCs as the basis, deleting from it the names of all persons who are registered in the 2012 PR of electors for any other FCs and the names of any persons who elect not to be registered in the DC (second) FC, and adding to it the names of any registered FC electors who elect to be registered in the DC (second) FC;
- (l) providing that the rate of financial assistance to eligible candidates of the LegCo election will be increased from \$11 to \$12;

- (m) specifying that the election deposit for the DC (second) FC is \$25,000, which is the same as that for other FCs. The forfeiture arrangement of the election deposit for the DC (second) FC follows that for the GCs;
- (n) specifying that each nomination paper in respect of the DC (second) FC must be subscribed by not less than 15 other persons, each being an elector registered in respect of the DC (first) FC. An eligible person may only subscribe a candidate in the DC (first) FC or a list of candidates in the DC (second) FC; and
- (o) providing that the maximum amount of election expenses that can be incurred by or on behalf of a candidate list in the DC (second) FC in a election is \$6 million.

4.5 Committee Stage Amendments to the Legislative Council (Amendment) Bill 2010 were made in February 2011. The major amendments are set out below:

- (a) introducing technical amendments to reflect the arrangements to be adopted by the ERO in respect of the voter registration for the DC (second) FC. As a one-off transitional arrangement, the ERO will prepare the first register of electors for the DC (second) FC by using the 2011 FR for GCs (instead of 2012 PR for GCs as mentioned in paragraph 4.4 (k) above) as the basis, and deleting from it the electors of the existing FCs and those who elect not to be registered in the DC (second) FC. Any persons who elect to be registered in the DC (second) FC during the 2012 voter registration cycle and any electors of the existing

FCs, who elect to be registered in the DC (second) FC, will be included in the first register of electors for the DC (second) FC; and

- (b) adjusting the electorate of the Transport FC, Wholesale and Retail FC and the Information Technology FC; and updating the names of certain specified bodies which are eligible for registration as electors in the Information Technology FC, Wholesale and Retail FC, Education FC and the Sports, Performing Arts, Culture and Publication FC under the LCO.

4.6 The Bill was passed by the LegCo on 5 March 2011 and the LegCo (Amendment) Ordinance 2011 was published in the Gazette on 11 March 2011.

### **Section 3 – Electoral Legislation (Miscellaneous Amendments) Bill 2011**

4.7 The Administration introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2011 to the LegCo for first reading and commencement of second reading debate on 4 May 2011. The Bill proposed to amend various pieces of legislation to introduce changes to the electoral arrangements for the LegCo, District Council (“DC”), Election Committee Subsectors (“ECSS”), CE and Village Representative (“VR”) elections. The changes relating to the LegCo Election include:

- (a) allowing a party to an election petition to lodge an appeal to the Court of Final Appeal against the determination of the petition by the Court of First Instance; and



- (b) providing that a candidate/a list of candidates validly nominated for a GC, the DC (second) FC or the Labour FC may send a promotional letter, free of postage, jointly with the candidate(s)/lists of candidates to each elector under specified circumstances.

4.8 A Committee Stage Amendment to the Bill was made to facilitate the handling of election returns with minor errors and/or false statements under the ECICO. Under the revised relief mechanism, for any errors and/or false statements found in an election return submitted by a candidate of which the aggregate amount does not exceed a specified amount for an election (i.e. in the case of the LegCo Election, \$3,000 for GC; \$5,000 for the DC (second) FC; \$500 for other FCs), the candidate might, subject to certain conditions, seek to have the errors and/or false statements rectified under a simplified relief procedure without recourse to court order.

4.9 The Electoral Legislation (Miscellaneous Amendments) Bill 2011 was passed by the LegCo on 6 July 2011.

#### **Section 4 – Amendment Regulations Made by the EAC**

4.10 With a view to improving the electoral procedures and arrangements, the EAC made nine amendment regulations with proposed legislative amendments to the nine regulations made under the EACO (Cap. 541) on 9 May 2011.

4.11 The amendments made to five regulations, namely the EAC (ROE) (FCSEC) Reg (Cap. 541B), EAC (NAC) (LC) Reg (Cap. 541C), EAC (EP) (LC)

Reg (Cap. 541D), PCBP (LC & DC) Reg (Cap. 541M) and EAC (FA) (APP) Reg (Cap. 541N) are related to the LegCo Election and include:

- (a) consequential amendments to Cap. 541C, Cap. 541D, Cap. 541M and Cap. 541N to cater for the adoption of the proportional representation list system for the DC (second) FC;
- (b) consequential amendments to Cap. 541B to provide for the detailed arrangements for voter registration and compilation of the first register of electors for the DC (second) FC and for issuing notifications to persons, who are eligible to be registered as electors for both the DC (first) FC and another FC, for registration in DC (first) FC but not that other FC;
- (c) consequential amendment to the form of ballot paper in Cap. 541D to reflect the increase of the maximum number of Members to be returned for a GC from eight to nine;
- (d) amendments to Cap. 541D to empower the Presiding Officers (“PROs”) in the LegCo 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

- (e) miscellaneous amendments to Cap. 541D to refine the voting arrangements for electors in custody.

4.12 The amendment regulations were published in the Gazette on 13 May 2011 and tabled in the LegCo on 18 May 2011.

### **Section 5 – Electoral Legislation (Miscellaneous Amendments) Bill 2012**

4.13 The Administration introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2012 to the LegCo for first reading and commencement of second reading debate on 8 February 2012. The Bill proposed to amend various pieces of legislation to introduce amendments to the regulatory regime of EAs; to introduce amendments relating to constituents of several FCs of the LegCo or subsectors of the Election Committee (“EC”); to improve electoral procedures for various elections; to provide for the counting arrangements for the DC (second) FC; and to make technical amendments to the ECICO. The major provisions of the Bill are set out below:

- (a) making amendments to various EAC Regulations to specify the relaxed public inspection requirement of EAs including the lifting of the previous requirement of ex ante declaration by candidates, and allowing candidates to upload their EAs onto an open platform operated through the Internet within one working day after the publication for public inspection;
- (b) providing that a candidate is not required to obtain the prior written

consent of a person or an organisation which gives support in his EAs if the candidate has neither requested or directed, nor authorised any other person to request or direct, the inclusion of the support in the EAs;

- (c) making amendments to Cap. 541D to provide for the central counting arrangement for the DC (second) FC;
- (d) amending the LCO (Cap. 542) to reflect the change of names and deletion of constituents of certain functional constituencies; and
- (e) providing technical amendments to various EAC regulations to improve the electoral procedures for various elections.

4.14 Committee Stage Amendments to the Electoral Legislation (Miscellaneous Amendments) Bill 2012 were made in April 2012. The major amendments include:

- (a) introducing a new numbering system for the lists of candidates for the DC (second) FC; and
- (b) empowering the ERO to make available an additional copy of the voter register in a format which he considers appropriate for public inspection. This amendment would enable the ERO to publish a register of electors in accordance with their registered principal residential address.

4.15 The Electoral Legislation (Miscellaneous Amendments) Bill 2012 was passed by the LegCo on 9 May 2012.

## CHAPTER 5

### THE GUIDELINES

#### Section 1 – The Preparatory Work

5.1 The EAC is empowered under section 6(1)(a) of the EACO to issue guidelines to facilitate the conduct or supervision of an election. The purpose of producing the guidelines is to ensure that all public elections are conducted in an open, honest and fair manner. The guidelines provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. They also give directions in layman's language on compliance with the relevant electoral legislation.

5.2 The EAC has at all times made its best endeavours in refining the electoral arrangements for elections. Before each general election, the EAC will revise the electoral guidelines. The revision is done on the basis of the guidelines used for previous elections, taking into account the operational experience of each election, as well as suggestions and complaints received from the public and other parties concerned. Before the promulgation of each set of guidelines, public consultation will be conducted and 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.

5.3 The EAC started revising the Guidelines on Election-related Activities in respect of LegCo Election (“the Guidelines”) in December 2011 for the 2012 LegCo 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 Guidelines on Election-related Activities in respect of the DC Election, the ECSS Elections and the CE Election published in September 2011, October 2011 and November 2011 respectively. The revisions reflected the legislative amendments enacted by the LegCo and the proposed legislative amendments in respect of the LegCo Election as set out in Chapter 4 and the amendments proposed in 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 2011 DC Election, the 2011 ECSS Elections and the 2012 CE Election.

## **Section 2 – The Proposed Guidelines**

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

*(I) Changes consequential to amendments already made to electoral legislation as at March 2012*

- (a) updating the composition of the fifth term of the LegCo;
- (b) setting out the number of members to be returned from the new DC (second) FC and the voting system for its election;

- (c) updating the number of members to be returned from the 5 GCs in the fifth term of the LegCo;
- (d) updating the number of members to be returned from the 29 FCs in the fifth term of the LegCo;
- (e) setting out the arrangement for compilation of the first provisional register for the DC (second) FC;
- (f) stating that to qualify to be nominated as a candidate at an election for a DC (first) FC or DC (second) FC, a person must be a elected member of any DC established under the District Council Ordinance (Cap. 547);
- (g) setting out the minimum number of qualified subscribers for a valid nomination and the amount of election deposit for an election for the DC (second) FC;
- (h) setting out the mechanism to lodge an appeal against the decision of the Court of First Instance in relation to an election petition arising from a LegCo election;
- (i) setting out the conditions that candidates contesting in a GC, the DC (second) FC and Labour FC election must comply with when posting joint election mails to electors using the free-of-postage facility;

- (j) setting out the election expense limit of \$6,000,000 for the DC (second) FC;
- (k) setting out the newly introduced statutory relief mechanism for handling minor errors or omissions in the return and declaration of election expenses and donations; and
- (l) revising the subsidy rate of financial assistance for an eligible candidate or list of candidates (that has been elected or has received 5% of valid votes or more) to the lowest of (i) \$12 per vote times the number of valid votes received by the candidate or the list of candidates; (ii) 50% of the election expenses limit of the respective constituency; or (iii) the amount of the declared election expenses of the candidate or list of candidates.

*(II) Changes consequential to proposed amendments to electoral legislation being scrutinised by the LegCo as at March 2012*

Subject to the enactment of the relevant legislative amendments,

- (a) setting out the polling and counting arrangements for an election for the DC (second) FC;
- (b) stating that the use of sound amplifying device within the no canvassing zone for the performance of duties by officers of the Correctional Services Department (“CSD”) at dedicated polling stations (“DPSs”) in prisons is allowed;



- (c) setting out the revised sorting process in a ballot paper sorting station (“BPSS”);
- (d) setting out the relaxed public inspection requirement for the publication of EAs; and
- (e) setting out the revised arrangements for obtaining consent of support for publishing the support in the EAs of a candidate.

*(III) Changes made in light of operational experience and/or suggestions/complaints received from past elections*

- (a) specifying the manner for the allocation of identified designated spots among the different constituencies, i.e. GCs, the DC (second) FC and other FCs and that no designated spot will be provided to a candidate who is returned uncontested;
- (b) strongly advising candidates and their election agents to strictly follow the guidance provided in the notes on personal data privacy in respect of electioneering activities (prepared by the Office of the Privacy Commissioner for Personal Data (“OPCPD”) at Appendix I to the proposed Guidelines) when conducting electioneering activities;
- (c) aligning the guidelines for election broadcasting, media reporting and election forums with those adopted in the Guidelines on Election-related

Activities in respect of the DC Election, the ECSS Elections and the CE Election published in September 2011, October 2011 and November 2011 respectively;

- (d) setting out the Transport Department's updated requirements for the display of EAs on public light buses and taxis;
- (e) 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 donations in accordance with section 37 of the ECICO; and
- (f) 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.

5.5 In accordance with the EACO and established practice, the EAC conducted a 30-day public consultation from 28 March to 26 April 2012. As in the past, the changes set out in paragraph 5.4 above were highlighted in a Message from the Chairman enclosed in the proposed Guidelines explaining the consultation mechanism, 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 20 April 2012 at the Leighton Hill Community Hall to receive oral representations. Five oral representations were received at the forum. The proposed Guidelines were also discussed by the LegCo

Panel on Constitutional Affairs on 16 April 2012 and the views of LegCo Members were taken into account in finalising the Guidelines. A total of 11 written representations were received through the public consultation exercise.

### **Section 3 – Changes after Public Consultation**

5.6 Having carefully considered all the representations received from the public and views of the LegCo Members and to reflect the latest relevant legislative amendments, the EAC made a number of changes to the proposed Guidelines. The major ones included:

- (a) setting out that EAs may be displayed on the windows of public light buses subject to the approval of the Transport Department and compliance with the conditions stipulated by it. The changes were made in response to representations calling for relaxation of the restrictions on the display of EAs on the windows and roofs of the public light buses;
- (b) setting out the gist of three complaint cases provided by the OPCPD for illustration purpose in Appendix J to the Guidelines to facilitate better understanding of the privacy concern of the electors and compliance with the requirement of the Personal Data (Privacy) Ordinance (Cap. 486); and
- (c) clarifying that the regulations, rules and guidelines in respect of civil servants' participation in electioneering activities issued by the Civil Services Bureau are equally applicable to the non-civil service contract

staff of the Government and that the guidelines on attendance of public functions by civil servants set out in the Guidelines are equally applicable to the non-civil service contract staff of the Government.

