

## **Section 1 – Prologue**

### ***The Vacancy***

1.1 The Hon TONG Ka-wah Ronny announced on 22 June 2015 resignation of his membership of the Legislative Council (“LegCo”) with effect from 1 October 2015. On 2 October 2015, the Clerk to the LegCo declared, by notice published in the Gazette, the existence of a vacancy in the membership of the LegCo with effect from 1 October 2015 arising from the resignation of the Hon TONG Ka-wah Ronny [s 35(1) of the Legislative Council Ordinance (“LCO”) (Cap 542)].

1.2 The Hon TONG Ka-wah Ronny was one of the nine LegCo Members returned by the New Territories East Geographical Constituency (“GC”) in the 2012 LegCo General Election.

### ***By-election***

1.3 In accordance with s 36(1)(a) of the LCO, the Electoral Affairs Commission (“EAC”) was to arrange for a By-election to be held to return one member to fill the vacancy.

1.4 As early as in mid March 2015, the Government announced 22 November 2015 as the date for holding the 2015 District Council (“DC”) Ordinary Election. The Registration and Electoral Office (“REO”) has also committed substantial manpower and resources in

preparing for the 2015 DC Ordinary Election. The existence of a vacancy in the membership of the LegCo had arisen unexpectedly. As the Hon TONG announced his resignation in June 2015, the public might have expected the By-election to be held as soon as practicable. However, the concerned vacancy would only arise officially on 1 October and the DC Ordinary Election and the LegCo New Territories East GC By-election are both large scale elections involving large numbers of electors (i.e. around 3.7 million and 940,000 electors respectively). As such, there would need to be sufficient time for planning and sufficient manpower and resources for preparation of the two elections. If the two different tiers of elections were to be conducted at the same time or in close proximity, it would easily create confusion to the public. Therefore, it is necessary to schedule the By-election after completion of the DC Ordinary Election. After considering all relevant factors, the EAC decided to appoint 28 February 2016 as the date of the By-election. On 23 October 2015 (after the close of nomination of the DC Ordinary Election), the Chief Electoral Officer (“CEO”) published a notice in the Gazette, appointing 28 February 2016 as the polling day for the By-election. The nomination period for the By-election started from 5 January 2016 and ended on 18 January 2016, lasting for a total of 14 days.

## **Section 2 – Appointments and Nominations**

### *Amendments to Electoral Guidelines*

2.1 The Guidelines on Election-related Activities in respect of the Legislative Council Elections (“the Guidelines”) published in June 2012 is applicable to this By-election. To facilitate candidates and related parties to make reference to the latest electoral provisions and requirements, the EAC issued a supplementary information sheet in December 2015 to set out the latest legislative amendments and the newly added electoral arrangements which were applicable to the By-election. The above supplementary information sheet had already been uploaded to the dedicated website for the 2016 LegCo New Territories East GC By-election for public inspection before the start of the nomination period.

### *Appointment of the Returning Officer and Assistant Returning Officers*

2.2 Ms HO Lai-sheung, Cora, the District Officer of Sha Tin under the Home Affairs Department (“HAD”), was appointed as the Returning Officer (“RO”), with District Officers of Sai Kung, North, Tai Po and Assistant District Officers of Sha Tin, Sai Kung, North and Tai Po appointed as Assistant Returning Officers (“AROs”). Their appointments were published in the Gazette on 23 October 2015.

2.3 Ms Dorothy CHENG (Acting Senior Assistant Solicitor

General), together with Miss Anita NG, Miss Emma WONG, Mr Manuel NG, Mr Vernon LOH (Senior Government Counsels), Miss Hikki WONG and Miss Agnes CHAN (Government Counsels) of the Department of Justice (“DoJ”) were appointed as the AROs (Legal).

### ***Meeting with the RO and AROs***

2.4 The EAC Chairman met with the RO and AROs on 9 December 2015 at the office at Harbour Centre. Also attending the meeting were the CEO and representatives of the DoJ and the Independent Commission Against Corruption (“ICAC”). The EAC Chairman highlighted several major electoral arrangements for the attention of the RO and AROs and exchanged opinions with participants of the meeting.

### ***Appointment of Nominations Advisory Committee***

2.5 Mr HO Bing-kwan, Barrister-at-law, was appointed as the Nominations Advisory Committee (“NAC”) for the By-election to provide legal advice to the RO on the eligibility of the nominated candidates, when required. His appointment, covering the period from 5 January to 20 January 2016, was published in the Gazette on 23 October 2015.

## *Nominations*

2.6 During the nomination period from 5 to 18 January 2016, the RO received a total of 7 nominations.

2.7 Having thoroughly considered the nominations, all the 7 nominations were determined to be valid by the RO. The validly nominated candidates were Mr LAU Chi-sing, Mr WONG Sing-chi, Mr CHOW Ho-ding Holden, Mr LEUNG Sze-ho Albert, Ms FONG Kwok-shan Christine, Mr LEUNG Tin-kei Edward and Mr YEUNG Alvin Ngok-kiu. The list of valid nominations was published in the Gazette on 29 January 2016.

## **Section 3 – Preparatory Work before the Poll**

### ***Major Publicity Activities***

3.1 Different publicity work was carried out to inform electors of the arrangements for the By-election. Announcements in the Public Interest were made in television and radio. Posters, railing banners and giant wall banners were mounted.

3.2 Detailed information about the By-election, including the electoral legislations and the Guidelines, press releases, Introduction to Candidates, designated polling and counting stations were uploaded to the dedicated By-election website to facilitate public access. ICAC also assisted in promoting clean and fair election by ways including placing advertisements on local newspapers.

