

Section 1 – Prologue

The Vacancy

1.1 Ms LAU Siu-lai was returned in the Kowloon West Geographical Constituency (“GC”) in the 2016 Legislative Council (“LegCo”) General Election. This by-election was to fill the vacancy of this LegCo seat.

1.2 In accordance with section 35(1) of the Legislative Council Ordinance (Cap. 542) (“LCO”), the Clerk to the LegCo declared by notices published in the Gazette on 2 August 2017 that four LegCo seats previously held by Ms LAU Siu-lai, Mr LEUNG Kwok-hung, Mr LAW Kwun-chung and Mr YIU Chung-yim had become vacant. Pursuant to section 36(1)(a) of the LCO, the Electoral Affairs Commission (“EAC”) must arrange a by-election in order to return LegCo Members for filling the relevant vacancies.

1.3 Since Mr LAW Kwun-chung and Mr YIU Chung-yim had not lodged an appeal against the judgment of the Court of First Instance (“CFI”) of the High Court made on 14 July 2017 disqualifying them from assuming the office of the LegCo, the judicial proceedings in relation to the relevant LegCo seats had been concluded. In view of this, the EAC arranged a LegCo By-election on 11 March 2018¹ in order to return the LegCo Members for filling the relevant vacancies. For the other vacancies, a by-election was to be arranged after the conclusion of the relevant judicial proceedings.

¹ The LegCo By-election conducted on 11 March 2018 also returned LegCo Members for filling the seats previously held by Mr LEUNG Chung-hang Sixtus and Ms YAU Wai-ching.

1.4 On the other hand, Ms LAU Siu-lai and Mr LEUNG Kwok-hung lodged their appeals on 11 September 2017 against the judgment of the CFI disqualifying them from assuming the office of the LegCo. Thereafter, Ms LAU Siu-lai submitted an application for withdrawal of her appeal on 29 May 2018, which was accepted by the court on the following day. Hence, the judicial proceedings in relation to her LegCo seat were also concluded. The EAC then arranged this by-election to return a LegCo Member for filling the vacancy.

1.5 Mr LEUNG Kwok-hung's appeal against the judgment of the CFI regarding his LegCo seat was dismissed by the Court of Appeal of the High Court on 15 February 2019. The EAC shall continue to keep in view if further appeal will be lodged and make necessary arrangements in accordance with the law after the conclusion of the relevant judicial proceedings.

Date of the By-election

1.6 Section 8 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) ("EAC (EP) (LC) Reg") stipulates that the Chief Electoral Officer ("CEO") must publish in the Gazette a notice to hold a by-election as soon as practicable after a declaration as to the existence of a vacancy in the membership of the LegCo is made. When deciding on the date of the 2018 LegCo Kowloon West GC By-election ("By-election"), the EAC had to give due consideration to all the practical and objective factors, such as the time required to recruit and train additional electoral staff, procurement of venues for the election (including venues for setting up the polling-cum-counting stations and

Media Centre (“MC”)), procurement and delivery of electoral materials and the principle of proper use of public funds, etc.

1.7 To ensure that the Registration and Electoral Office (“REO”) could have sufficient time and resources for the preparation of this By-election, and taking into account the various practical and objective factors mentioned in paragraph 1.6 above, the EAC decided to hold this By-election on 25 November 2018.

1.8 In accordance with section 8 of the EAC (EP) (LC) Reg, the CEO published in the Gazette on 7 September 2018 a notice designating 25 November 2018 as the date of this By-election. The nomination period ran from 2 to 15 October 2018 for a total of 14 days.

Section 2 – Appointments and Nominations

Electoral Guidelines

2.1 The Guidelines on Election-related Activities in respect of the Legislative Council Election (“Guidelines”) published in June 2016 is applicable to this By-election. In addition, the EAC provided supplementary information on the Guidelines in September 2018 setting out the latest legislative amendments and the related electoral arrangements which were applicable to this By-election, among which include the requirement for an elector to produce his/her original Hong Kong permanent identity card or other specified alternative documents before a ballot paper can be issued to him/her. The relevant supplementary information had already been uploaded to the website of the 2018 LegCo Kowloon West GC By-election (“election website”) for the public’s reference before the start of the nomination period.

Appointment of the Returning Officer

2.2 Mr Franco KWOK, the District Officer of Kowloon City under the Home Affairs Department (“HAD”), was appointed as the Returning Officer (“RO”) for this By-election. His appointment was published in the Gazette on 7 September 2018.