5.7 The EAC announced the publication of the finalised Guidelines by way of a press release. The Guidelines were made available for public access at the EAC's website from 15 June 2012 and for distribution at a number of venues, including District Offices and the REO on 11 July 2012. Each candidate of the election was provided with a copy of the Guidelines when he or she submitted the nomination form.

## CHAPTER 6

### APPOINTMENTS AND NOMINATIONS

#### Section 1 – Appointment of Nominations Advisory Committees

6.1 Four legal professionals were appointed as members of the Nominations Advisory Committees (“NACs”) under the EAC (NAC) (LC) Reg to provide the ROs and candidates with free legal advice on the eligibility of the candidates, in case they needed it. Members of the NACs, including Mr Wong Ching-yue, Senior Counsel, Mr Ho Bing-kwan, Mr Kevin Chan and Mr Lui Kit-ling, barristers-at-law, were experienced members of the legal profession and were not affiliated with any political organisations. Their appointment covered the period from 27 April 2012 to 2 August 2012 and was published in the Gazette on 27 April 2012. During their appointment period, the NACs received 15 requests from the Returning Officers (“ROs”) and candidates for legal advice.

#### Section 2 – Appointment of and Briefings for ROs

6.2 A total of five DOs of the HAD and 20 directorate officers of relevant policy bureaux and departments were appointed ROs of GCs and FCs respectively on 22 June 2012.

6.3 The EAC Chairman hosted a briefing session for all the ROs in the afternoon of 5 July 2012 at the Leighton Hill Community Hall. Also attending the briefing session were the Chief Electoral Officer (“CEO”)/REO and representatives

of the Department of Justice (“DoJ”), ICAC and Food and Environmental Hygiene Department. The EAC Chairman highlighted the major electoral arrangements for the ROs’ attention, including the nomination procedure, appointment of agents, polling and counting arrangements, matters relating to the No Canvassing Zone (“NCZ”) and No Staying Zone (“NSZ”), provisions in the legislation and the Guidelines governing EAs and election expenses, and handling of complaints. Representatives 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.

6.4 With the assistance from DoJ, another briefing was conducted on 27 August 2012 at the Central Library for the ROs and Assistant ROs (“AROs”) to acquaint them with the legislation relating to the ruling of questionable ballot papers. The opportunity had also been taken at this briefing to familiarise the ROs and AROs with the operation of the Central Counting Station (“CCS”) on the polling day. The REO also took the opportunity to brief the ROs/AROs on the contingency arrangements for the relocation of GC counting stations in case the count could not be completed by 6:00 am on 10 September 2012.

### **Section 3 – Appointment of Assistant ROs**

6.5 To provide assistance to the ROs, 114 AROs, who were senior officers of District Offices or relevant policy bureaux and departments, were appointed. For providing legal advice to the ROs and PROs during the count and determining the validity of questionable DC (second) FC ballot paper, 80 AROs (Legal) were also appointed. They were all legally qualified persons in the civil service, the majority

of whom came from the DoJ and the rest from the Land Registry and Legal Aid Department.

#### **Section 4 – Nomination of and Briefing for Candidates**

6.6 The validity of the nomination of candidates for GCs and FCs were governed by the LCO and the nomination procedure was set out in the EAC (EP) (LC) Reg.

6.7 Nomination commenced on 18 July 2012 and closed on 31 July 2012. This two-week period was gazetted on 22 June 2012. During this period, candidates were required to submit their nomination forms in person to the respective ROs.

6.8 According to section 39(1)(b) of the LCO (Cap. 542), a person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person has, in Hong Kong or any other place, been sentenced to death or imprisonment and has not either:

- (a) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
- (b) received a free pardon.

However, in two consolidated judicial review cases<sup>1</sup>, the Court of First Instance delivered oral and written judgment on 14 and 21 June 2012 respectively and declared section 39(1)(b) of the LCO unconstitutional. On 12 July 2012, the Administration announced its decision not to appeal against the judgment. In view of the above, the REO prepared an addendum to the nomination form to inform persons contemplating to run in the election of the above. Specifically, prospective candidates were reminded that any person who would like to be nominated as a candidate for the 2012 LegCo Election and is doubtful about his/her eligibility for nomination may seek independent legal advice, and may also apply to the NAC appointed by the EAC for advice in accordance with the electoral law.

### ***Geographical Constituencies***

6.9 By the close of nomination, a total of 72 lists of nomination were received. Out of them, 67 lists were confirmed valid by the ROs, three lists were withdrawn and two lists were ruled invalid. The two invalid lists composed of one person each. The 67 lists of validly nominated candidates for the five GCs were published in the Gazette on 7 August 2012.

### ***Functional Constituencies (other than District Council (second) functional constituency)***

6.10 By the close of nomination, a total of 58 nominations were received. Out

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<sup>1</sup> Wong Hin Wai v Secretary for Justice (HCAL 51/2012) and Leung Kwok Hung v Secretary for Justice (HCAL 54/2012). In both cases, the applicants had been convicted by a court of law and sentenced to imprisonment. Both appealed against the conviction and sentence, and were granted bail pending appeal. They challenged the constitutionality of the disqualification provisions of section 39(1)(b)(i) and section 39(1)(d) of the LCO by means of judicial review.



of them, 53 were confirmed valid by the ROs, three were withdrawn and two were ruled invalid. The names of the 53 validly nominated candidates for the 28 FCs were published in the Gazette on 7 August 2012. Of the candidates, 16 were returned uncontested in 14 FCs leaving 37 contesting in the remaining 14 FCs.

***District Council (second) functional constituency***

6.11 By the close of nomination, a total of seven lists of nomination were received. All the seven lists were ruled valid by the RO. The seven lists of validly nominated candidates for this FC were published in the Gazette on 7 August 2012.

6.12 The EAC Chairman held a briefing session on 3 August 2012 at the Kowloonbay International Trade and Exhibition Centre (“KITEC”) in Kowloon Bay to draw the attention of the candidates and their agents to the major provisions of the relevant electoral legislation and the Guidelines. Topics included polling and counting arrangements including that for the new DC (second) FC, requirements relating to EAs and election expenses, appointment and roles of the various types of agents, conduct of electioneering activities, the new arrangement for candidates to post joint promotional letters using the free-of-postage facility, the new measure to provide candidates with an option to send election mails on a “household” basis, 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.

6.13 The EAC Chairman reminded the candidates and their agents to abide by the requirements laid down in the electoral legislation and the Guidelines and to cooperate with the authorities concerned to ensure that the election would be conducted in an open, fair and honest manner. He stressed that the EAC and all the government departments concerned would strictly enforce the law and the Guidelines.

6.14 After the briefing session, the ROs drew lots to determine the order of the candidates' names that would appear on the ballot paper and the designated spots to be allocated to the candidates for displaying their EAs.

### **Section 5 – Introduction to Candidates**

6.15 The Introduction to Candidates showing the name, photograph, political platform and other details of each of the candidates was mailed to electors to facilitate their making an informed choice when casting their votes for particular candidates.

6.16 The Introduction to Candidates, together with the poll card, Guide on Voting Procedure, location map of the polling station, publicity leaflet on the “1-person-2-votes” arrangement and the ICAC leaflet on clean election were sent to each registered elector at least ten days before the polling day in accordance with section 31 of the EAC (EP) (LC) Reg.

6.17 To assist visually-impaired electors in reading candidates' election platforms, the REO had appealed to candidates to provide a soft-copy text version

of their messages to be included in the Introduction to Candidates for uploading onto the dedicated website of the 2012 LegCo Election (“election website”). About 90 % of the candidates heeded the advice and provided the REO with a soft copy of their messages. With the soft copy made available on the election website, visually-impaired electors could access candidates’ messages as contained in the Introduction to Candidates with the aid of a suitable reading device.

## CHAPTER 7

### POLLING AND COUNTING ARRANGEMENTS

#### Section 1 – Recruitment of Polling and Counting Staff

7.1 A service-wide recruitment exercise was launched to invite suitable serving civil servants from various government departments to serve as electoral staff. For the GC elections, the polling-cum-counting arrangement was adopted, and staff were recruited to take up both polling and counting duties. They also had to serve FC electors who went to the polling stations to cast both GC and FC votes. Since centralised counting was adopted for FCs, including the new DC (second) FC, counting staff had to be recruited for the counting of FC votes at the CCS.

7.2 Some 24,500 applications were received as opposed to about 21,000 applications in the 2011 DC Election and about 18,500 applications in the 2008 LegCo Election. Around 22,700 staff members of various government bureaux and departments were appointed PROs, Deputy PROs (“DPROs”), Assistant PROs (“APROs”), Polling Officers, Polling Assistants, Counting Supervisors (“CSs”), Assistant Counting Supervisors, Counting Officers and Counting Assistants on the polling day.

7.3 Those who were appointed PROs, DPROs and APROs were selected from senior government officers. Other junior polling staff were appointed from the ranks of junior government officers. To avoid any actual or perceived conflict of interests, they would not be deployed to work in the polling stations where they

would cast their votes. 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 GC concerned. This arrangement would help maintain the neutrality and independence of the electoral arrangements and avoid the perception of collusion which might compromise the integrity of the election.

7.4 Staff were deployed to the polling-cum-counting stations, taking into account the specific need of each polling station, the working experience of staff in previous elections and the locations of their residence.

## **Section 2 – Briefing for PROs**

7.5 Given the important role played by PROs and DPROs in the election, three management training sessions were conducted on 6 and 7 August 2012 at the KITEC to strengthen the quality of polling management of PROs and DPROs. Topics included important provisions of the EAC (EP) (LC) Reg, key to quality customer and polling service, crisis management and emotional quotient training. There was also a session in which experienced PROs were invited to share their experience.

## **Section 3 – Training for Polling and Counting Staff**

7.6 Fifteen training sessions were held from August to early September 2012 at the KITEC and 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. With the introduction of the DC (second) FC, most of the electors would have for the first time two votes to cast in the 2012 LegCo Election. In this regard, polling staff's particular attention was drawn to the new arrangement for issuing both GC and the DC (second) FC ballot papers to most of the electors. Polling staff tasked to perform statistical compilation duties were required to attend one additional workshop to provide them with hands-on exercises. A total of fifteen workshops were organised.

7.7 There were also general briefings for all staff of the DPSs and the BPSSs on the operation of these stations. Two training sessions for DPSs were conducted at the Wan Chai Activities Centre on 28 and 29 August 2012, while the one for BPSS was conducted at the same venue on 30 August 2012.

7.8 Nine briefing-cum-mock-counting sessions were held from 20 to 24 August 2012 at the Southorn Stadium to familiarise the counting staff recruited for counting FC (except the DC (second) FC) votes at the CCS with the counting procedures and to provide them with hands-on practice.

7.9 For the DC (second) FC, 11 training sessions were held from 13 to 31 August 2012 at the Southorn Stadium and the REO office at Caroline Hill Road to familiarise the counting staff recruited for counting the DC (second) FC votes at the CCS with the counting procedures and to provide them with hands-on practice. A set-up session cum site visit was also arranged for the counting staff to familiarise themselves with the operation of the CCS on 8 September 2012.

7.10 Considerable efforts were spent to improve and update the training materials. The materials were revamped to focus on enhancing electoral staff's understanding of their core duties and familiarising them with the relevant legislation. A training video for polling staff showing various scenarios on common problems encountered by polling staff at polling stations on the polling day was produced, with emphasis on the new polling and counting arrangements arising from the introduction of the DC (second) FC. In addition, six "warm reminders" were issued by email to all PROs, DPROs and APROs from 21 August 2012 running up to the election to refresh and strengthen their understanding of the polling and counting arrangements and to highlight some issues which merit special attention during the election.

#### **Section 4 – Identifying Venues as Stations**

7.11 The overriding principles in identifying venues to be used as polling stations were convenience and accessibility to electors, including electors with mobility difficulty. Another essential factor in the selection of venues was that they should be sufficiently spacious to cater for the number of electors. Where possible, venues which had been used previously as polling stations were selected for the election.

7.12 Successful procurement of a suitable venue depends on the willingness and co-operation of the owner or management of the venue and the availability of the venue on the polling day. In general, the process of identifying venues as polling stations went smoothly. The REO staff however had encountered difficulties in securing permission from some owners or management bodies of

private premises for using their venues. The majority of the reasons put forward for rejecting the REO's requests was that activities had already been scheduled for the polling day. In such cases, the REO would have to look for alternative venues. For the election, the REO managed to secure a total of 549 venues for use as polling stations.

## **Section 5 – Polling Arrangements**

7.13 Of the 549 venues, 11 were designated as small polling stations pursuant to section 28(1B) of the EAC (EP) (LC) Reg as they served an electorate of less than 500. These stations were used for polling only. 512 polling stations were accessible to electors with mobility difficulty, representing approximately 93% of the total number of polling stations, as compared with approximately 82% for the 2008 LegCo Election. These 512 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.

7.14 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 functions of a polling station for both GCs and FCs and a counting station for GCs. Voting compartments, ballot boxes and ballot paper issuing desks were provided in all polling stations. Except the 11 small polling stations with less than 500 registered electors and the 25 DPSs, all polling stations were converted into counting stations immediately after the close of the poll.