### ***Other Publicity Activities by the EAC***

3.3 The EAC Chairman briefed the candidates and their agents on the major provisions of the relevant electoral legislation and the Guidelines at a briefing session held on 20 January 2016 in the Conference Room of the Sha Tin District Council. Candidates and their agents were reminded to adhere to the requirements laid down in the electoral legislation and the Guidelines and to co-operate with the relevant departments to ensure that the election would be conducted in an open, fair and honest manner. He stressed that the EAC and the

government departments concerned would strictly enforce the legislation and the Guidelines.

3.4 Immediately after the briefing session, the RO, witnessed by all parties concerned, drew lots to determine the order of the candidates' names that would appear on the ballot papers and the designated spots to be allocated to the candidates for display of their election advertisements ("EAs"). Each candidate was allocated the same number of designated spots for displaying his/her EAs in each District in the New Territories East GC (i.e. Sha Tin District, Sai Kung District, North District and Tai Po District).

### ***Identifying Venues as Polling Stations***

3.5 Same as the arrangements in past elections, the REO had sought to use those venues which were used in the 2015 DC Ordinary Election as polling stations in the By-election as long as the venues were suitable for use again. The REO had, however, encountered difficulties in securing some of these venues as polling stations. The main reasons given were that some of the venues had already been reserved for other activities on the polling day.

3.6 Notwithstanding, the REO was able to set up 146 ordinary polling stations in the By-election, of which 134 were designated polling stations chosen for the 2015 DC Ordinary Election (including 21 polling stations which had not been used in the end as the validly nominated

candidates for their respective constituencies were elected uncontested). 10 suitable venues used in the 2015 DC Ordinary Election were not available for use in the By-election. The REO had endeavoured to identify alternative venues that were equally convenient to the electors as replacements.

3.7 In addition, the REO has all along been making every effort to identify suitable venues which are accessible to disabled persons for use as polling stations. Preparation of the By-election was under a tight schedule. Nonetheless, out of 146 ordinary polling stations, 132 (i.e. about 90%) were accessible to electors with mobility difficulties. However, in individual Districts, while some of the venues are considered most suitable for use as polling stations because of their convenient location, there may not be facilities for persons with mobility difficulties. There is, therefore, a need to strike a balance between convenience to the majority of the electors concerned and the need to facilitate electors with mobility difficulties to cast their votes. Furthermore, even if the REO is able to identify a venue that is both convenient to most electors and accessible to persons with mobility difficulties, its availability for use as a polling station is still subject to the consent of its owner.

3.8 To facilitate persons with mobility difficulties to exercise their right to vote in the By-election, the REO would, as far as practicable, install temporary ramps at the entrances and exits of certain polling stations and post the contact number of the polling staff beside the ramp so that the persons in need could call for assistance. The REO had

installed temporary ramps at 19 polling stations in the By-election.

### *Contingency Measures*

3.9 The following arrangements were adopted to cater for inclement weather or other emergencies. Major measures are as follows:

- (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 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; and
- (d) setting up of an emergency depot in each of the four Districts in New Territories East to provide logistic support to

respective polling stations in each District. Each depot was equipped with 5 vehicles for urgent deployment when the need arose.

3.10 Most of the polling stations were set up at schools or organisations which would resume operation in the morning of the day after the polling day. In this connection, the REO had to vacate these schools and organisations before they resumed operation in the morning of 29 February 2016. The REO drew up a detailed contingency plan to cater for the event that the count could not be completed by 6:00 am on 29 February 2016 and had to take place in a reserve counting station.

## **Section 4 – The Poll**

### ***Recruitment of Polling and Counting staff***

4.1 A service-wide recruitment exercise was launched to invite suitable serving civil servants from various government departments to serve as electoral staff for the By-election. About 4,400 civil servants from various government bureaux/departments were appointed as Presiding Officers (“PROs”), Deputy PROs (“DPROs”), Assistant PROs (“APROs”), Polling Officers and Polling Assistants to carry out polling and counting duties.

4.2 Each appointee was 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 the By-election. This arrangement would help maintain the neutrality and independence of the electoral arrangements and avoid the perception of collusion which might compromise the integrity and cleanliness of the election.

### ***Training for PROs and other Polling and Counting staff***

4.3 Given the important role played by PROs and DPROs in the election, the REO organised a management training session on 2 February 2016 at the Lady Trench Training Centre in Wan Chai to strengthen the quality of polling management. Topics included crisis management, quality polling service, training on emotional quotient and

experience sharing workshop.

4.4 The REO organised 4 training sessions from 16 to 19 February 2016 at the Southorn Stadium in Wan Chai to equip all the polling and counting staff with the necessary knowledge for discharging their duties. Topics included polling and counting procedures, contingency arrangements, and mock counting demonstration and exercise. Polling staff tasked to perform statistical compilation duties were required to attend one additional workshop to provide them with hands-on exercise in discharging the related duties.

4.5 In addition, the REO also organised general briefings for all the staff of the Dedicated Polling Stations (“DPSs”) on 18 February 2016 at the Lady Trench Training Centre in Wan Chai on the operation of the DPSs.

### ***Registered Electors***

4.6 A total of around 940,000 registered electors whose names were included in the 2015 final register of electors for the New Territories East GC were eligible to vote in the By-election.

### ***Poll Cards***

4.7 A poll card, together with the Introduction to Candidates, a location map of the polling station, a voting guide and an ICAC leaflet

reminding electors of the importance of clean election, were mailed to the electors at least 10 days before the polling day in accordance with section 31 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”). For the sake of environmental protection, these documents were printed on recycled papers or paper made from wood-pulp derived from sustainable forest. Furthermore, environmentally friendly ink was used in the printing.