Appointment of the Assistant Returning Officers

2.3 To provide assistance to the RO in discharging his duties, the EAC appointed five Assistant Returning Officers (“AROs”) who were

officers of the HAD. In addition, the EAC appointed 11 AROs (Legal). They were all legal officers of the Department of Justice.

Appointment of Nominations Advisory Committee

2.4 Mr Jin PAO, Senior Counsel, was appointed to serve on the Nominations Advisory Committee (“NAC”) for the By-election to provide legal advice to the RO when required. His appointment, covering the period from 2 to 18 October 2018, was published in the Gazette on 7 September 2018.

Nominations

2.5 The nomination period commenced on 2 October 2018 and closed on 15 October 2018. As stated in paragraph 1.8 above, this two-week nomination period was gazetted on 7 September 2018 by the CEO. Persons seeking candidature were required to submit their nomination forms in person to the RO during the nomination period.

2.6 By the close of nomination, the RO received a total of six nomination forms. Nominations of five persons seeking candidature were ruled valid by the RO, while the nomination of the remaining person seeking candidature was ruled invalid. For the nomination ruled invalid, the RO had endorsed on and attached to the person’s nomination form his decision and the reasons for it for public inspection in accordance with section 19 of the EAC (EP) (LC) Reg. The five candidates who were validly nominated were published in the Gazette on 26 October 2018.

2.7 As the number of validly nominated candidates was more than one, a poll for the By-election had to be held.

2.8 Given that some members of the community expressed concern over the nomination of a person seeking candidature being ruled invalid by the RO, the EAC issued a press release on 13 October 2018 explaining the relevant legal provisions on the nomination procedures. For LegCo elections, details on the eligibility to be nominated as a candidate, disqualification from being nominated as a candidate and from being elected as a LegCo Member, and the requirements to be complied with by persons nominated as candidates are set out in sections 37, 39 and 40 of the LCO respectively (including the requirement for a person seeking candidature to make a declaration in the nomination form to the effect that he/she will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region). Whether the nomination of a person seeking candidature is valid or not is solely determined by the RO according to the legal requirements and relevant procedures. The EAC is neither empowered nor involved in the making of the decision and would not give any opinion with regard to decisions made by the RO. Also, in accordance with section 19 of the EAC (EP) (LC) Reg, if the RO decides that a nomination is invalid, the RO must endorse on the nomination form his/her decision and the reason(s) for it, which will be made available for public inspection in accordance with section 14 of the EAC (EP) (LC) Reg. Anyone may make an election petition to question the result of an election if he/she is disqualified from being a candidate at an election in accordance with section 61 of the LCO.

2.9 Regarding the nomination of candidates, on 25 January 2019,

Ms LAU Siu-lai, one of the candidates, lodged an election petition (Case Number: HCAL 245/2019) against the RO and the candidate returned at the By-election on the grounds that material irregularities occurred in relation to the election as a result of the decision of the RO that her nomination was invalid. As at the production of this Report, the case is yet to be dealt with by the court.

Section 3 – Preparatory Work before the Poll

Major Publicity Activities

3.1 Diversified publicity work was carried out by the Government to inform electors of the arrangements for this By-election, including broadcasting Announcements in the Public Interest on television and radio, placing advertisements on the Internet and newspapers, displaying posters and railing banners, as well as mounting giant wall banners at prominent locations. The scale of publicity work for this By-election was basically similar to that for the previous LegCo by-elections. The Government had also strengthened the publicity of the legislative amendment to require electors to produce the original of Hong Kong permanent identity card or other specified alternative documents for the issuance of ballot paper.

3.2 Detailed information about this By-election, including the electoral legislation and the Guidelines, press releases, Introduction to Candidates, designated polling and counting stations were uploaded to the election website to facilitate public access. The Independent Commission Against Corruption (“ICAC”) had assisted in promoting clean and fair election by various means including placing advertisements on newspapers.

Briefing for Candidates

3.3 The EAC Chairman conducted a briefing session for candidates on 22 October 2018 at the Kowloonbay International Trade and Exhibition Centre (“KITEC”). Candidates and their agents were reminded to observe the major provisions of the relevant electoral legislation and the Guidelines

and co-operate with the relevant departments to ensure that the By-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 requirements of the legislation and the Guidelines.

3.4 Before the briefing session, the RO and AROs, under the witness of the candidates and their agents, drew lots to determine the order of the candidates' names which would appear on the ballot papers for the By-election, and the designated spots to be allocated to the candidates for display of their election advertisements ("EAs").