7.15 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 delineation of the NCZ and NSZ.

7.16 The staff manning the polling-cum-counting stations were required to work through the polling and counting hours. Their remuneration package was drawn up with reference to their respective duties and was tied to working hours. Where necessary, the staff would be compensated on an hourly basis for any work performed beyond their normal working hours.

### ***Polling Hours***

7.17 Same as the past general 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 penal institutions which had shorter polling hours as detailed in paragraph 7.22 below.

### ***Design of Ballot Papers and Ballot Boxes***

7.18 The design of ballot papers is basically provided in the law and same as in the 2008 LegCo Election, candidates were allowed to have certain specified particulars relating to them printed on the ballot papers in the 2012 LegCo Election. The design of the ballot paper for the DC (second) FC was similar to that of a GC ballot paper as the polling for both constituencies adopts the same “list system of proportional representation”. For the GCs, a list of candidates is assigned a number

and the number is printed on the ballot paper of the concerned constituency. As most of the GC electors were also registered electors for the DC (second) FC, it might be confusing to them when they cast their vote if the lists of candidates for both GCs and the DC (second) FC are referred to by the same numbering sequence starting from 1 and followed by 2, 3 and so on. To avoid confusion, a new numbering system for the lists of candidates for the DC (second) FC is adopted, with the number for the lists of candidates starting from 801 and followed by 802, 803 and so on.

7.19 With the increased number of LegCo Members to be returned by the GCs and as more candidates/list of candidates contested for the seats, the sizes of ballot papers of GCs unavoidably became larger with the maximum size measuring 440 by 488 mm, which was about 1.5 times of a A3 size paper. The large size ballot papers put pressure on the printing, production, checking, delivery, and issuance to electors by polling staff as well as the counting workflow. The operational difficulties arising from the handling of a large size ballot paper should be suitably addressed in future LegCo Elections.

7.20 With the introduction of the DC (second) FC, there was a new ballot box of white colour dedicated to receiving ballot papers cast for the constituency, in addition to the traditional blue boxes for GC ballot papers and red boxes for ballot papers of FCs other than the DC (second) FC. The back of the ballot papers was printed with patterns of the colours corresponding to that of their respective ballot boxes (e.g. the back of a GC ballot paper was printed with blue-colour 'tick' patterns and GC-code pattern to match the colour of its dedicated ballot box). This arrangement provided easy identification for electors to insert the ballot papers into

the correct ballot boxes and facilitated polling staff to monitor the vote casting process and provide assistance if necessary.

7.21 To ensure that sufficient ballot boxes would be provided to the polling stations, the REO had carefully and thoroughly tested the ballot boxes for use in the 2012 LegCo Election.

### ***Special Polling Arrangements for Imprisoned, Remanded and Detained electors***

#### ***Dedicated Polling Stations***

7.22 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 open for polling from 7:30 am to 10:30 pm as with other ordinary polling stations.

7.23 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 to avoid the use of sharp objects for security reasons.

7.24 The REO issued poll cards and other related electoral documents such

as the Introduction to Candidates to all imprisoned registered electors at their prison addresses. Mailing labels were provided to candidates upon request for mailing of EAs to this group of electors at prisons if the registered electors concerned had consented to provide prison addresses as their correspondence addresses for receiving EAs.

7.25 A BPSS was set up at Kowloon Park Sports Centre for the sorting of GC ballot papers cast at the DPSs at penal institutions according to each GC before they were delivered to the respective main counting stations for counting of votes. Three other BPSSs were set up at the REO office at Caroline Hill Road, Mei Foo Community Hall and the Toi Shan Association College for sorting of ballot papers cast at the DPSs in police stations according to each constituency before they were delivered to the respective main counting stations. The GC ballot papers were then mixed with those cast at the respective main counting stations before they were counted to preserve the secrecy of votes. The whole sorting process was open for observation by the public.

## **Section 6 – Counting Arrangements**

### ***Geographical Constituencies***

7.26 The “list system of proportional representations” was adopted for the GC elections as provided under the law. In the light of the past experience, the polling-cum-counting arrangement was adopted. This arrangement had proved to be effective in reducing the time and risk involved in the transportation of ballot boxes from the polling stations to counting stations.

7.27 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.

7.28 To ensure openness and transparency of the counting process, candidates, their election agents, polling agents and counting agents were allowed to stay in polling stations after the close of the poll to monitor the conversion of the polling stations into counting stations. Apart from the candidates themselves and their counting agents, members of the public and the media could also observe the counting process.

7.29 With the exception of the small polling stations and DPSs, all polling stations were immediately converted into counting stations after the close of the poll. Where there were two or more polling stations in the neighbourhood, with one of which being a small polling station, a station would be designated by the CEO/REO as the main counting station. Ballot papers cast at the small polling station were sent to the main counting station for counting.

7.30 At the commencement of the count, the PRO assumed the role of the counting supervisor. He was also responsible for determining the validity of questionable ballot papers.

7.31 Most of the polling-cum-counting stations were set up inside schools and premises which had to be returned to the venue management in the early morning on 10 September 2012. To cater for the event that the counting of GC votes could not be completed by 6:00 am on 10 September 2012, a total of 115 reserve counting stations had been identified for continuation of the counting process thereat. A detailed contingency plan had been drawn up in advance to cater for the scenario that electoral documents and equipment had to be transported from the counting stations that had to be handed back to the venue management to the designated reserve counting stations for the resumption of the counting process.

***Functional Constituencies other than District Council (second) Functional Constituency***

7.32 With the exception of the four special FCs: Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport for which the “preferential elimination system” was adopted, the “first past the post system” was applicable to the FC (other than the DC (second) FC) election. A centralised counting approach was adopted.

***District Council (second) Functional Constituency***

7.33 The “list system of proportional representations” was adopted for the DC (second) FC election. The REO carefully examined the option of counting the votes of the DC (second) FC in individual polling stations as for GC votes but did not consider it operationally viable. This was because of operational problems associated with the number of additional staff required if both GC and the DC

(second) FC votes were to be counted in the polling stations. More importantly, there was a need to return most of the polling stations (typically schools) to the venue management for normal business in the early morning of the following day. Therefore, as in the case for the other FCs, a centralised counting approach was adopted.

***Central Counting Station for Functional Constituencies including District Council (second) Functional Constituency***

7.34 All ballot boxes for FC (including the DC (second) FC) votes from different polling stations were transported to the CCS for counting after the close of the poll. The CCS was set up in the AsiaWorld-Expo (“AWE”) for counting of votes of the FCs including the DC (second) FC.

***Counting of votes for Functional Constituencies other than District Council (second) Functional Constituency***

7.35 Based on past experience, a number of measures were adopted to streamline and speed up the counting of votes for FCs for the 2012 LegCo Election. These measures included:

- (a) 32 unloading points were set up outside the AWE, with designated officers to guide the transportation of ballot boxes from the unloading area to the reception counters;

- (b) a total of 64 reception counters were set up to receive the ballot boxes and their accompanying documents. Ballot boxes thus received were stored temporarily at the Ballot Box Deposit Area before being transported to the counting zones;
- (c) a total of about 130 counting tables were deployed for opening ballot boxes. Once opened, the ballot papers contained therein would be sorted in accordance with the respective FCs. The sorted ballot papers were then delivered to the General Zone for distribution to the respective FC counting tables for counting; and
- (d) the ROs/AROs of uncontested FCs assisted in opening ballot boxes and sorting the ballot papers of contested FCs.

***Counting of votes for District Council (second) Functional Constituency***

7.36 The arrangement for reception of ballot boxes containing the DC (second) FC votes was similar to that for the other FCs. In view of the large number of votes for the DC (second) FC, special arrangements were adopted to speed up the counting process:

- (a) to set up about 540 sets of counting tables in the designated counting zone for the DC (second) FC, each dedicated to receiving and handling the ballot boxes from one polling station. This arrangement could avoid bottlenecking when ballot boxes lined up for allocation of counting tables. In addition, 12 allocation counters were set up and all were



connected with a computerized system specially designed to allow speedy allocation of counting tables;

- (b) staff were redeployed from other units upon completion of other tasks to strengthen the manpower of the counting staff for the DC (second) FC;
- (c) making use of all available space of the venue, a total of 54 tables were set up for determination the validity of questionable ballot papers; and
- (d) to match the deployment of the 54 tables in (c) above, a sufficient number of AROs were appointed for the DC (second) FC to assist the RO to discharge statutory duty to determine the validity of questionable ballot papers and decide whether or not to count a vote under delegated authority.

### **Section 7 – The Fast Response Team (“FRT”)**

7.37 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.

7.38 The FRT comprised seven members. Polling stations in each of the five GCs would be taken care of by at least one member of the FRT. 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 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 make recommendations on the follow-up actions. The FRT was also required to handle emergency cases relating to polling stations as directed by the CCC.

### **Section 8 – Contingency Measures**

7.39 The following arrangements were planned or 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 CCC and Statistical Information Centre (“SIC”) in Rumsey Street Multi-Storey Carpark Building to compile statistical returns collected from polling/counting stations;

- (e) setting up a fall back venue in KITEC for the central counting of FC votes including the DC (second) FC in case the AWE has been rendered inoperable by unexpected events; and
- (f) preparation of public announcement notices in the event that any of the contingency arrangements as set out in paragraphs 7.39 (a), (b) or (c) above had to be implemented.

## **Section 9 – Release of Counting Results**

7.40 Following the practice adopted in the 2008 LegCo Election, the REO posted up the counting results of GC votes and the newly added DC (second) FC votes for each polling station on the Counting Results Display Panels in the Media Centre. Besides, to enhance the transparency and dissemination of counting information, the progress of the count of each FC, the interim counting results for individual GCs and the DC (second) FC and the final election results of the five GCs and all FCs were displayed on two sets of on-site display screens and plasma TVs set up in the CCS and in the Media Centre. The interim counting results and election results were also uploaded onto the election website for public information on a real-time basis. The press and the media were briefed on the above arrangements before the poll.

## **CHAPTER 8**

### **PUBLICITY**

#### **Section 1 – An Introductory Note**

8.1 Publicity is an important element in any election. It arouses the awareness of the public and appeals to them to actively participate in the election by registering as electors, seeking candidature or casting their votes on the polling day. It also serves to disseminate the relevant information to candidates and electors efficiently and to remind electors to vote on the polling day. In the 2012 LegCo Election, the EAC and government departments concerned contributed much to the publicity of the election and particular emphasis was given to the introduction of the DC (second) FC and the related changes in polling procedures.

8.2 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**

8.3 A kick-off ceremony of the Voter Turnout Publicity Campaign for the 2012 LegCo Election was organised by the RTHK on 21 July 2012. The objectives of the Campaign were to promote general awareness of the 2012 LegCo Election and to call upon registered electors to vote. It also encouraged nominations of candidates, publicised the electoral procedures particularly for the DC (second) FC,

promoted clean and fair election, and encouraged electors to vote on the polling day.

8.4 On 3 August 2012, the EAC Chairman conducted a briefing for the candidates at the KITEC. The event received wide coverage by the media.

8.5 Four mock polling stations, set up at the Leighton Hill Community Hall, Mei Foo Community Hall, Tuen Mun Town Hall and Tai Po Community Centre, were open to help electors familiarise themselves with the station set up and voting procedures. In view of the new polling arrangements arising from the introduction of the DC (second) FC, the operating period of these mock polling stations was extended compared with the period for the 2008 LegCo Election. The mock polling stations at the Tuen Mun Town Hall and Tai Po Community Centre were open from 5 to 8 September 2012 and those at the Leighton Hill Community Hall and Mei Foo Community Hall were open from 3 to 8 September 2012. Their opening hours ran from noon to 8:00 pm. The EAC Chairman met the media on 2 September 2012 to introduce the arrangements of the 2012 LegCo Election and demonstrate the voting procedures at the Mei Foo Community Hall. The mock polling stations were well received by members of the public.

8.6 On the eve of the polling day, the EAC Chairman visited the CCS at the AWE to inspect the preparatory work and met the media at a stand-up session. On the polling day, the EAC Chairman and the two EAC Members met the media and updated them with the progress of the election at various intervals. The EAC Chairman also took the opportunity to explain once again the polling procedure for the DC (second) FC.

8.7 The EAC Chairman appeared on a TV programme in early September 2012 to drive home messages on the new DC (second) FC, the “1-person-2-votes” arrangement and the relevant voting procedures.

8.8 In addition, staff of the REO also attended a number of meetings and briefings to explain electoral arrangements to various bodies. Briefing sessions were held for Mutual Aid Committees, Owners’ Corporations and management companies of buildings to enhance their understanding of how applications for electioneering activities by candidates should be fairly handled. These briefings were well received and the audience participated actively during the Question-and-Answer sessions.

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

### **Section 3 – Publicity by Other Government Departments**

8.10 The Administration, with a budget of \$33 million, launched a seven-week Voter Turnout Publicity Campaign from 21 July 2012 to the polling day on 9 September 2012. The publicity programme was coordinated by an inter-departmental working group chaired by the CMAB and with the participation of the HAD, ISD, ICAC, RTHK and REO. 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, radio, outdoor video walls, video platform on public transport and the Internet, special radio programmes, posters, banners, billboards, lamppost buntings, vantage points

advertising, newspaper and Internet advertisements, parades, smartphone applications, production of souvenirs and election messages on public utility bills.