### ***The Polling Arrangements***

4.8 As mentioned in para. 3.6 above, polling stations for the 2015 DC Ordinary Election were used as polling stations for the By-election as far as practicable to facilitate electors to cast their votes, unless the venues were unavailable on the polling day mostly due to activities already scheduled. A total of 146 ordinary polling stations were set up in the By-election.

4.9 Except for the 4 small polling stations with fewer than 500 registered electors and 21 DPSs, all polling stations were converted into counting stations immediately after the close of poll. On the day preceding the polling day, the polling staff set up these designated venues to suit the functions of polling-cum-counting stations. Ballot paper issuing desks, voting compartments and ballot boxes, etc. were provided in all the polling stations to facilitate electors to vote.

### ***Polling Hours***

4.10 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 set up in penal institutions which had shorter polling hours (9:00 am to 4:00 pm).

### ***Design of Ballot Paper and Ballot Box***

4.11 The design of the ballot paper of the By-election followed that used in the 2012 LegCo General Election and 2015 DC Ordinary Election. Candidates were allowed to have certain specified particulars relating to them printed on the ballot papers. To ensure that sufficient ballot boxes were provided to the polling stations, the REO had carefully tested the capacity of ballot boxes for use in the By-election. There was an adequate provision of ballot boxes to cater for a 100% turnout of registered electors.

### ***Special Polling Arrangements for Imprisoned, Remanded or Detained Electors***

4.12 To enable registered electors who were imprisoned or remanded by the Correctional Services Department (“CSD”) to vote on the polling day, 20 DPSs were set up in penal institutions. Owing to security reasons, the poll at these DPSs was conducted from 9:00 am to 4:00 pm.

Besides, a DPS was set up at Tin Sum Police Station for the registered electors who were remanded or detained by the law enforcement agencies (“LEAs”) (other than the CSD) on the polling day. Since the LEAs might arrest persons who happened to be registered electors any time on the polling day, these DPSs were opened from 7:30 am to 10:30 pm as with other ordinary polling stations.

4.13 The venue set-up at the DPS was basically the same as that of the ordinary polling station, except that some of the polling materials were specially designed for security reasons.

4.14 The REO issued all poll cards and other related electoral documents such as the Introduction to Candidates to the imprisoned registered electors at the addresses of their penal institutions. Address labels were provided to candidates upon request for mailing EAs to this group of electors at penal institutions if the concerned electors had provided the addresses of the penal institutions as their correspondence addresses.

### ***Logistics***

4.15 A Central Command Centre (“CCC”), supervised by the CEO, was set up at the REO’s Office at Kowloonbay International Trade and Exhibition Centre (“KITEC”) to oversee the entire operation and provide central command and support services on the polling day. The REO and the relevant sections of the bureaux/departments concerned operated in

the CCC to facilitate communication and co-ordination.

4.16 A Statistical Information Centre (“SIC”) was set up inside the CCC for compiling and collating the hourly voter turnout statistics of all polling stations and the counting results from each counting station. Voter turnout figures were made available to the public on an hourly basis through press releases and the dedicated website for the By-election.

4.17 A Complaints Centre (“CC”) was set up at the REO’s office at Harbour Centre to co-ordinate the handling of complaints. The relevant details were set out in Section 6.

4.18 A Media Centre (“MC”) was set up at the Tiu Keng Leng Sports Centre (“TKLSC”) to facilitate the dissemination of voter turnout statistics and interim counting results to the candidates, the media and the public. Press releases and election results were also displayed at the MC.

4.19 The Police rendered assistance in maintaining law and order in the polling stations, the No Canvassing Zones (“NCZs”), the No Staying Zones (“NSZs”) and the counting stations. The Civil Aid Service (“CAS”) also assisted in providing crowd management services at about 90 polling stations with larger number of electors.

### ***Turnout of Electors***

4.20 Out of an electorate of 940,000, 434,220 electors cast their votes, including 168 imprisoned, remanded or detained electors who cast their votes at the DPSs. The overall turnout rate was 46.18% , which was lower than the turnout rate of 53.86% for the New Territories East GC in the 2012 LegCo General Election , but higher than the turnout rate of 17.23% for the New Territories East GC in the 2010 LegCo By-election. A breakdown of the hourly turnout rate of electors for this By-election is shown at **Appendix I**.

### ***EAC's Visits to Polling Stations***

4.21 The Chairman and the two Members of the EAC visited a total of 11 polling stations, including 3 DPSs at Lai Chi Kok Reception Centre, Siu Lam Psychiatric Centre and Tin Sum Police Station. Two media briefing sessions were held, one in the morning at the Baptist Lui Ming Choi Primary School and one in the afternoon at the HHCKLA Buddhist Ching Kok Secondary School, to provide election statistics and answer questions from the media. The EAC closely monitored the events on the polling day and was satisfied with the polling arrangements.

## **Section 5 – The Count**

### ***Counting Arrangements***

5.1 As only one LegCo member needs to be elected in the New Territories East GC By-election, only one candidate was required to form each list and the candidate who obtained the highest number of valid votes was elected. Polling-cum-counting arrangement was adopted for the By-election. Under this arrangement, a polling station, except for a small polling station with fewer than 500 registered electors and a DPS, was converted into a counting station immediately after the close of poll. The ballot papers cast at the small polling stations and the DPSs were directly delivered to respective main counting stations for counting of votes.