Identifying Venues as Polling Stations

3.5 The REO had endeavoured to use those venues, which were used in the 2016 LegCo General Election and/or the LegCo By-election held on 11 March 2018, as polling stations in this By-election (as long as the venues were suitable for use again) so as to facilitate the casting of votes by electors in a more familiar location.

3.6 The REO set up 73 ordinary polling stations in this By-election, out of which 67 (i.e. about 92%) were polling stations used in the 2016 LegCo General Election and/or the LegCo By-election held on 11 March 2018.

3.7 The REO endeavours to identify venues which are accessible to persons with mobility difficulties for use as polling stations. Of the 73 ordinary polling stations, 71 (about 97%) were accessible to electors with mobility difficulties. Nine of them were converted into such by installing

temporary ramps at entrances/exits by the REO. With regard to these polling stations with temporary ramps, the REO also requested the respective Presiding Officers (“PROs”) to make special arrangements to assist electors in need on the polling day. Such arrangements included the putting up of notices by the ramps with contact telephone numbers of the polling station to facilitate electors to call for assistance, and deployment of polling staff to station at the ramps to render assistance to electors.

Contingency Measures

3.8 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 at 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 at one or more polling stations;
- (c) designation of reserve polling/counting stations to serve as replacement or additional polling/counting stations in the event that the original polling/counting stations, for one reason or another, could no longer function properly or to which electors were denied access; and
- (d) setting up of one emergency depot in each of the three

districts of Kowloon West to provide logistic support to the polling stations. Each depot was equipped with vehicles for urgent deployment when the need arose.

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 bureaux and departments to serve as electoral staff for this By-election. About 2 700 civil servants from various government bureaux/departments were appointed as 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 whether he/she had any close relationship with any candidate, and if so, he/she would not be assigned to work at any of the polling stations concerned. Besides, according to the existing arrangement, the REO would as far as possible refrain from deploying appointees to polling stations in which they, as electors, would cast their votes. This arrangement would help maintain the fairness and equality of the electoral arrangements and avoid the perception of collusion which might compromise the integrity 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 for them on 8 November 2018 at the Lady Trench Training Centre in Wan Chai to enhance the quality of polling management. Programme topics included important provisions of the EAC (EP) (LC) Reg, quality polling service,

complaints handling, crisis management and keys to building a team. There was also a session in which experienced PROs were invited to share their experience, and the Hong Kong Police Force to deliver a brief outline of the duties to be discharged by police officers at the polling stations.

4.4 The REO organised three training sessions at the Queen Elizabeth Stadium and the Lady Trench Training Centre in Wan Chai from 13 to 15 November 2018 to equip the polling staff of ordinary polling stations with the necessary knowledge for discharging their duties. Programme topics included polling and counting procedures, contingency arrangements as well as mock counting demonstration and exercise. During the same period, a total of three additional workshops were organised by the REO at the Queen Elizabeth Stadium and the Lady Trench Training Centre in Wan Chai for the polling staff who were tasked to perform statistical compilation duties in order to provide them with hands-on practice in discharging the related duties.

4.5 The REO also organised general briefings for all the staff of the Dedicated Polling Stations (“DPSs”) on the operation of these stations. The briefing for the DPSs was conducted at the Lady Trench Training Centre in Wan Chai on 12 November 2018.

Registered Electors

4.6 A total of 487 160 registered electors for the Kowloon West GC, whose names were included in the 2018 Final Register of Electors published on 25 July 2018, were eligible to vote in this By-election.

Poll Cards

4.7 A poll card, together with the Introduction to Candidates, a location map of the polling station, a voting procedure guide with an attachment showing documents required for collecting a ballot paper and an ICAC leaflet reminding electors of the importance of clean election, were mailed by the REO to the electors at least 10 days before the polling day in accordance with section 31 of the 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 Arrangements for Polling Stations

4.8 As mentioned in paragraphs 3.5 and 3.6 above, a total of 73 ordinary polling stations were set up in this By-election by the REO. The polling stations used in the 2016 LegCo General Election and/or the LegCo By-election held on 11 March 2018 were chosen as polling stations for this By-election as far as practicable to facilitate the casting of votes by electors.

4.9 Except for the 19 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 at all the polling stations to facilitate the voting by electors.

Polling Hours

4.10 Same as the past general elections or 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 followed that used in the 2016 LegCo General 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 carefully tested the capacity of ballot boxes for use in this By-election. Also, 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, 18 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 the Cheung Sha Wan 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,

the DPS at the Cheung Sha Wan Police Station was 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 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 on the grounds that such electors would be unable to receive election mails through their original registered addresses. On the other hand, to safeguard the secrecy of the imprisoned registered electors, the REO would not provide the address labels of their penal institutions to the candidates for mailing election mails unless these electors had chosen the penal institution addresses as their correspondence addresses. In this By-election, there were imprisoned registered electors chose to use the addresses of the penal institutions for receiving election mails.