8.11 As more than 3.2 million electors would have for the first time two votes to cast in the LegCo Election – one for a GC and one for the new DC (second) FC, a set of TV and radio APIs was launched on 30 July 2012 to explain the “1-person-2-votes” arrangement. It was complemented by another set of TV and radio APIs launched on 13 August 2012 to feature the voting procedures for the GCs and the DC (second) FC. A publicity leaflet and poster on the “1-person-2-votes” arrangement were produced and the leaflet was posted to all registered electors together with the poll card. Several press releases introducing various electoral arrangements were also issued. These publicity materials, together with relevant polling information, were also uploaded onto the election website for public viewing. Newspaper advertisements on the “1-person-2-votes” arrangement were placed nearer the polling day to give a further boost to the publicity.

8.12 Apart from the publicity measures mentioned in paragraphs 8.10 and 8.11 above, APIs were produced to remind electors to follow the proper voting procedures to protect voting secrecy and the disabled electors to apply in time for re-allocation to another polling station if the designated polling station was not accessible to them. To provide electors of ethnic minorities with information on the election and the voting procedures, election briefs and voting procedures in six ethnic minority languages were uploaded onto the election website. Similar information, posters and publicity leaflets were also sent to six support centres for ethnic minorities to enhance their awareness of the election. Key electoral information was also broadcast in ethnic minority languages on radio.

8.13 The Secretary for Constitutional and Mainland Affairs met the media on 6 September 2012 at the Leighton Hill Community Hall to explain and demonstrate the voting procedures. Representatives of the CMAB and REO were interviewed on TV and radio programmes in order to enhance the understanding of the public of the new DC (second) FC, “1-person-2-votes” arrangement and related voting procedures.

8.14 The RTHK organised election forums for both GC and FC (including the DC (second) FC) elections, which were broadcast on the TV and radio and could be viewed/listened on the RTHK website. The RTHK also produced a smartphone application for the promotion of the election.

8.15 The ISD launched the election website as mentioned in paragraphs 8.11 and 8.12 above to facilitate public access to information related to the election.

8.16 To promote the importance of clean election, the ICAC launched a “Support Clean Elections” educational and publicity programme for the 2012 LegCo 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 on anti vote-rigging and voting guidelines were produced and distributed to electors with the assistance of the REO;
- (d) feature articles on clean elections were published in the newsletters and journals of various government departments, public bodies, district organisations, professional bodies and chambers of commerce;
- (e) new TV and radio APIs on the theme of “Vote for a clean election. Vote for a better Hong Kong” were launched and related posters were displayed at government offices, public bodies, mass transportation, etc.;
- (f) press feature articles, TV and radio programmes were produced to remind candidates and electors of the need to abide by the ECICO;
- (g) 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;
- (h) a dedicated website with all the educational and publicity materials was launched;
- (i) an Election Enquiry Hotline was set up to answer public enquiries on the ECICO and the ICAC’s educational and publicity activities on clean elections; and

- (j) a series of mobile vehicle exhibitions were arranged to disseminate clean election messages.

## **PART THREE**

### **ON THE POLLING DAY**

## CHAPTER 9

### CENTRAL SUPPORT

#### Section 1 – The Central Command Centre (“CCC”)

9.1 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 Enquiry Hotlines 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 the direct supervision of the CEO who was deputised by the Principal Electoral Officer (“PEO”). This command structure had significantly enhanced the ability of the CCC in responding swiftly to problems associated with the election on the polling day.

9.2 The CCC comprised a Command Desk, eight Helpdesks and Enquiry Hotlines. The Command Desk was tasked with overseeing the overall conduct of the poll. The Helpdesks handled enquiries about electoral matters made by the polling staff. The Enquiry Hotlines dealt with enquiries about the poll from members of the public and LEAs and provided assistance to visually-impaired electors in apprehending the contents of the Introduction to Candidates. The centre was also equipped with an Incident Logging System for parties concerned to share information on and keep track of major incidents.

9.3 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*

9.4 A SIC was set up each at the CCC at the REO office on Caroline Hill Road and the Central Counting Station (“CCS”). The SIC at the CCC was responsible for compiling and collating the hourly voter turnout statistics for both GCs and FCs, as well as the counting results for the GCs. All the polling stations were required to submit their hourly voter turnout figures and GC counting results to the SIC by fax. The SIC at the CCS was responsible for consolidating the counting results for the FCs including the DC (second) FC collected from the CCS. Based on the information received, the SIC collated and released the statistics to the public through regular press releases and the election website. The collection and compilation of the hourly voter turnout statistics and the counting results were, in general, smoothly conducted on the polling day.

9.5 A total of 303 telephone lines and 196 fax lines were set up for the SIC and Helpdesks at the CCC to support the collection of voter turnout statistics and handling of enquiries from polling stations. The provision of telephone and fax line services had been awarded to a contractor after seeking quotations from the market in accordance with standard procurement procedures and the system had undergone a series of on-site tests before the polling day. At about 7:15 am on the polling day, there were reports from some of the Helpdesks and the SIC units about sporadic difficulties encountered in using telephone and fax lines. The REO

immediately alerted the on-site staff of the contractor to look into the matter. According to the contractor's initial check, the problem was suspected to be attributable to simultaneous outgoing call attempts generated by a large group of users within a very short period of time. Despite the remedial action taken by the contractor, the situation persisted for some time and even worsened at some stages. The incident was later escalated to a senior level for speedy resolution. The system gradually resumed normal operation at around 11:00 am after the contractor had replaced a processor card, reset the system and reloaded all affected lines. During the period, operators at the SIC and the Helpdesks had to resort to their mobile phones and the fax lines available on the other floors of the same building for communication. The incident had resulted in a delay in the handling of enquiries from polling stations and the compilation and publication of voter turnout statistics.

9.6 With the professional support of the Office of Communications Authority ("OFCA"), the REO has been working with the contractor to identify the technical issues leading to the system breakdown and possible enhancement and preventive measures. The REO will carefully review the experience and the relevant service specifications with a view to avoiding recurrence in future elections.

## **Section 2 – The Complaints Centre**

9.7 A Complaints Centre ("CC") was set up at the REO office in Harbour Centre to receive and process election-related complaints lodged with the EAC direct from the public by phone, by fax or through e-mail, and cases referred to the EAC by other complaints-handling parties. It was manned by staff of the EAC Secretariat and operated from 7:30 am to 11:00 pm. Details of the complaints handled are set out in Chapter 13.

## CHAPTER 10

### THE POLL

#### Section 1 – General

10.1 On the polling day, 549 polling stations, of which 512 (93%) were accessible to electors with mobility difficulty, were open 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 other LEAs 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 smoothly and efficiently conducted.

10.2 On electors' turnout, for GCs, a total of 1,838,722 electors were recorded to have turned up at their respective stations to cast their votes, which represented 53.05% of the electorate.

10.3 For the 14 contested FCs (other than the DC (second) FC), a total of 151,124 electors cast their votes for the contested constituencies, amounting to 69.65 % of the electorate of these FCs.

10.4 For the new DC (second) FC, a total of 1,672,793 electors were recorded to have turned up at their respective stations to cast their votes, which represented 51.95% of the electorate.

10.5 A breakdown of the turnout rate by constituency for this election is shown at **Appendix V**.

10.6 On the polling day, the FRT visited 158 polling stations in the 18 districts. Special visits were made to polling stations as directed by the CCC, as and when necessary, to assist in resolving difficulties on the spot and to offer advice to the PROs.

## **Section 2 – Exit Poll**

10.7 A total of five 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 15 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, all the five applications were approved. These organisations were all required to sign an undertaking not to release the results of the exit polls before the close of poll to:

- (a) any candidates contesting in any constituencies covered by the exit polls;
- (b) any persons or organisations which had publicly expressed support for any candidates or candidate lists contesting in any constituencies covered by the exit polls; and



- (c) any organisations with member(s) contesting in any constituencies covered by the exit polls.

The list of these five organisations approved for conducting exit polls was uploaded to the election website on 5 September 2012 and was also displayed in a prominent place outside the relevant polling stations for public inspection.

## **CHAPTER 11**

### **THE COUNT**

#### **Section 1 – Geographical Constituencies**

11.1 The polling-cum-counting arrangement was adopted for this election. All polling stations, with the exception of 11 small polling stations with less than 500 registered electors and the DPSs, were converted into counting stations immediately after the close of the poll for the counting of GC votes cast in the polling stations. FC (including the DC (second) FC) votes were conveyed to the CCS for counting.

11.2 To ensure openness and transparency of the counting process, candidates, their election agents, polling agents and counting agents were allowed to stay to observe the conversion of the polling stations into counting stations for GCs. The time of the conversion process varied from station to station, and the average time was about one hour. The EAC considers that the time taken was acceptable in view of the fact that polling staff were busily engaged in reckoning the statistics on the ballot for not only GCs but also the various FCs including the DC (second) FC at the close of the poll, apart from the physical conversion of the polling stations. Candidates, their agents, members of the public and the media were allowed to stay inside the stations after the conversion to observe the count.

11.3 While the ballot boxes containing the GC ballot papers cast at the 11 small polling stations were directly conveyed to and counted at their respective

main counting stations, the ballot boxes containing GC ballot papers cast at the DPSs were sent to the relevant BPSSs for sorting according to each GC 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 cast at the main counting stations before they were counted, in order to preserve the secrecy of the votes.

11.4 As in the past general elections and by-elections, invalid ballot papers as defined under section 80 of the EAC (EP) (LC) 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. A summary of invalid and rejected questionable ballot papers that were not counted is at **Appendix VI**. A summary of spoilt and unused ballot papers is at **Appendix VII(A)**.

11.5 During the count, ROs of GCs stationed at the CCS oversaw the count at the counting stations of their respective GCs, with the assistance of AROs (Legal). At the beginning of the count, the GC ballot boxes would be emptied and any misplaced FC ballot papers would first be sorted out. These ballot papers were put in sealed receptacles and delivered to the respective RO(FC)s at the CCS. A total of 163 misplaced ballot papers for the DC (second) FC and 1 for one other FC were found inside the GC ballot boxes. When the counting at a polling station was completed, the PRO made known the counting results to candidates or their agents present at the polling station. The candidates or their agents were then given the

opportunity to request a recount of votes. When there was no request for a re-count, the PRO reported the counting result to the SIC by fax. When the counting results of all counting stations in a GC (including GC ballot papers misplaced in FC ballot boxes counted at the CCS) were available, the SIC informed the RO concerned of the consolidated counting result of all counting stations. The RO then made known the consolidated counting results to the candidates and/or their agents present at the Media Centre who were given the opportunity to request a recount of votes for all the counting stations of that GC. As there was no request for re-count, the ROs formally announced the election results.

11.6 As a measure to enhance election transparency and to facilitate timely dissemination of interim statistics, the counting results of GC and the DC (second) FC at individual counting stations were updated once confirmed and the accumulated valid votes obtained by each candidate list were displayed on the on-site display screens set up in the CCS and the Media Centre for reference of the candidates, the media and the public. As compared with the last LegCo Election in 2008 in which interim counting results were released only twice, this new measure was a great leap forward in terms of both transparency and efficiency as it provided the candidates, the media and the public with an instant update on the interim counting results of each candidate list and the overall progress of the count of each GC and the DC (second) FC. For those members of the public who were not in the CCS and the Media Centre, they could visit the election website for the same counting information.

11.7 The counting results for all GCs were declared between 6:25 am and 8:00 am on 10 September 2012. When compared to the 2008 LegCo Election in

which the GC counting results were declared by around 6:40 am, there appeared to be a delay but this was understandable given the obviously higher voter turnout this round, the need to await the sorting of GC ballot papers misplaced in the large number of DC (second) FC ballot boxes and the much more complex operational procedures of the CCS due to the addition of the DC (second) FC.

11.8 The election results for GCs were gazetted on 14 September 2012 and are now re-produced at **Appendix VIII** for easy reference.

## **Section 2 – Functional Constituencies (other than District Council (second) Functional Constituency)**

11.9 The counting of votes for the 14 contested FCs was held centrally at the CCS. In the CCS, areas were designated for candidates, their agents, the media and members of the public to observe the count. A RO was designated as the Chief RO to supervise the overall operation of the CCS.

11.10 At the CCS, all FC ballot boxes were delivered to and opened by the ROs or AROs at the counting zones. The ballot papers were sorted by the counting staff in accordance with the respective FCs. The sorted ballot papers were then sealed and delivered to the designated General Zone which served as a central clearing house. Staff of each FC counting zone collected the sorted ballot papers of the respective FC from the General Zone and then took them to the counting tables for mixing before they were counted. To preserve the secrecy of the votes, the ballot papers were arranged to face downwards during the sorting process.

11.11 Any misplaced GC ballot papers identified were also sealed and delivered to the General Zone. The misplaced GC ballot papers of the same GCs were grouped together before they were handed over to the respective RO(GC)s. A total of 1 misplaced GC ballot paper and 79 misplaced DC (second) FC ballot papers were found in the FC ballot boxes.