5.2 To ensure openness and transparency of the counting process, candidates, election agents, polling agents and counting agents were allowed to stay to witness the conversion of the polling stations into counting stations. Furthermore, during the count, candidates, their election agents and counting agents can observe the counting process outside the restricted zone of the counting tables. Members of the public and the media can also enter the public area to observe the entire counting process.

5.3 At the commencement of the count, the polling staff, who then took up the role of counting staff, and the PRO, assisted by the DPRO, APRO and counting staff, were responsible for counting the votes. The

PRO was also responsible for the determination of the validity of questionable ballot papers. An analysis of the ballot papers not counted (including those which were invalid, and questionable ones which were rejected by the PROs after determination) is shown at **Appendix II**. An analysis of invalid ballot papers kept by the PROs is shown at **Appendix III**.

5.4 Upon completion of the count, the PRO made known the counting results to candidates or their agents present at the counting station. The candidates or their agents were then given the opportunity to request a recount of valid votes at the concerned counting stations. After consolidating the counting results of all the counting stations, the SIC reported the consolidated results to the RO. The RO then made known the consolidated counting results to the candidates or their agents present in the MC who were given the opportunity to request a recount of valid votes for all the counting stations. As there was no request for recount from the candidates or their agents, the RO formally announced the election result.

#### ***EAC's Visit to a Counting Station***

5.5 The EAC visited the counting station at the HHCKLA Buddhist Ching Kok Secondary School after the close of poll and emptied the first ballot box together with the PRO and observed the counting of votes afterwards.

### ***Release of Election Results***

5.6 To enhance transparency of the count and facilitate timely dissemination of the progress of the count, interim counting results were released from about 00:30 am on 29 February 2016. The final election result was announced at around 05:00 am by the RO. The REO also issued the respective press releases at 05:15 am.

5.7 The election result was published in the Gazette on 4 March 2016 and is now re-produced at **Appendix IV**.

### ***Conclusion of the Count***

5.8 The entire count was completed in around 5 hours after the close of poll. The EAC Chairman met the media after the announcement of the election result at the MC. The EAC was satisfied that the counting process of the By-election was completed in a smooth and efficient manner.

## **Section 6 – Complaints**

### ***A General View***

6.1 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 the deficiencies in certain aspects of the electoral arrangements and helped the EAC make better arrangements for future elections.

6.2 The complaints-handling mechanism also acts as a mutual check among candidates and through complaints, they would better understand the requirements of the electoral legislation and guidelines. The EAC is committed to handling complaints received fairly and efficiently.

### ***The Complaints-handling Period***

6.3 The complaints-handling period for the By-election started from 5 January 2016, i.e. the day when the nomination period commenced, and ended on 13 April 2016, i.e. 45 days after the polling day.

### ***The Complaints-handling Parties***

6.4 A total of five designated parties were responsible for handling complaints during the complaints-handling period. They were the EAC,

RO, Police, ICAC and the PROs (who discharged the duties on the polling day only). 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 complaints.

6.5 Based on past experience, the number of complaint cases to be handled in a by-election would be relatively small. Therefore, for the By-election, the EAC considered complaint cases itself instead of forming a Complaints Committee as in a general election for this purpose. The EAC dealt with cases that were within its jurisdiction and not covered by any statutory provisions involving criminal liability. The RO was responsible for handling complaint cases of a minor nature under the authority delegated to her by the EAC, e.g. those relating to EAs, electioneering activities, use of sound amplifying devices, etc. The Police handled cases that involved possible criminal liability, e.g. breaches of the EAC (EP) (LC) Reg and criminal damage of EAs. The ICAC attended to cases that involved possible breaches of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), Prevention of Bribery Ordinance and ICAC Ordinance. The PROs received complaints at the polling stations on the polling day and took action on the spot regarding cases which required immediate attention, e.g. use of sound amplifying devices in the vicinity of the station, unlawful activities carried out in the NCZs or NSZs, etc.

6.6 The EAC Secretariat assumed the role of the co-ordinator for collating complaint-related statistical information from other parties and

compiling a consolidated report for submission to the EAC during the complaints-handling period.

### *The Number and Nature of Complaints*

6.7 By the end of the complaints-handling period on 13 April 2016, a total of 1,201 complaints were directly received from the public by the five parties mentioned above. Details are as follows:

<u>Complaints-handling Party</u>	<u>Complaints Received</u>
EAC	545
RO	383
Police	197
ICAC	17
PROs	59
	Total: 1,201

The majority of the complaints were related to EAs (451 cases) and disturbances to electors caused by loudspeakers/broadcasting vehicles/telephone canvassing, etc. (240 cases). A breakdown of the complaints by receiving party and nature is shown at **Appendices V (A) – (F)**.

### *Handling of Complaints on the Polling Day*

6.8 On the polling day, as mentioned in paragraph 4.17 above, a CC was set up in the REO's office at the Harbour Centre to handle

complaints. RO/AROs also set up District command centres at their offices to receive and handle complaints. The PROs received and handled complaints on the spot at the polling/counting stations. Moreover, designated police officers were on duty in the police stations in each District to attend to complaints and the ICAC also have designated officers manning a complaint hotline to deal with incoming calls on the polling day.

6.9 The CC, RO and PROs received a total of 339 complaint cases on the polling day. The majority of the complaints which could be resolved on the spot (e.g. unauthorised display of EAs, illegal canvassing in NCZs, noise disturbances to electors caused by loudspeakers, etc.) were expeditiously dealt with and resolved. For the more complicated cases, they would either take a longer time to handle or need to be referred to relevant authorities for investigation and follow-up actions.

6.10 Of the 339 cases handled by the EAC, RO and PROs on the polling day, 226 cases (i.e. 66.7%) were resolved before the close of the poll and the remaining 113 cases would require further follow-up actions.