Ballot Paper Issuing Procedures

4.15 As mentioned in paragraphs 2.1 and 3.1 above, an elector must produce his/her original Hong Kong permanent identity card or other specified alternative documents before a ballot paper can be issued to him/her in this By-election. On the polling day, all polling staff had followed the new ballot paper issuing procedures and issued the ballot papers upon checking the electors' original Hong Kong permanent identity cards or other specified alternative documents. Relevant procedures were

conducted smoothly.

Logistics

4.16 A Central Command Centre (“CCC”) under the supervision of the CEO was set up at the REO’s office at the KITEC to oversee the entire operation and provide central command and support services on the polling day. The REO and the relevant divisions of government bureaux/ departments operated in the CCC to facilitate communication and co-ordination.

4.17 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 election website for this By-election.

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

4.19 An MC was set up at the Tiu Keng Leng Sports Centre to facilitate the dissemination of interim counting results to the candidates, the media and members of the public. Press releases and election results were also published at the MC.

4.20 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 also assisted in providing crowd management services at 72 polling stations.

Turnout of Electors

4.21 A total of 216 522 electors of the Kowloon West GC cast their votes, representing an overall turnout rate of 44.45%. A breakdown of the hourly turnout rate for this By-election is shown at **Appendix I**.

EAC’s Visits to Polling Stations

4.22 On the polling day, the Chairman and two Members of the EAC visited various polling stations. Moreover, they met the media together at the Tung Wah Group of Hospitals Lo Yu Chik Primary School in the morning to provide electoral statistics and answer questions from the media. The EAC closely monitored the election on the polling day and was satisfied with the polling arrangements.

Section 5 – The Count

Counting Arrangements

5.1 As only one LegCo Member for a GC needed to be elected in this By-election, only one candidate was required to form each list and the candidate who obtained the highest number of valid votes would be elected. The polling-cum-counting arrangement was adopted for this By-election. All polling stations, except for the 19 DPSs, were converted into counting stations immediately after the close of poll for counting of votes cast at the polling stations.

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

5.3 The ballot boxes containing ballot papers cast at the DPSs were sent to the designated Main Counting Stations (“MCSs”) for counting. These ballot papers were then mixed with those cast at the MCSs before they were counted, in order to safeguard voting secrecy.

5.4 Upon the commencement of the count, the polling staff would immediately take up the role of counting staff, and the PRO, assisted by the

DPRO(s), APROs and counting staff, was responsible for conducting the count. The PRO was also responsible for determining 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**.

5.5 When the counting of votes at a counting station was completed, the PRO would make known the counting results to the candidates or their agents present at the counting zone. The candidates or their agents were then given the opportunity to request a re-count of votes. When there was no request for a re-count, the PRO would report the counting results to the SIC by fax. When the counting results of all counting stations were available, the SIC would inform the RO of the consolidated counting results of all counting stations. The RO then made known the consolidated counting results to the candidates, their election agents or counting agents present at the MC. The candidates or their election agents might at that time request a re-count of votes of all the counting stations.

5.6 There was no request for re-count from the candidates or their agents present at the MC in this By-election. The RO announced the election results at around 3:05 am on 26 November 2018.

5.7 The election result was published in the Gazette on 30 November 2018. It is now reproduced at **Appendix IV** for easy reference.

EAC's Visit to Counting Stations

5.8 The EAC Chairman and two Members visited the counting station at the Jockey Club Government Secondary School after the close of poll and emptied the first ballot box together with the Secretary for Constitutional and Mainland Affairs, and observed the counting of votes afterwards. The EAC Chairman and Members met with the media, provided electoral statistics and answered questions from the media.

Release of Election Results

5.9 Following the practice adopted in past elections, the REO posted the counting results for each counting station on the Counting Results Display Panels at the MC. Besides, to enhance transparency of the count and facilitate timely dissemination of the counting result in progress, interim counting results were released during the count starting from around 12:30 am on 26 November 2018. The cumulative number of valid votes obtained by each candidate list in the Interim Counting Result System was updated once the counting results at individual counting stations were confirmed. The interim counting results as well as the final election results were displayed on on-site display screens or televisions set up at the MC for reference by the candidates, their agents, members of the public and the media. The relevant results were also uploaded to the election website for public information on a real-time basis. The press and the media were briefed on the above arrangements before the polling day.