11.12 The respective RO was responsible for determining the validity of questionable ballot papers identified by counting staff during the counting process. A summary of the invalid and rejected questionable ballot papers not counted for FCs is at **Appendix IX(A)**. A summary of spoilt and unused ballot papers is at **Appendix VII(B)**. The results of all segment counts were then added up to produce the overall result of each FC.

11.13 The counting results for individual FCs were declared from about 9:25 am to around 10:55 am on 10 September 2012. While the completion time was later than that in the 2008 LegCo Election by about three hours, it was something within expectation given the higher voter turnout in FCs this time and the much larger volume of logistics required for the operation of the CCS due to the addition of the DC (second) FC.

11.14 The election results of the 14 contested FCs were published in the Gazette on 14 September 2012. All the election results of the FCs (other than DC (second) FC)) are re-produced at **Appendix X(A)** for easy reference.

### **Section 3 – District Council (second) Functional Constituency**

11.15 The counting of the DC (second) FC votes was also conducted centrally at a counting zone designated in the CCS. There were also areas designated for the candidates, their agents, the media and members of the public to observe the count.

11.16 At the CCS, the DC (second) FC ballot box(es) of each polling station were delivered to and opened by the RO or AROs at counting tables. To preserve the secrecy of votes, the ballot papers were kept facing downwards when sorting out the misplaced GC and FC ballot papers (i.e. other than the DC (second) FC ballot papers). After taking out the misplaced GC and FC ballot papers, the DC (second) FC ballot papers were sorted by the counting staff according to each list of candidates before they were counted.

11.17 Any misplaced GC or FC ballot papers identified were sealed and delivered to the FC counting zones or the counting zones for misplaced GC ballot papers in the CCS as appropriate. In total, there were 228 misplaced GC ballot papers and 54 misplaced FC ballot papers found in the DC (second) FC ballot boxes.

11.18 Because of the vast number of votes involved and the need to speed up the counting process, the RO for the DC (second) FC had delegated the power to designated AROs to determine the validity of questionable ballot papers identified by counting staff during the process and to decide whether or not to count a vote under the law. A total of 54 tables were set up in the DC (second) FC counting zone for the determination of the validity of questionable ballot papers. A summary

of the invalid and rejected questionable ballot papers not counted for the DC (second) FC is at **Appendix IX(B)**. A summary of spoilt and unused ballot papers is at **Appendix VII(C)**.

11.19 The counting results for the DC (second) FC were declared at around 1:45 pm on 10 September 2012.

11.20 The election result of the DC (second) FC was published in the Gazette on 14 September 2012. The election result of the DC (second) FC is re-produced at **Appendix X(B)** for easy reference.



## **CHAPTER 12**

### **EAC VISITS**

12.1 On the polling day, the Chairman and two Members of the EAC paid visits to some polling stations to observe what was happening on the spot and closely monitored the progress of the poll. Each of them had his individual itinerary throughout the day. They covered a total of 18 ordinary polling stations across the 18 districts and four DPSs. The EAC Chairman and Members first cast their votes at their designated polling stations before they visited polling stations in different districts respectively. They met at the polling station at the Hong Kong Park Sports Centre and the BPSS at the Kowloon Park Sports Centre at about 10:45 am and 5:30 pm respectively to meet and brief the media on the latest election statistics.

12.2 The Chairman and Members of the EAC and the Secretary for Constitutional and Mainland Affairs accompanied the CE to open and empty the first DC (second) FC ballot box at the CCS around 12:40 am on 10 September 2012. The Chairman and Members of the EAC then met the media to brief them on the completion of the poll and the overall voter turnout. After the completion of counting of votes, the Chairman and Members of the EAC met the media again at about 1:50 pm on 10 September 2012 at the CCS to conclude the election. The EAC considered that the poll and the count of the election was generally smooth and that the election was organised and concluded in an open, fair and honest manner.

## **PART FOUR**

# **VOICES FROM THE PUBLIC**

## **CHAPTER 13**

### **COMPLAINTS**

#### **Section 1 – A General View**

13.1 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 some areas of the electoral arrangements and helped the EAC to bring about better arrangements for future elections.

13.2 The complaints-handling mechanism 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**

13.3 For the 2012 LegCo Election, the complaints-handling period started on 18 July 2012 when the nomination period commenced, and ended on 24 October 2012, i.e. 45 days after the polling day under the Guidelines on election-related activities in respect of the LegCo Election.

### **Section 3 – The Complaints-handling Parties**

13.4 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;
- (b) the Police handled cases that involved possible criminal liability, breaches of the EAC (EP) (LC) 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 received at the polling stations on the

polling day and took action on the spot on those cases which required immediate attention e.g. use of sound amplifying devices in the vicinity of the station, unlawful activities carried out in the NCZ or NSZ, etc.

#### **Section 4 – Number and Nature of Complaints**

13.5 By the end of the complaints-handling period on 24 October 2012, a total of 11,799 cases were received :

<u>Complaints-handling Party</u>	<u>No. of Complaints Received</u>
CCm	6,854
ROs	2,527
Police	1,483
ICAC	130
PROs	<u>805</u>
	Total: 11,799

The majority of the complaints concerned corruption/bribery/treating/undue influence/impersonation (5,257 cases), EAs (2,806 cases) and disturbances to electors caused by canvassing activities (1,106 cases). As compared with the past public elections conducted and supervised by the EAC, the 2012 LegCo Election recorded the largest number of complaints received by all complaints-handling parties. It is however worth noting that, out of the total of 11,799 complaints, about 5,000 complaints were related to very similar allegations of engagement in suspected corrupt conduct to bribe electors in the election received by the EAC during the complaints-handling period (please also see paragraph 13.16 below). A detailed breakdown of the complaints by the receiving party and nature of

complaints is shown on **Appendices XI (A)–(F)**. Certain categories of cases, which deserve special attention are detailed in Section 7 below.

### **Section 5 – Complaints on the Polling Day**

13.6 On the polling day, as mentioned in paragraph 9.7, a CC was set up in the REO office in 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 and handled complaints on the spot at the polling/ counting stations.

13.7 The CCm, ROs and PROs received 2,200 complaint cases. Cases involving on-the-spot incidents (e.g. illegal canvassing in NCZs, noise nuisance 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, where appropriate, referred immediately to the relevant authority for action.

13.8 Of the total of 2,200 complaints handled by the CCm, ROs and PROs on the polling day, 1,505 (68.4 %) were satisfactorily resolved on the same day.

13.9 The CC handled a total of 464 complaints on the polling day. 122 of these cases were resolved on the polling day. The remaining 342 complaints required further investigation.

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

## **Section 6 – The Outcome of Investigations**

13.11 As at 24 October 2012 (when the complaints-handling period ended), of the 7,407 cases handled by the CCm, 256 were found substantiated or partially substantiated. Of the 3,844 cases handled by the ROs, 1,889 were found substantiated or partially substantiated. A total of 1,251 warning letters had been issued to the infringing parties. There were still 1,493 cases under investigation by CCm and ROs.

### Censure

13.12 On 7 September 2012, the EAC publicly censured Ms Peck Wan-kam Pamela, a candidate contesting the DC (second) FC of the LegCo Election for breaching the guidelines set out in the paragraph 8.11 of the Guidelines that a candidate must ensure the correctness and accuracy of all factual statements in her EAs and her failure to earnestly correct her mistake within a reasonable period of time. In late August 2012, the RO of the DC (second) FC reported to the EAC that numerous complaints had been received against Ms Peck about the misstatement of her candidate number in a large number of her EAs. Ms Peck was in the election allocated the candidate number “803” but the number was misstated as “3” in the EAs concerned. This had allegedly misled or caused confusion to electors. The complaints were found substantiated upon investigation by the RO. However, despite the repeated requests of the RO and a serious warning issued against Ms

Peck on 28 August 2012, the problem persisted.

13.13 According to the outcome of a round of site inspections conducted in the territory by the RO staff on 31 August 2012 (which was only about one week before the polling day), it was found that there were still over 120 EAs of Ms Peck which continued to bear the wrong candidate number and had yet to be rectified. It was evident that Ms Peck had failed to take serious heed of the requests and warning of the RO to rectify the mistake about her candidate number within a reasonable period of time. After careful consideration of the RO's investigation result of the complaints and the representation submitted by Ms Peck, the EAC considered the incident a blatant breach of the guidelines set out in paragraph 8.11 of the Guidelines and that Ms Peck's explanations were not sufficiently convincing to exculpate her. The EAC considered her attitude regrettable and, therefore, publicly censured Ms Peck on 7 September 2012. The details of the case are set out in the EAC's censure statement against Ms Peck at **Appendix XIII**.

#### Police and ICAC

13.14 The Police handled 1,709 cases. After investigation, 112 were substantiated. The ICAC handled 162 cases and none was found substantiated. There were still 451 cases under investigation by these two parties.

13.15 A breakdown of the outcome of investigations as at 24 October 2012 is detailed in **Appendices XIV (A)–(D)**.



## **Section 7 – Complaints Deserving Special Attention**

### *Complaints about suspected corrupt conduct to bribe electors*

13.16 As mentioned in paragraph 13.5 above, there were about 5,000 complaints relating to very similar allegations of engagement in corrupt conduct to bribe electors in the election received by the EAC during the complaints-handling period. Most of the complaints were lodged in light of some media reports alleging that:

- (a) supporters of a candidate offered free transportation for taking some elderly electors to the polling stations. That candidate's EA was displayed inside the vehicle(s) concerned and the electors were taught how to cast their votes;
- (b) some elderly electors were taken to the polling stations to cast their votes by free transportation and it was found that a label showing two numbers, which were believed to be the candidate numbers of two candidates, was seen affixed to the palm of one of these electors; and
- (c) some electors were offered an advantage as an inducement for them to cast their votes for particular candidates.

The complainants alleged that the electors mentioned in (a) and (c) above had cast their votes after accepting an advantage while the electors in (b) might be manipulated by other persons to cast their votes. As the allegations involve

possible breach of the ECICO which is enforced by the ICAC, the complaints have been referred to the ICAC for investigation with consent to referral of the complainants concerned. It is worth noting that the number of complaints that could eventually be referred to the ICAC with the complainant's consent represents a small percentage of the total number.

### ***Complaints about EAs***

13.17 A large number of complaints about EAs were received during the complaints-handling period (2,806 cases). The majority of these cases are related to unauthorised display of EAs on locations without obtaining the prior permission of owners/occupiers concerned. These complaints were also mostly lodged on the polling day. The EAC notes that many of the aforesaid EAs were vertical flags erected by candidates along roadside railings to catch the attention of passers-by.

13.18 The existing Guidelines have set out the detailed guidelines which candidates are required to observe. Candidates were further reminded of the need to strictly abide by the requirements laid down in the electoral legislation and the Guidelines when conducting electioneering activities at the briefing session for candidates held on 3 August 2012. Candidates were further reminded in the "Conditions for Display of Election Advertisements", which was distributed to them when they submitted their nomination forms, that vertical flags were prohibited from being displayed at or near railings and fences. The prohibition was imposed for traffic safety reasons. The ROs had been tasked with the handling of the aforesaid complaints. For substantiated cases, the ROs had issued a warning letter to each of the candidates and referred those cases involving possible breaches

of the relevant legislation to the relevant law enforcement agencies for investigation after obtaining the complainants' consent to the referral action.

13.19 While it is understandable that the competition among candidates of the 2012 LegCo Election was keen and that candidates generally considered displaying EAs in places frequented by electors a very effective electioneering strategy, it was the unshirkable responsibility of the candidates to comply fully with all relevant requirements as stipulated in the relevant legislation and the Guidelines before displaying their EAs. Despite the guidance provided in the Guidelines and the reminders mentioned in paragraph 13.18 above, the prevalence of complaints about unauthorised display of EAs in the 2012 LegCo Election shows that many candidates failed to pay serious attention to the need to observe the aforesaid requirements at all time. It is also noted that some candidates failed repeatedly to comply with such requirements. The problem is not a simple one and there are many facets to it. On one hand, there is a need to allow sufficient room for candidates to promote themselves in elections with the use of EAs erected in public and private places. On the other, traffic or road safety and the implications for enforcement or prosecution would need to be weighed carefully. To address the situation, the EAC sees the need for a comprehensive review, in conjunction with all relevant bureaux and departments, of the existing regime to regulate the display of roadside EAs and the establishment of a more effective mechanism against offenders.

13.20 It is noteworthy that the large number of complaints about EAs received in the 2012 LegCo Election had unavoidably put immense pressure and heavy workload on the ROs and their staff in handling these cases and coordinating the

removal of the unauthorised EAs. The EAC fully appreciates the strenuous efforts made by the ROs and their staff in handling such complaints.

***Complaints relating to tendered ballot papers***

13.21 The EAC has received about 70 complaints about the issue of tendered ballot papers. The complainants were dissatisfied that when they tried to claim their ballot papers at their assigned polling stations, they were told that someone else had earlier been issued with ballot papers using the same identity of the complainants.