6.11 A breakdown of the complaint cases received on the polling day is shown at **Appendices VI (A) – (E)**.

### ***The Outcome of Investigations***

6.12 During the complaints-handling period, the EAC and RO

received 593 cases and 626 cases respectively (**Appendices V (B) and (C)**). As at 9 May 2016, of the cases which have been dealt with, one case was found substantiated by the EAC while 312 cases were found substantiated or partially substantiated by the RO. A total of 167 warning letters have been issued to the infringing parties. A breakdown of the outcome of investigations for the EAC and RO is shown at **Appendices VII (A) and (B)**. There were still 66 cases under investigation by the EAC and 1 case under investigation by the RO.

6.13 The Police received a total of 219 cases (**Appendix V (D)**). As at 9 May 2016, investigation of 194 cases have been completed and breakdown of the outcome of investigations is at **Appendix VII (C)**. There were still 25 cases under investigation.

6.14 The ICAC received a total of 29 cases (**Appendix V (E)**). As at 9 May 2016, investigation of 7 cases have been completed and breakdown of the outcome of investigations is at **Appendix VII (D)**. There were still 22 cases under investigation.

## **Section 7 – Review and Recommendations**

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

### ***(A) Text Version of Introduction to Candidates for Electors with Visual Impairment***

7.2 To assist electors with visual impairment in reading the contents of the election platform in the Introduction to Candidates, the REO has encouraged candidates to provide a text version of their Introduction to Candidates for uploading onto the dedicated website since the 2012 LegCo General Election. The text version contains typed text that includes the candidates' numbers, names, ages, occupations, political affiliations, email addresses or websites and election platforms, so that electors with visual impairment can read the contents of the Introduction to Candidates with the aid of computer software. While the provision of the text version is optional, the EAC and the REO have all along encouraged candidates to use text version to convey their electoral messages to electors with visual impairment.

7.3 In this By-election, all seven candidates supported the appeal of the REO and provided text version of their Introduction to Candidates to cater for the needs of electors with visual impairment, so as to enable them to know more about the contents of the Introduction to Candidates through the dedicated website for the election.

**Recommendation:**

7.4 The EAC is pleased to note that all candidates in this By-election have made active efforts in providing a text version of the Introduction to Candidates to cater for the needs of electors with visual impairment. The EAC has also noticed that some members of the community proposed making it a mandatory requirement for candidates to provide the text version. However, to make it a must for a candidate to provide a text version of his/her election platform together with the relevant contents for inclusion into the Introduction to Candidates may not be desirable as a candidate should have the right to decide how he/she would like to promote his/her idea and election platform to the electors. Instead, a more suitable way is to foster an electoral culture that is more friendly to electors, and would arouse candidates' awareness of the right of electors to receive electoral information and the importance of it. In this way, candidates will strive more actively for the chance to reach out to electors of different sectors. Besides, the initiative of providing a text version has just been implemented since the last election cycle and candidates may need more time to fathom the effectiveness of this initiative and to adjust their election strategies and arrangements. The

fact that 100% of the candidates have provided a text version of their Introduction to Candidates in this By-election indicates that this initiative may have gradually gained the acceptance from candidates. The EAC is of the view that continuous monitoring on the implementation of this initiative is required before considering whether any adjustments may be required. Meanwhile, the REO should continue to appeal for candidates' support of this initiative to enable electors with visual impairment to receive electoral information as far as possible.

***(B) Specimen of Election Mail Found not Acceptable for Free Postage***

7.5 Pursuant to section 43 of the LCO, a candidate who is validly nominated for this By-election may send, free of postage, one letter to each elector to promote or advertise himself/herself. As in previous elections, candidates wishing to make use of this arrangement should first apply to the Hongkong Post for written approval of the specimens of their election mail before they send them to the electors.

7.6 Among the seven candidates contesting in this By-election, six submitted specimens of their election mail to the Hongkong Post for approval, and one of the specimens was found not acceptable. That candidate submitted three sets of election mail specimens for free postage to the Hongkong Post on 28 January 2016, 3 and 4 February 2016 respectively. The Hongkong Post consulted the REO on the contents of these specimens. Having considered the case, the REO sought legal advice from DoJ and was advised that some phrases contained in the

specimens, including “autonomy”, “self-determination for our future”, “self-rule”, “militant resistance”, “challenging repression by force”, “a history different from that of China”, as well as the background of language use and related annotation, were fundamentally in breach of the Basic Law, in particular Article 1 which stipulates that “The Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China.” The so-called “autonomy” referred to and advocated in the specimens, when reading in the context of the specimens as a whole, was against the “high degree of autonomy” being implemented by the Hong Kong Special Administrative Region (“HKSAR”) under the principle of “One Country, Two Systems” as laid down in the Basic Law. The LCO provides that all candidates must declare in the nomination form that he/she will uphold the Basic Law and pledge allegiance to the HKSAR. In this regard, the candidate concerned had already made the required statutory declaration in the nomination form. As such, from the legal perspective, it was considered that the relevant contents would most probably amount to an indication that the candidate was acting against the Basic Law and the contents of the declaration<sup>1</sup>. In addition, phrases like “militant resistance” and “challenging repression by force” mentioned in the specimens were also suspected of inciting the use of unlawful violence to achieve one’s goals.

---

<sup>1</sup> Section 103(1) of the EAC (EP) (LC) Reg provides that “a person who, in an election related document, makes a statement which that person knows to be false in a material particular or recklessly makes a statement which is incorrect in a material particular or knowingly omits a material particular from an election related document commits an offence.”