13.22 In accordance with section 53 of the EAC (EP) (LC) Reg, in a LegCo election, immediately before issuing a ballot paper, the PRO must place a line in the copy of the final register across the name and identity document number of the elector to denote that the ballot papers which the person is entitled to at that polling station have been so issued. Moreover, section 60 of the EAC (EP) (LC) Reg states that if a person representing himself or herself to be a particular elector applies for a ballot paper after that particular elector has been issued with a ballot paper (i.e. a line has been placed in the register across the name and identity document number of the elector), the PRO may issue a ballot paper endorsed on the front of it with the words “重複” and "TENDERED" to that person. These ballot papers will not be regarded as valid in vote counting. The PROs have to act in strict accordance with the above Regulation when handling requests for issue of ballot papers where the name and identity document number of an elector have already been crossed out in the register of electors.

13.23 As a standard practice, before every election, the REO would through training remind electoral staff working at the issuing desk that they should act according to the Regulation and exercise due care in crossing out the name and identity document number of an elector in the register after checking his or her identity. The REO also requires that when crossing out an entry in the register, it should be double-checked by another electoral staff to ensure that the correct entry was crossed out.

13.24 When handling the complaints, the EAC would take into account the investigation results of the REO and the statements taken from the electoral staff concerned. Where there are suspicious circumstances, the EAC would refer them to LEAs for investigation. Given the nature of the secret ballot and in the absence of independent evidence, it is almost impossible to ascertain the causes. In general, given the nature of such incidents, there could be three possible causes:

- (a) there might be an impersonator applying for a ballot paper in the name of the elector concerned;
- (b) an elector might attempt to claim a ballot paper in his or her own name again after having cast a vote earlier; or
- (c) the electoral staff at the issuing desk might have inadvertently crossed out a wrong entry in the register.

The EAC had completed the investigation of most of the complaints which had not revealed circumstances requiring further follow-up action. Nevertheless, the EAC

considers that the REO should continue to enhance the training for the electoral staff to ensure that they carry out their duties with adequate prudence and in accordance with the law in future elections.

### ***Complaints about voter registration***

13.25 A number of complaints was received on the polling day from persons claiming that they were registered electors, but were found not entitled to vote at the 2012 LegCo Election as their names had not been included in the 2012 Final Register of Electors (“FR”).

13.26 The EAC had completed the investigation of most of the complaints and it was found that inquiry letters had been issued by the ERO to the complainants in accordance with the electoral law following completion of a series of enhanced checks conducted to maintain the integrity of the voter registration system and to enhance the accuracy of the information in the register of electors as mentioned in paragraph 3.17 above. In the 2011–2012 registration cycle, inquiry letters had been sent to about 296,000 electors requesting them to confirm whether their registered addresses in the 2011 FR were still their principal residential addresses and, eventually, a total of 217,400 electors were not included in the 2012 FR pursuant to section 7 of the EAC (ROE) (GC) Reg. The names of the complainants were not included in the FR wholly because they had failed to update their registered addresses or lodge a claim to reinstate their registrations according to the statutory deadline and, throughout the process, the ERO had followed entirely the procedures laid down in the electoral law for handling the cases.

13.27 Upon completion of the investigation of the complaints, the complainants concerned would be informed of the results accordingly.

***Complaints relating to incorrect issue of DC (second) FC ballot papers to electors***

13.28 The EAC has received three complaints alleging incorrect issue of DC (second) FC ballot paper at five different polling stations to five electors who are not registered electors in the DC (second) FC.

13.29 The EAC has looked into all the five incidents. The investigation has confirmed that all the five electors involved are each a registered elector of a GC and a traditional FC according to the 2012 FR. Therefore, they were only entitled to vote in their respective GC and traditional FC in the election and not the DC (second) FC. In three of the incidents, the EAC's findings reveal that the polling staff concerned were not fully familiar with the proper procedures for the issue of ballot papers and, in particular, the voting eligibility for the DC (second) FC. Judging from the evidence gathered by the EAC, a DC (second) FC ballot paper had been incorrectly issued to each of the three electors concerned. Nevertheless, the EAC notes that upon enquiry made by the electors concerned on the spot, all the three electors eventually only received their respective GC and traditional FC ballot papers and did not cast their votes in the DC (second) FC.

13.30 Regarding the other two incidents, the circumstances are less clear since the complainants did not raise any complaint on the spot. Evidence which has come before the EAC is inconclusive as to whether or not the polling staff concerned had actually erred in the issue of DC (second) FC ballot papers as

alleged in the two complaints.

13.31 The EAC notes that before the election, the REO has provided necessary training to all polling staff on the ballot paper issuing procedures and particular emphasis was given to the new DC (second) FC ballot paper and the need to be careful when issuing ballot papers to electors. After the incidents mentioned in paragraph 13.29 above had come to the notice of the REO in the morning of the polling day, the REO took immediate action to alert all PROs asking them to remind their polling staff once again of the need to exercise great caution when checking the number and type of ballot papers to be issued to electors, the information of which was clearly marked on the poll registers.

13.32 The EAC concludes that as revealed in the incidents mentioned in paragraph 13.29 above, there was misunderstanding on the part of the polling staff concerned about the proper ballot paper issuing procedures. Nevertheless, the EAC believes that they were only isolated incidents arising from an error made by individual staff. In all the five incidents, there are only two electors who claimed to have cast vote in the DC (second) FC. Given the very small number of such complaints received either on the polling day or after the election, the overall integrity of the election was not compromised in any way. Indeed, the REO has taken swift action to remind polling staff after learning of the incidents on the polling day. Nonetheless, the EAC considers that, in order to forestall recurrence of similar incidents in future elections, the REO should continue to strengthen the training of polling staff with a view to ensuring that they are fully familiar with all major aspects of the ballot paper issuing procedures and to explore whether further cross-checking measures can be put in place.



## **PART FIVE**

### **AFTER THE POLLING DAY**

## CHAPTER 14

### THE REVIEW AND RECOMMENDATIONS

#### Section 1 – A General Remark

14.1 The EAC is generally satisfied with the smooth conduct of the 2012 LegCo Election and considers that it was organised in an open, fair and honest manner. Following the established practice, the EAC has 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's findings and the related recommendations are set out in the ensuing paragraphs.

#### Section 2 – Specific Operational Matters

##### (A) Registration of Electors

14.2 Eligibility for voter registration is governed by stipulations in the LCO. Section 24(2) of the LCO provides that a person is not, by virtue of being registered as an elector in an existing final register of GCs, entitled to be included as an elector in any subsequent register if the ERO is satisfied on reasonable grounds that the person no longer resides at the residential address recorded against the person's name in that existing register and the ERO does not know the person's new principal residential address (if any) in Hong Kong. The law however does not impose a criminal sanction on an elector for not reporting changes in the registered residential address.

14.3 As part of the established process to maintain the integrity of the voter registration system, the REO would conduct inquiry checks on the accuracy of registered addresses in the GC register. As the right to registration and voting was both important and fundamental, the inquiry process was carried out in a cautious manner and strictly according to the relevant electoral laws throughout. An existing registered elector would not be taken off the register unless the ERO had justifiable reason to believe that the registered address was no longer the elector's only or principal residential address based on the information gathered after completing the inquiry process. To address public concern over the accuracy of registered addresses in the register and possible vote-rigging following the 2011 DC Election, the REO had implemented a series of initiatives since January 2012 to enhance the checks on the voter registers. In the past, the REO's target of inquiry covered mainly electors whose poll cards had been returned undelivered after election. With the implementation of the enhanced measures, the inquiry checks covered electors selected through random sampling and other targeted means like cross-checking of data with other government departments and identifying addresses which appeared suspicious or incomplete (e.g. address without a house number, street number or lot number or address suspected to be commercial or non-residential in nature) and addresses which carried multiple electors or multiple surnames. As a result of the extensive inquiry checks conducted in the 2011-2012 registration cycle, a total of 231,000 electors were included in the Omissions List ("OL") published in June 2012.

14.4 Although the law does not impose a criminal sanction on an elector for failing to report and update his or her residential address as recorded in the register, it is undeniably an elector's civic duty to report any changes in residential address

or other registration particulars to the REO by the statutory deadline so that the REO could update his or her registration records accordingly. For the 2011-2012 registration cycle, the statutory deadline for reporting change of registration particulars was 29 June 2012. To promote public awareness of the need for electors to update the REO on their principal residential addresses in a timely manner and to draw electors' particular attention to the publication of the PR and the OL, a massive publicity campaign was rolled out in May 2012 which included radio/television APIs, posters, newspaper advertisements, advertisements on the GovHK website and advertisements in MTR train compartments. The campaign focused on the particular importance of provision of accurate information and subsequent updating of voter registration particulars. In addition, to avoid electors included in the OL losing their voting right inadvertently or due to oversight, the REO sent a reminder letter, and an email if available, to the electors concerned in mid-June 2012 to remind them to confirm/update their residential addresses or lodge claims in accordance with the statutory procedure if they wished to reinstate their voter registration in the 2012 FR. Subsequently, about 13,600 electors in the OL reported their updated residential addresses or successfully lodged claims on or before 29 June 2012 and, with the approval of the Revising Officer, their registration entries were eventually reinstated and included in the 2012 FR.

14.5 The enhanced checking measures had unavoidably caused inconvenience to electors resulting in quite a number of complaints from many of them. Despite this, it was a necessary step to take and the REO had tried its best efforts to strike a balance between upholding the accuracy and integrity of the voter registration system and safeguarding a person's voting right.

14.6 **Recommendation:** The EAC appreciates the vigorous efforts made to strengthen the accuracy or inquiry checks on electors in the 2011-2012 registration cycle. It is evident that the various measures implemented have gone some way in improving the accuracy of the registration particulars in the registers. There is a need to sustain the process and therefore such checking measures should continue in future elections. The EAC however cautions that there must be sufficient flexibility in adjusting the measures to suit prevailing circumstances or needs. More importantly, more educational and publicity efforts should be made in future elections to drive home the message that while a person enjoys the basic voting right, he should at the same time be responsible for providing accurate information for registration and updating his registration particulars in a timely manner.

14.7 In any case, the EAC notes that, despite the previous concern over possible vote-rigging of a massive scale as alleged in the media, the outcome of the checking exercise showed that the inaccuracy detected so far in respect of the addresses in the register was mostly due to the failure on the part of electors to provide an updated address in a timely manner after moving home. The EAC also notes that the law currently allows only two weeks' time for electors to inspect the PR and file claims or objections following publication of the PR. The timeframe seems somewhat tight for the public and, at the same time, may give rise to procedural difficulties in processing claims and objections should the number of such claims and objections become very large. The matter may need to be kept under close watch and examined further when a suitable opportunity arises.

(B) Publicity for the DC (second) FC

14.8 As over 3.2 million electors would for the first time have two votes in the LegCo Election – one for a GC and one for the new DC (second) FC, a dedicated publicity plan was drawn up to publicise the new “1-person-2-votes” arrangement well before the election. Different publicity measures were rolled out at different phases of the campaign and, starting from late July 2012, two dedicated sets of APIs were first aired on TV and radio, one on the “1-person-2-votes” arrangement and the other on the related polling arrangement. Following on the heels were appearances on TV and radio interviews and media briefing to explain the detailed arrangements, posters put up at vantage points, a leaflet sent to all registered electors together with the poll card and the usual voting guide, and newspaper and Internet advertisements. The publicity initiatives were accompanied by press releases as appropriate to boost the effect. Furthermore, to familiarise electors with the design of the different ballot papers, the schematic design of the ballot papers showing the main features and the differences was uploaded onto the election website for public information. In the course of the publicity drive, particular emphasis was also given to the message that an elector could only vote for one candidate list each for the GC and the DC (second) FC. About one week before the polling day, four mock polling stations were set up across the territory for electors to gain a first-hand feel of the polling procedures and, in anticipation of greater public demand, specific arrangement was made to suitably extend the usual operating periods of these mock polling stations. With all these progressive publicity efforts, the “1-person-2-votes” arrangement and the related procedures were generally well understood in the society.

14.9 **Recommendation:** The EAC notes the dedicated efforts made by the CMAB and the REO in publicising the electoral arrangement of the DC (second) FC. The EAC further notes that the number of invalid ballot papers bearing more than one vote in the GCs and DC (second) FC is very small constituting far less than one percent of the combined electorate. In general, the publicity campaign was effective and timely in raising electors' awareness despite the fact there was still lingering concern about the misunderstanding of the polling arrangement in some quarters of the society. In view of the ever rising aspirations of the public in elections, the experience has in any case pointed to the need to suitably adjust the publicity efforts in future elections whenever there is a major change to electoral arrangement.

(C) Use of 'Household' Mailing Labels

14.10 Under section 43 of the LCO (Cap. 542), a validly nominated candidate/list of candidates for a GC/FC may send one election mail to each elector of the relevant constituency free of postage. In previous elections, as part of the established administrative arrangement to facilitate candidates in the posting of the election mails, candidates/lists of candidates would each be provided with a set of 'individual' mailing labels (i.e. one mailing label for each elector). In the 2012 LegCo election, the REO slightly modified the arrangement by providing candidates for the first time with a choice between 'individual' mailing labels or 'household' mailing labels (i.e. one mailing label for electors residing at the same address). This revised arrangement was meant to reduce the use of mailing labels and the consumption of other resources required for printing, processing and delivering the election mails to electors, while at the same time allowing candidates

to have greater flexibility in publicity strategy.