7.7 After considering the relevant legal advice and the views of the EAC, the REO replied to the Hongkong Post on 15 February 2016 that the mail specimens submitted by the said candidate should not be approved unless the relevant contents were deleted. The Hongkong Post notified the said candidate of the application result on the same day. According to the current arrangement, the candidate can submit a revised version of the specimen to the Hongkong Post before the submission deadline. The candidate concerned later expressed dissatisfaction on this matter to the media, but the Hongkong Post did not receive any revised submission from the candidate subsequently. After the By-election, the candidate concerned also applied to court for leave to apply for judicial review in relation to the above incident.

**Recommendation:**

7.8 The EAC is of the view that as the current arrangement of free postage for candidates was provided by government departments using public resources, the REO and the Hongkong Post have the responsibility to ensure that they will not be assisting candidates in delivering election mails with contents that are suspected of contravening the law. Neither the EAC nor the REO holds any political stance and there was no political consideration in handling the case. If DoJ's legal advice suggests that the contents of the specimen submitted by a candidate would most probably amount to an unlawful act, the REO has the responsibility to act according to the legal advice so as to ensure that the arrangement of free postage provided by the Government would not

involve any unlawful act. The freedom of speech all along cherished by Hong Kong has not been undermined by this decision. The EAC understands that the arrangement of free postage of election mail serves to enable candidates to promote and advertise themselves by elucidating their election platforms and presenting their visions for candidature. But to avail themselves of this opportunity, candidates must comply with the general requirements on publishing EAs, including all applicable legislation and the Guidelines issued by the EAC. For the case in question, the REO had sought and fully considered the relevant legal advice, reported to the EAC on its justifications in handling the case and taken EAC's views into account. Regarding the questionable contents or phrases of the specimens mentioned above, the EAC also agrees that one must refer to the background of the language usage and the overall context in order to understand the meaning of the words concerned. The EAC respects the concerned candidate's right to apply for judicial review in this incident. The EAC considers that the REO, before the Court has made a ruling in the above judicial review, should continue to take a prudent approach when handling similar cases. Thorough legal advice should be sought from the DoJ and a balance should be struck between various factors of consideration. At the same time, the overall interest of the election should be borne in mind.

7.9 As this case involves relatively complicated and sensitive legal issues, it is necessary for the REO to handle with care. The EAC believes that the experience gained in handling this case could be helpful in dealing with similar cases in future.

### **(C) Operation of the Media Centre**

7.10 To facilitate the dissemination of counting results of the By-election to candidates, media and the public, an MC was set up at the TKLSC on the polling day. Apart from a designated working area for the media to cover the By-election, the MC also had a separate area with about 300 seats exclusively for the candidates and their supporters. Furthermore, a public zone with about 600 seats was also set up by the REO for the public to observe the announcement of election results.

7.11 For the sake of fairness, admission of the public to the venue was arranged on a “first-come-first-served” basis. Relevant admission arrangement was announced by the REO on the dedicated website and through a press release before the By-election. Moreover, the REO set up a dedicated hotline on the polling day to answer enquiries about the admission arrangement for that evening. Generally speaking, admission of the public was maintained in an orderly manner. The MC was filled to capacity at about 1 am on the following morning, with announcement made accordingly and immediately to the public by the REO on the dedicated website, through press release and a mobile broadcasting device at the venue.

7.12 House rules of the MC were displayed at the entrance of the MC and prominent spots inside the venue to remind persons admitted into the MC to behave in an orderly manner. Although supporters of individual candidates shouted out slogans from time to time to show their

support for individual candidates, good order was maintained throughout as a whole.

**Recommendation:**

7.13 In respect of this By-election, the EAC considers that the TKLSC was an appropriate venue for setting up the MC, and is satisfied with its overall operation. The EAC notes that, due to the size constraint of the TKLSC, there was after all only limited space designated as the public area. To accommodate more members of the public to observe the announcement of election results, the REO may consider adjusting the number of seats in the public area in future elections, so as to accommodate more members of the public, as well as to allow more flexible use of limited space to cater for different circumstances.

**(D) The Loss-of-key Incident of a Polling Station**

7.14 On the night of the polling day, the polling station at CUHKFAA Chan Chun Ha Secondary School (Code: R2501) was converted into a counting station immediately after the close of poll and opened to the public for observation of the counting process. The PRO and DPRO were then to open the four ballot boxes containing ballot papers one by one in the counting station.

7.15 According to the existing arrangement, each ballot box has to undergo a sealing procedure before use. The PRO will first lock the

back door of the ballot box with a padlock (the PRO will open the back door to retrieve the ballot papers inside the box during the count), then use a string to tie the sealing certificate which bears the signatures of the PRO and two other witnesses onto the catch of the back door of the ballot box with a knot. The PRO will first invite candidates, election agents or polling agents who are present to be the witness. In the event that the above persons are not at the scene, the PRO will invite a police officer, a member of the CAS or one of the polling staff present to be the witnesses. The sealing certificate should also bear a red seal in order to forestall the certificate and the above knot being tampered with. According to established procedures, each ballot box is affixed with a key to the padlock. The key should be attached to one of the handles on the side of the ballot box with a plastic cord after the ballot box is locked, and the key will be used by the PRO to open the ballot box during the count.