14.11 The new measure was well received by candidates in general. About two thirds of the lists of candidates in the geographical constituencies and the DC (second) FC opted for the 'household' mailing labels. The use of 'household' labels, if adopted by all candidates, could roughly save one third of the overall label consumption. As a result, it is estimated that about 12 million pieces of mailing labels and about 50 million sheets of A4 paper for printing of election mails were saved.

14.12 **Recommendation:** In view of the substantial saving of resources achieved in the election, the EAC considers that, if the existing arrangement of providing candidates with mailing labels is to continue, parallel efforts should continue to be made by the REO in encouraging candidates to use 'household' mailing labels instead of 'individual' labels for posting election mails in future elections.

(D) Joint Election Mails for Free Postage

14.13 To allow greater flexibility under the above free-of-postage arrangement for candidates/lists of candidates to jointly promote themselves in multiple-seat constituencies and constituencies with overlapping electorate (as in the case of the GCs and DC (second) FC), the relevant statutory provision has also been relaxed to allow validly nominated lists of candidates to make use of the facility to send joint election mails under certain circumstances as detailed in section 43(4A) of the LCO. The facilitation might also encourage candidates to



reduce the volume of their EAs and, hopefully, paper consumption. In the 2012 LegCo Election, a total of 30 candidates/lists of candidates (GCs: 22, DC (second) FC: 6 and Labour FC: 2) made use of the relaxation to send joint election mails to their electors. While the relaxed arrangement for joint election mails operated smoothly during the election, it is noted that a candidate has lodged a judicial review to challenge its fairness on the ground that it is less favourable to independent candidates and small parties.

14.14 **Recommendation:** The free-of-postage facility is to help candidates promote themselves to electors through the distribution of hard-copy promotional letters. The recent relaxation on joint election mails under the arrangement is meant to provide greater flexibility for candidates/lists of candidates to jointly promote themselves in specified circumstances and, furthermore, to be a further step to encourage reduction of paper consumption. The free-of-postage facility is stipulated in the LCO and does not fall within the statutory purview of the EAC. In this regard, the EAC maintains a neutral stance in the judicial review. But the EAC sees a case to provide incentive for reducing consumption of resources as far as practicable in elections. In view of the enormous manpower and resource input from both the REO and the Hongkong Post currently associated with the administration of the free-of-postage arrangement, the EAC recommends that a review on the existing mechanism would be needed with a view to streamlining the workflow to achieve a more cost-effective and flexible way to accomplish the purpose of promoting candidates to electors. This is particularly necessary since the posting of hard-copy promotional letters may no longer be the popular means of publicity given the many other publicity options and channels made available

nowadays with the advance of information technology and the rising popularity of the new media.

(E) Allocation of Designated Spots

14.15 In accordance with past practices, suitable spots on government or private land/property were identified and designated for allocation to candidates for display of EAs in the 2012 LegCo Election. These designated spots consisted mainly of roadside banner spots and poster spots at public housing estates. In accordance with the Management Scheme for the Display of Roadside Non-commercial Publicity Materials administered by the Lands Department, because of road safety reasons, no banner spots could be designated since the 2011 DC Election:

- (a) within 30 metres on the traffic upstream side of government built pedestrian crossings;
- (b) on the central dividers of roads; and
- (c) within 30 metres on the traffic upstream side of all road junctions (with the exception for locations which are within a one-way street near junction if they do not obstruct the views of drivers getting on to the major road).

Furthermore, for reason of fairness, no spots would normally be designated within the NCZ of polling stations for allocation to candidates. As a result of these, there

was unavoidably a drop in the number of designated roadside spots for the display banners. On the other hand, the LegCo Election saw an increase in the number of candidates/lists of candidates contesting. This, coupled with the introduction of the DC (second) FC which would return five seats from the whole territory as one single constituency, had resulted in a greater demand for designated spots.

14.16 To address the problem, the CMAB and the REO had before the election met with the government departments concerned with a view to identifying as many spots as possible for display of EAs by candidates. Altogether, about 37,000 spots, including 26,000 roadside banner spots and 11,000 poster spots in public housing estates, had been made available for allocation. Although this overall number registered a small increase when compared to the number of designated spots (about 33,000) allocated in the 2008 LegCo Election, because of the difference in geographical condition in different districts, the roadside banner spots which could be identified for allocation in some districts were unavoidably fewer than others.

14.17 Traditionally, the majority of the poster spots designated in public housing estates for allocation to candidates were in A3-size. In the 2012 LegCo Election, owing to a lack of enough wall space in the lobbies of housing estates to accommodate the need of the large number of lists of candidates contesting in the GCs and the DC (second) FC for display of A3-size poster, only about 11,000 poster spots could initially be identified for allocation and, in certain housing estates, no poster spot could be identified for allocation. The lack of poster spots at some public housing estates had in the course of election caused concern among some candidates. To address the concern, swift action was taken in conjunction

with the District Offices and the HD to identify additional, but smaller, spots for allocation to the candidates by reducing the size of poster spots from A3 to A4. As a result, about 12,000 additional poster spots were identified for use by candidate lists in the GCs and the DC (second) FC. With this addition, there were eventually some 49,000 designated spots allocated to candidates for display of EAs, both banners and posters.

14.18        **Recommendation:** The EAC appreciates the quick response and hard work of the District Offices and HD made to address the concern of candidates. The EAC notes that, to cater for a possible upsurge in the demand for designated EA spots, a more innovative and flexible approach would need to be explored in future major elections to identify and allocate designated spots.

(F) Location of the Central Counting Station

14.19        In view of the considerable number of votes which need to be counted at the CCS and the huge volume of logistics required for the operation ranging from reception of ballot boxes to announcement of results, a sufficiently large space is required for setting up the CCS in order to ensure that the whole counting process can be conducted smoothly and effectively. Although the REO has started the search for a suitable venue shortly after the 2008 LegCo Election, the process has not been an easy one given that venues suitable for such an operation are in short supply in Hong Kong. As a result of the search, a decision was eventually made to set up the CCS for the 2012 LegCo Election at the AWE, where eight column-free exhibition halls equipped with very good unloading/logistics handling facilities and providing a space of more than 40,000 sq

meters on the same floor were hired for the event. Geographically, the location of the AWE would look slightly inconvenient because it was not located at a central area of Hong Kong. To address this potential inconvenience, the REO took early action to explore various facilitation options together with the venue management and the major transport operators. With the assistance and advice of the AWE and major transport operators, the REO produced a transportation guide detailing the special transportation arrangements made to facilitate people making trips to and from the CCS. The information was sent to candidates beforehand and was also uploaded onto the election website for reference by the public.

14.20        **Recommendation:** The EAC was pleased to note the proactive effort made by the REO in coming up with the transportation guide and, in particular, the special transportation arrangements mapped out in conjunction with major transport operators and the AWE to address the potential access difficulty associated with the location of the CCS. Depending on the actual need, the EAC considers that similar arrangements should continue in future elections.

(G) Central Platform for Election Advertisements

14.21        In accordance with the revamped statutory regime for the regulation of EAs under section 105 of the EAC (EP) (LC) Reg (Cap. 541D), the REO launched the designated Central Platform for 2012 LegCo Election on 1 June 2012, about six weeks before commencement of the nomination period on 14 July 2012. Under the new regulatory regime, in order to satisfy the statutory requirement of public inspection, a candidate/list of candidates may post an electronic copy each of his EAs and the other required particulars onto a Central Platform (which is an

open platform operated through the Internet) maintained by the CEO within one working day after publication of the relevant EAs. The new regime also provides a parallel option for a candidate/list of candidates to maintain a Candidate's Platform for the posting of EA particulars for public inspection in a similar way to the Central Platform. Detailed information on the operation of the Central Platform and the operational requirements of a Candidate's Platform is provided in the Guidelines for the reference of candidates. To familiarise candidates with the new arrangement for the Central Platform, the REO drew up and issued a separate Procedural Guide to candidates to brief them on the detailed operational procedures. For the sake of convenience and flexibility, the new regime has also retained the traditional hard-copy alternative to allow a candidate/list of candidates to submit hard copies of EA particulars to the ROs for public inspection.

14.22 Out of the 137 candidates/candidate lists who submitted nomination forms in the election, a total of 103 applied for using the Central Platform (i.e. 54 GC candidate lists, 7 DC (second) FC candidate lists and 42 FC candidates) and, in total, about 17,900 EAs were eventually submitted onto the Central Platform for public inspection, amounting to 61% of the total. There were also three GC candidate lists who had opted to use a Candidate's Platform. It is however worth noting that there were some 80 candidates/candidate lists who had at the same time used the traditional hard-copy method to submit EA particulars to the ROs for public inspection.

14.23 **Recommendation:** The introduction of the Central Platform for public inspection of EAs has in general proved to be successful by allowing candidates to submit their EAs by electronic means round the clock and providing

the public with a convenient means to inspect the EAs anytime through the Internet. Compared to the previous hard-copy arrangement whereby the public have to go to the RO's office to inspect the EAs in person, the new measure has greatly enhanced the transparency of the election by allowing the public to access the EAs easily through the Internet. While this new electronic method appears to have been well received by candidates, there are still quite a number of candidates/lists of candidates who for some reasons also used the traditional hard-copy method for submitting EAs for public inspection in some circumstances. As such, there remains a need to maintain the hard-copy alternative in the foreseeable future. On the other hand, the option of Candidate's Platform has proved to be much less attractive and popular than the Central Platform judging from the feedbacks in the election. In the light of experience, the EAC considers that there is a need to review the cost-effectiveness and worthiness of keeping the Candidate's Platform as an option and critically assess if it is more effective to maintain only the Central Platform for submission of EAs for the sake of better control and management. From the public point of view, maintaining only the Central Platform as a one-stop shop for public inspection of EAs would definitely be more convenient and less confusing.

(H) Casting of Votes by Electors

14.24 With the introduction of the DC (second) FC, of the 3.46 million GC electors, about 3.22 million electors could cast one vote each in their respective GC and the DC (second) FC, and about 210,000 can cast votes in their respective GCs and traditional FCs. Accordingly, the REO had revisited and modified the established polling arrangements and, as part of the revised polling arrangement,

three different ballot boxes were set up inside each polling station for the collection of different ballot papers cast by electors. To ensure that electors put their ballot papers into the correct ballot boxes, the following measures were taken –

- (a) the ballot boxes were painted in different colours, blue for GC, white for the DC (second) FC and red for traditional FC, for easy identification;
- (b) the back of the ballot papers for GC, the DC (second) FC and FC were distinguished by patterns in different colours. The pattern on the back of GC and traditional FC were blue and red respectively while the back of the DC (second) FC was mainly white in colour, each corresponding to the colour of the respective ballot box. On the top of the ballot boxes, cardboard stands printed with the pattern of the back of the respective ballot papers were put up as a further reminder to electors of the correct ballot boxes to put their ballot papers;
- (c) when issuing ballot papers to electors, polling staff would remind electors to put their ballot papers into the ballot boxes of the corresponding colours; and
- (d) additional polling staff were deployed to stand beside the ballot boxes to provide prompt guidance to the electors and assist them to insert their ballot papers into the correct ballot boxes if required.

14.25 The above measures proved effective in ensuring that electors inserted the ballot papers into the correct ballot boxes. During the sorting process,



the number of misplaced ballot papers found inside the GC, the DC (second) FC and traditional FC ballot boxes turned out to be small (164 misplaced ballot papers found inside GC ballot boxes, 282 in the DC (second) FC ballot boxes, and 80 in traditional FC ballot boxes). These numbers constituted an insignificant percentage of the total of more than 3.6 million ballot papers cast by electors.

14.26        **Recommendation:** The EAC commends the REO on the effectiveness of the various prudent measures taken to ensure the tendering of ballot papers into the correct ballot boxes and considers that the successful experience should be taken into account when drawing up the polling procedures for future elections.

(I) The Setting Up of Counting Information Display System

14.27        The Counting Information Display System (“CIDS”) is a new computer system developed specifically for the 2012 LegCo Election with a purpose to facilitate candidates, agents and the public to monitor the counting process of the DC (second) FC at the CCS. The system is developed on the basis of the ballot box tracking system used in 2011 ECSS Elections with suitable modifications to suit the particular operational needs of the LegCo election. The system is equipped with dedicated functions to register the arrival of ballot boxes from polling stations, facilitate allocation of ballot boxes to counting tables with reference to the size of different polling stations, and track and display the progress in respect of opening of ballot boxes, sorting of ballot papers, counting of votes and determination of questionable ballot papers at individual counting tables and tables for determination of questionable ballot paper. The system was fully tested before

the election and further on-site trials were conducted before its deployment at the CSS on the polling day.

Sample screen design of CIDS on counting progress

區議會(第二)功能界別 (DC(second)FC) – 香港島 (Hong Kong Island)							
票站編號 Posting Station Code	票站名稱 Polling Station Name	工作檯 Table	現況 Status	票站編號 Polling Station Code	票站名稱 Polling Station Name	工作檯 Table	現況 Status
B0801	黃泥涌體育館 Wong Nai Chung Sports Centre	CZ1514	等候問題 選票裁決 Waiting for Q- paper	C0201	太古城郵政局 Tai Koo Shing Post Office	CZ1531	等候問題 選票裁決 Waiting for Q- paper
B0901	瑪利曼中學 Marymount Secondary School	CZ0925	計算點票 結果 Result Calculation	C0202	地利亞(加拿大)學校 Delia School of Canada	CZ1727	點票 Counting of Votes
B0902	寶血小學 Precious Blood Primary School	CZ1522	完成點票 Counting Completed	C0301	西灣河健康中心 Sai Wan Ho Health Centre	CZ1823	完成篩選 誤投選票 Sifting Misplaced Ballot Paper(s)
B1001	灣仔郵政局 Wan Chai Post Office	CZ0817	點票 Counting of Votes	C0401	中華基督教會基灣小學(愛 蝶灣) CCC Kei Wan Primary School (Aldrich Bay)	CZ0407	完成篩選 計算點票 結果 Result Calculation
B1101	循道衛理中心 Methodist Centre	CZ1117	完成點票 Counting Completed	C0501	筲箕灣郵政局 Shau Kei Wan Post Office	CZ0116	等候問題 選票裁決 Waiting for Q- paper
C0101	東區少年警訊會所 Eastern District JPC Club House	CZ0627	完成篩選 誤投選票 Sifting Misplaced Ballot Paper(s) Completed	C0601	愛秩序灣官立小學 Aldrich Bay Government Primary School	CZ1527	點票 Counting of Votes

14.28 At the CCS, the CIDS published information through two sets of on-site giant display screens each comprising four projector screens (see sample screen design above). The system operated smoothly on the day and proved to be effective in communicating information on the progress of the count to candidates, agents and members of the public who were present at the CCS. The same information was also uploaded to the election website instantly.

14.29       **Recommendation:** The EAC considers that the CIDS has greatly enhanced the transparency of the counting process given the large area of the CCS and recommends that the same arrangement be made for central counting in future LegCo elections as needed.

(J) Instant Display of Interim Counting Results

14.30       As a further step to enhance the transparency of the counting process and to facilitate timely dissemination of the counting results in progress, the Interim Counting Results System (“ICRS”) has for the first time been developed for use in the LegCo election. With the aid of the system, the counting results of the GCs and the DC (second) FC of individual counting stations were updated once confirmed and the cumulative number of valid votes obtained by each candidate list would then be disseminated through the two sets of on-site display screens at the CCS and the Media Centre for public information. The same information was also uploaded onto the election website at the same time. The system ran without a hitch throughout the count and feedbacks were generally positive.

14.31       **Recommendation:** The EAC considers the ICRS easy-to-comprehend and very useful in keeping the candidates, the media and the public posted of the counting progress in an open and transparent manner. For the sake of transparency, the REO should continue its efforts in exploring similar means to disseminate counting information electronically in the future elections.

(K) Crowd Control of the Central Counting Station

14.32 The CCS for the 2012 LegCo Election was set up in the AWE. A designated area with about 1,400 seats were made available for candidates and agents, and another designated public gallery with about 1,000 seats for the public at the Media Centre therein to observe the counting of FC votes and declaration of election results. In anticipation of a full-house situation, the REO had also arranged to set up a reserve public seating area with 700 spare seats at a location adjoining the Media Centre for the public to observe the proceedings through video live feed. Admission of the public was arranged on a first-come-first served basis with on-site distribution of admission tickets starting from 11:00 pm at the admission counters set up at the 1/F of AWE on the polling day. The admission arrangements were announced beforehand on the election website and through a press release issued on 8 September 2012.

14.33 During the count on 10 September, the CCS was filled with members of the public and supporters of the candidates from time to time and became particularly crowded towards 5:00 am when declaration of election results drew near. When the designated public gallery at the Media Centre reached its full capacity at 5:30 am, the REO issued a press release and uploaded such message on the election website to urge the public not to go to the CCS. At roughly the same time, about 200 people gathered around the admission checkpoints to request entry to the public gallery. Their request could not be acceded to at the particular time due to safety reasons since the public gallery at the Media Centre had already reached its full capacity. Despite the repeated advice given by the REO that seats were still available at the reserve public seating area at the auditorium, the

supporters of the candidates and the public refused to take up the seats there. The REO also explained to the candidates and agents that they could use the designated area for candidates and agents but some of them still refused to enter the venue because their supporters' entry to the public gallery was denied. The dispute over admission persisted and became bitter at some time. The situation eased shortly after 6:30 am when some members of the public in the public gallery started to gradually leave the venue after the declaration of election results of geographical constituencies, thus vacating some space for those then awaiting admission at the entrance.

14.34        **Recommendation:** The EAC regrets the incident and recognises that, there are limited choices of venue in Hong Kong which can meet all the requirements of the CCS, and that each venue has its own strengths and limitations. In any case, crowd control and public safety are important considerations when regulating the admission of the public. In this regard, a delicate balance will need to be struck between public convenience, public safety and the need to guard against any unwarranted disturbance or interference at the venue. Subject to a suitable venue being identified, it is recommended that a larger public gallery should be provided in the CCS in future elections to accommodate the supporters of candidates and members of the public. Consideration may also be given to suitably merging the area designated for candidates and agents with the public gallery to allow more flexible use of the limited space to suit the need in different situations.

(L) Reserve Counting Stations for Geographical Constituency

14.35 As in the past election, the polling-cum-counting arrangement was adopted for GCs. All polling stations, with the exception of 11 small polling stations with less than 500 registered electors and the DPSs, were converted into counting stations immediately after the close of the poll for the counting of GC votes cast at the polling stations. Since most of the venues for setting up the GC polling-cum-counting stations would normally have to be returned to the venue management by 6:00 am on 10 September 2012 for resumption of their normal business, a contingency plan had been drawn up in advance to cater for the scenario that the count could not be concluded before 6:00 am.

14.36 Based on the assessment at around 5:00 am on 10 September 2012, the counting of votes for most GCs could be completed by 6:00 am as the count at all GC counting stations had already been completed then. However, the election results could not be declared right away because of the need to wait for the counting of misplaced GC ballot papers found inside the FC ballot boxes at the CCS to compile the consolidated counting results. The wait was not expected to be a long one since the number of misplaced GC ballot papers was very small (totalling 229). The process turned out to be a little longer than expected largely due to the late arrival of FC ballot boxes from a polling station and the time taken to remove the misplaced GC ballot papers from the sealed receptacles one by one. As a result, only the election results of the Kowloon West GC could be declared by around 6:00 am. As regards the other four GCs, the count was gradually concluded and the election results declared one after another from 7:00 am onwards. To cater for the possibility of a recount, the PROs of the four GCs were notified at

around 6:20 am to start moving to the reserve counting stations and stay there pending further instruction from the REO as to whether a recount would be necessary. Although no recount became necessary at the end, the relocation process had caused some problems given the large number of polling stations involved and the volume of logistics required. It had unavoidably created pressure for the PROs since some of them were already hard pressed by the venue management to tidy up and return the venues as soon as they had completed the count.

14.37        **Recommendation:** The EAC appreciates the need for the REO to draw up a contingency plan to cater for the situation that the count cannot continue at the GC polling-cum-counting stations for any reason. The situation encountered during the process is to some extent inevitable and partly associated with the way of handling of misplaced ballot papers when the count for GC and FC ballot papers are to be conducted at different places. The logistics required for receiving FC ballot boxes and the subsequent sorting out of misplaced GC ballot papers at the CCS have unavoidably created uncertainty for the possible timing of declaration of GC election results. In any case, the EAC considers that the REO should continue to look for means to streamline the counting procedures as long as the overall integrity and transparency would not be compromised. As there is practically little room in asking the venue management of the GC stations (which are mostly set up inside schools) to allow use of the venue beyond 6:00 am in most of the cases, the REO should review the contingency arrangement with a view to smoothing out the process in future elections.

(M) Hotline services

14.38 In order to provide prompt response to the telephone enquiries from members of the public on the polling day, the REO had established an Enquiry Hotline Team composing in total about 200 staff. In addition, the REO had enlisted the assistance of the Government's 1823 Call Centre, a telephone hotline centre responsible for handling public enquiries for a number of government departments with subscription of its service, to supplement the handling capacity of the Enquiry Hotline Team on the polling day. Incoming calls that could not be handled immediately by the REO's Enquiry Hotline Team were automatically re-directed to the 1823 Call Centre for immediate response. On the polling day, the 1823 Call Centre and the REO's Enquiry Hotline Team handled about 17,300 calls and 29,800 calls from members of the public respectively. The majority of the calls were related to enquiries about voting eligibility and the whereabouts of the allocated polling stations. The number of calls handled on the day was unprecedented and put huge pressure on the enquiry hotline system. Overall, although there were times when members of the public could not get through the hotline readily, the system functioned effectively throughout the day.

14.39 **Recommendation:** The EAC considers that the enquiry hotline system is an important part of an election and its effective functioning is crucial in ensuring that electors who have questions about the polling arrangements are provided with information in a timely and orderly manner. Subject to the availability of funding and resources, additional manpower should be deployed to cope with any possible upsurge in the number of telephone enquiries in future major elections.



(N) Exit Poll

14.40 The EAC has from time to time appealed to the media and the other parties concerned for self-regulation and voluntary cooperation in the conduct of exit polls so that electors' behaviour will not be unduly influenced and elections can be conducted honestly and fairly. In considering the issue of exit poll, there is an important need to strike a good balance between the need to maintain order outside polling stations and the upholding the freedom of expression, freedom of press and academic freedom. As a further step to forestall any possible public suspicion about the integrity of the persons or organizations conducting exit polls (or the pollsters), organisations or persons applying for the conduct of exit polls in the 2012 LegCo Election were all required to sign an undertaking not to release, directly or indirectly, the results of the exit polls or make specific remarks or predictions on the performance of any candidate to:

- (a) any candidate contesting in the constituencies covered by the exit polls;
- (b) any person or organisation which had publicly expressed support for any candidate contesting in the constituencies covered by the exit polls;  
and
- (c) any organisation with member(s) contesting in the constituencies covered by the exit polls before the close of poll.

The list of approved pollsters was also uploaded to the election website five days before the polling day so that the relevant information was made available to the

public as soon as possible. As before, a notice showing the particulars of the approved pollsters with their contact numbers was also displayed at each of the polling stations concerned.

14.41 A total of five applications were approved for the conduct of exit poll in the 2012 LegCo Election. To avoid an excessive number of interviewers staying at the exits of individual polling stations thus causing crowd control problems and unnecessary disturbances to electors, each approved pollster would only be allowed to have no more than five interviewers carrying out interviews at each polling station at any one time. This arrangement had effectively capped the maximum number of interviewers who could be allowed to stay at the egress of each polling station to conduct interviews and had proved to be conducive to the maintenance of order.

14.42 **Recommendation:** The EAC considers that capping the number of interviewers who can be deployed by each approved pollster at each polling station for conducting interviews at any one time is a prudent and reasonable measure necessary for regulating the activities of exit poll. It strikes a reasonable balance between the normal operation of polling stations and the need of the pollsters in conducting exit poll in a meaningful manner. A similar approach should continue to be adopted for future elections. If need be, consideration should also be given to capping across the board the total number of interviewers who can be permitted to conduct interviews at any single time at a polling station irrespective of the number of approved pollsters.

**Section 3 – Recommendation to Publish the Report**

14.43 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 2012 LegCo Election.

## **PART SIX**

## **CONCLUSION**

## CHAPTER 15

### ACKNOWLEDGEMENT

15.1 The smooth conclusion of the 2012 LegCo Election was attributable to the dedicated and concerted efforts of all parties involved.

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

Agriculture, Fisheries and Conservation Department

Auxiliary Medical Service

Civil Aid Service

Correctional Services Department

Customs and Excise Department

Constitutional and Mainland Affairs Bureau

Department of Justice

Drainage Services Department

Efficiency Unit of Chief Secretary for Administration's Office

Electrical and Mechanical Services Department

Food and Environmental Hygiene Department

Government Flying Service

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  
Office of the Communications Authority  
Official Languages Division of the Civil Service Bureau  
Official Receiver's Office  
Planning Department  
Radio Television Hong Kong  
Social Welfare Department  
Transport Department  
Airport Authority Hong Kong

15.3 The EAC is grateful for the staff of the REO, both civil servants and their non-civil-service counterparts, for their dedicated efforts and contribution at all stages of the 2012 LegCo Election.

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

15.5 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.

15.6 The EAC would like to thank members of the media who had helped substantially to enhance the transparency of the election by giving the key events a wide and in-depth coverage. In particular, the EAC is grateful for the media's specific coverage dedicated to the new DC (second) FC and the relevant voting procedure, which has certainly enhanced the understanding of electors.

15.7 The EAC shows appreciation towards candidates, their helpers, building management bodies and members of the general public for their dedicated efforts made for complying with the electoral legislation and the Guidelines.

15.8 The EAC is also grateful to the PROs, the CSs and all the other polling and counting staff who had worked for long hours to discharge their duties in a professional manner.

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

## **CHAPTER 16**

### **LOOKING FORWARD**

16.1 The 2012 LegCo Election held on 9 September 2012 was smoothly concluded in an open, honest and fair manner. The EAC was satisfied with the overall electoral arrangements which have been thoroughly and skillfully carried out according to plan.

16.2 The EAC remains committed to fulfilling its mission of safeguarding the integrity of public elections in Hong Kong. It will continue with its utmost 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 in future elections.