7.16 The four ballot boxes in the said counting station had all been locked in accordance with the sealing procedure, with the sealing certificates bearing the seal attached. The PRO opened the first two ballot boxes successfully, but when he was about to open the third one, he discovered that no key was attached to the handle of the ballot box. He then instructed polling staff to search for the key in question and proceeded to open the fourth ballot box, which was emptied onto the counting table and the unloaded ballot papers were then mixed with those of the other two ballot boxes. The PRO and DPRO carefully inspected the third ballot box that could not be opened and found that the padlock, sealing certificate and seal were all intact. There was no sign that the

ballot box had been tampered with. Since the key of the ballot box could not be found, the PRO called the REO to report the incident and requested legal advice on the proposal to break the padlock with tools. The REO noted that the ballot box had not been tampered with and, after seeking legal advice, informed the PRO that he could break the padlock with tools in the presence of the candidates and/or their agents, and mix the ballot papers inside the box with those of the other ballot boxes for counting. This is because there is no provision laid down in the electoral legislation that would allow ballot papers from individual ballot boxes to be counted separately. Subsequently, the PRO borrowed some tools (a screwdriver and a hammer) from the school and prepared to break the padlock. Meanwhile, arguments broke out among those who were present to observe the counting process. They questioned why the key of the padlock was lost and whether the padlock should be broken with tools. The PRO informed the people at the scene that legal advice on using tools to open the ballot box had already been sought, and that the ballot papers inside the ballot box should be mixed and counted together with those on the counting table.

7.17 In fact, when the PRO was preparing to break the padlock with tools, a polling staff discovered a key inside a transparent plastic bag holding the sealing certificate and informed him. However, the PRO was not sure whether that key in the plastic bag was the lost one. To avoid causing unwarranted speculation among those who were present in the station in case this key could not open the padlock, the PRO considered it more appropriate to continue to open the ballot box by

breaking the padlock with tools and made this decision. According to the post-incident investigation conducted by the REO, the key in that plastic bag is believed to be the lost key of the padlock (see para. 7.21).

7.18 Some people at the scene were dissatisfied with the arrangement and raised queries, demanding that the PRO should count the ballot papers inside the ballot box separately. They also clamored and threatened to storm into the counting zone. Police officers responsible for maintaining order at the scene then reported the situation to their seniors and requested reinforcement, while the PRO also reported the latest situation of the counting station to the REO. The REO and RO, after discussing the situation, contacted the Support Wing of the Hong Kong Police Force and the Sha Tin Police District Station respectively for reinforcement and assistance. The REO also sent the ARO (Legal) to the counting station urgently to provide on-the-spot legal advice on the procedures of opening the padlock to the PRO. Police reinforcement subsequently arrived at the counting station and appropriate deployment was made inside and outside of the counting station based on the prevailing circumstances, so as to maintain order in the station and prevent interference with the counting process. After arriving at the scene and learning about the situation, the ARO (Legal) considered using appropriate ways other than using the key to open the ballot box a legally reasonable option after confirming that the padlock, sealing certificate and seal were all intact and there was no sign of the ballot box having been tampered with. The ARO (Legal) also reminded the PRO that counting agents at the scene must be invited to inspect if the seal of the

ballot box in question was intact before using tools to break the padlock. Also, the ballot box should be opened in the presence of the aforementioned agents and the public and the ballot papers inside the ballot box in question should be mixed and counted together with other ballot papers.

7.19 As the tools borrowed from the school might not be able to break the padlock efficiently and effectively, the PRO requested the Police to provide a pair of snips and assist in breaking the padlock. The PRO then explained to the people at the scene the procedure to break the padlock and the counting arrangements that would follow. He also explained that the main purpose of police reinforcement was to help maintain order and ensure that the counting process would be conducted smoothly. The police reinforcement, after entering the counting station, remained outside the restricted zone of the counting table and did not touch any ballot papers or ballot boxes.

7.20 Although there were still some people clamoring at the scene at that time, the situation was gradually under control. The PRO then invited the four counting agents present to inspect if the seal of the ballot box in question was intact. After scrutinizing the seal, none of the counting agents raised any objections to the observation that the ballot box had not been tampered with. As the polling staff were not good at using the pair of snips provided by the Police, the PRO asked a police officer in plain-clothes to help break the padlock of the ballot box using the pair of snips. The police officer did not touch any ballot papers

during the process. The PRO and DPRO then emptied all the ballot papers inside the ballot box in question onto the counting table and mixed them with other ballot papers for counting. The whole counting process took about two hours and finished smoothly under the surveillance of the counting agents and all those at the scene. The counting results, after verification, completely tallied with the estimated number of votes in the ballot boxes as recorded in the ballot paper account.

7.21 The electoral equipment of the polling station concerned, including the sealing certificate of the ballot box in question and the broken padlock, was then delivered to the REO for retention. Staff of the REO later found a key inside the transparent plastic bag holding the sealing certificate (i.e. the key as mentioned in para. 7.17 above), and invited the PRO concerned to check together if the key belonged to the padlock of that ballot box. It was found that the key could fit into and turn in the keyhole of the padlock. Thus, it was highly probable that the key might be the one that was lost in the said polling station on the polling day.

7.22 As for the reason why the key had been placed inside the transparent plastic bag holding the sealing certificate, the PRO stated that the key was attached to the handle of the ballot box in question with a metal clasp after the box was sealed on the polling day. Furthermore, according to the investigation of the REO, none of the polling staff indicated that they had placed the key inside the plastic bag.

**Recommendation:**

7.23 According to the investigation of the REO, the ballot box in question had all along been placed in the said polling station, with polling staff and police officers on duty there. The PRO and DPRO confirmed after checking the ballot box that the padlock, sealing certificate and the seal were all intact. The counting agents present, after inspecting the seal of the ballot box, also did not raise any objection to or disagreement on the observation that the ballot box had not been tampered with. The EAC therefore considers it appropriate to break the padlock with tools. Concerning whether the ballot papers inside the ballot box should be counted separately, there is no provision in the current electoral legislation that allows separate counting of ballot papers in individual ballot boxes. Also, considering that the ballot box was confirmed to have never been tampered with and that the counting results were verified to be in complete accord with the estimated number of votes in the ballot boxes as recorded in the ballot paper account, the counting result was beyond all doubts based on the above objective evidence. Furthermore, the ballot paper account only records the estimated total number of votes but not breakdown of votes inside each of the ballot boxes. Thus, no matter what the result of the count would be, counting the ballot papers in the ballot box in question separately would not serve any verification purposes. Hence, the EAC regards the arrangement to snip the padlock and mix the ballot papers in the ballot box in question with ballot papers in all other ballot boxes in the same polling station for counting in accordance with statutory procedures appropriate.

7.24 With regard to the loss of key, the EAC is of the view that the investigation result cannot establish which staff placed the key inside the transparent plastic bag holding the sealing certificates. Anyhow, if the PRO had used the plastic cord provided to attach the key to the handle of the ballot box, the key would not have fallen off easily.

7.25 As a whole, the EAC considers this an accident which did not involve any intentional interference. The PRO had handled the matter properly according to the legal advice received. Considering that the ballot box in question had all along been placed in the polling station; that police officers had been on duty in the polling station throughout the polling day; that the ballot box and sealing certificate were confirmed to have never been tampered with after inspection by the PRO, DPRO and counting agents; and that the counting results were verified to be in complete accord with the number of votes in the ballot boxes as recorded in the ballot paper account, the EAC is of the view that the integrity of the election had not been affected by the incident. The EAC considers that the snipping of the padlock of the ballot box was an exceptional arrangement, which would inevitably raise doubts among the public. As regards the fact that the PRO failed to use a plastic cord to attach the key to the ballot box, the EAC had instructed the REO to seriously remind the concerned PRO of the importance of compliance with the operational manual. In addition, to avoid the recurrence of similar incidents, the REO needs to enhance its training for PRO and DPRO in the future, in particular on the arrangement as to how the key should be attached to the

handle of the ballot box after the ballot box is sealed and to arrange one more staff to double check the above procedures.

### ***(E) The Count***

7.26 Overall speaking, the time taken for the counting and verification of results for the 2016 LegCo New Territories East GC By-election was about 5 hours. For over 90% of the counting stations, the counting and verification of results were completed within 3 hours. Due to the above-mentioned delay in counting and reporting of counting results to the SIC caused by the loss of a ballot box key at a polling station (Code: R2501), the final announcement of the election results was delayed. Nevertheless, the time used for the counting and verification of results for this election was still shorter than the 6.5-hour taken in the 2015 DC Ordinary Election. Based on the operational experience of the SIC during the 2015 DC Ordinary Election, the REO made improvements in the workflow of results verification for this election. Moreover, the SIC kept close contact with the PROs during the count to monitor the counting progress and provide prompt assistance to them in case they encountered any difficulties. This had helped expedite the completion of the relevant procedures. Furthermore, since only 146 ordinary polling stations were set up for this election, the SIC was able to deploy more adequate manpower to take charge of data collection. As a result of the improvements in these three aspects, the time taken for the counting and verification of results in this By-election was shortened.

**Recommendation:**

7.27 The EAC is pleased to note that a shorter time was taken to complete the counting and verification of election results in this election. Notwithstanding that the actual circumstances of each election may vary, the EAC suggests that the REO should, having regard to the situation and its past experience, continue to adopt feasible measures in future elections and consider enhancing manpower so that election results could be announced as early as possible.

## **Section 8 - Acknowledgement**

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

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

Agriculture, Fisheries and Conservation Department

Auxiliary Medical Service

Civil Aid Service

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Health

Department of Justice

Drainage Services Department

Education Bureau

Efficiency Unit of the Chief Secretary for Administration's Office

Electrical and Mechanical Services Department

Fire Services Department

Food and Environmental Hygiene Department

Government Flying Service

Government Logistics Department

Government Property Agency

Highways Department

Home Affairs Department

Hong Kong Observatory

Hong Kong Police Force

Hongkong Post

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Leisure and Cultural Services Department

Marine Department

Office of the Communications Authority

Office of the Government Chief Information Officer of the  
Innovation and Technology Bureau

Official Languages Division of the Civil Service Bureau

Official Receiver's Office

Transport Department

8.3 The EAC is grateful to the REO for its dedicated efforts and contribution at all stages throughout the By-election.

8.4 The EAC is deeply thankful to the government officers serving as RO, AROs, PROs, DPROs, APROs and polling and counting staff, and the legal practitioner serving on the NAC, for their contributions to this By-election.

8.5 The EAC would also like to express its appreciation to CSD, Police and other LEAs for their assistance to the REO in making the necessary arrangements for registered electors who were imprisoned, remanded or detained on the polling day to vote.

8.6 Moreover, the EAC is also grateful to members of the media for enhancing the transparency of the election through their extensive coverage.

8.7 The EAC would like to thank each and every elector who turned out to cast their votes, and those who provided support and assistance throughout the election to ensure that the electoral legislation and the Guidelines were complied with.

## **Section 9 – Concluding Note**

9.1 At the time of finalising the report, the EAC is engaged in the preparation for the LegCo General Election to be held in the coming September. The EAC remains committed to fulfilling its mission of safeguarding the fairness and integrity of public elections in Hong Kong in accordance with the law. It will continue with its efforts to ensure that all public elections are conducted in an open, fair and honest manner. The EAC welcomes positive and constructive comments to bring about improvements to the arrangements for future elections.

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