Conclusion of the Count

5.10 The entire count was completed in around four hours after the close of poll. The EAC Chairman met the media after the announcement of the election results at the MC. The EAC was satisfied that the counting process of this 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 this By-election started from 2 October 2018, i.e. the day when the nomination period commenced, and ended on 9 January 2019, 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

on the nature of the complaints.

6.5 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 him 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) (“ECICO”), the Prevention of Bribery Ordinance (Cap. 201) and the ICAC Ordinance (Cap. 204). 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 polling stations, 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 9 January 2019, a total of 773 complaints were directly received from the public by the five parties mentioned above. Details are as follows:

Complaints-handling Party	No. of Complaints Directly Received from the Public
EAC	252 cases
RO	257 cases
Police	214 cases
ICAC	18 cases
PROs	32 cases
	Total: 773 cases

The majority of the complaints were related to EAs (296 cases) and disturbances to electors caused by canvassing activities (263 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 4.18 above, a CC was set up in the REO's office at the Harbour Centre to handle complaints. The RO and 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 had 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 293 complaint cases on the polling day. The majority of these complaints could be resolved on the

spot (e.g. unauthorised display of EAs, illegal canvassing in NCZs, noise disturbances to electors caused by loudspeakers, etc.) and they had been 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 departments for investigation and follow-up actions.

6.10 Of the 293 cases handled by the CC, RO and PROs on the polling day, 214 cases (i.e. about 73%) were resolved before the close of the poll and the remaining 79 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) – (F)**.

The Outcome of Investigations

6.12 During the complaints-handling period, the EAC and RO received 277 cases and 452 cases respectively (**Appendices V (B) and (C)**). As at 11 February 2019, of the cases which have been dealt with, no case was found substantiated by the EAC, while 221 cases were found substantiated or partially substantiated by the RO. A total of 83 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 37 cases under investigation by the EAC and 19 cases under investigation by the RO.

6.13 The Police received a total of 218 cases (**Appendix V (D)**). As at 11 February 2019, investigation of 205 cases has been completed and a breakdown of the outcome of investigations is at **Appendix VII (C)**. There

were still 13 cases under investigation.

6.14 The ICAC received a total 21 cases (**Appendix V (E)**). As at 11 February 2019, investigation of 1 case has been completed and a breakdown of the outcome of investigations is at **Appendix VII (D)**. There were still 20 cases under investigation.

Section 7 – Review and Recommendations

7.1 The EAC considers that this By-election has been conducted in an open, fair and honest manner, and is satisfied with the overall electoral arrangement. In line with the established practice, the EAC has conducted a comprehensive review of the electoral procedures and arrangements of the By-election with a view to improving the conduct of future elections. The EAC's review findings and the related recommendations are set out in the ensuing paragraphs.

(A) Electors Going to Wrong Polling Stations

7.2 On the polling day, there were several hundred electors going to the wrong polling stations in respect of three polling stations which were close to one another in Hung Hom. The three polling stations were namely the Aoi Pui School Polling Station (Code: G2001), Hung Hom Municipal Services Building Sports Centre Polling Station (Code: G2101) and Ex-French International School (Hung Hom Campus) Polling Station (Code: G2201).

7.3 As this By-election was held just over half a year after the 2018 LegCo By-election conducted in March 2018, for the convenience of electors, every effort has been made by the REO to set up the polling stations for both elections at the same venues to prevent electors from going to the wrong polling stations because of a change of venue. However, successful securing of the venues for use as such was subject to the consent of the venue management and whether the venues were reserved for other activities on the polling day.

7.4 Based on the above principle, the REO has successfully secured again for this By-election the Hung Hom Municipal Services Building Sports Centre and the Ex-French International School (Hung Hom Campus), both of which were used as polling stations in the 2018 LegCo By-election. Since another polling station previously used could not be secured this time, the REO has secured the Aoi Pui School for this By-election. Arising from this change of venue, some electors did not notice that their designated polling station as indicated on the poll card had changed, and they went to the wrong polling stations. Moreover, the three polling stations were located close to each other and some electors might have mixed up and had gone to the wrong polling stations as a result.

7.5 In view of the above change of polling station, the REO had already put up notices in the major residential estates concerned and areas near the polling stations to remind electors of the names and addresses of their designated polling stations. More polling staff were also deployed to direct electors to the correct polling stations.

7.6 **Recommendation:** The EAC considers that in future elections, the REO should continue its efforts to secure suitable polling stations used in past elections. That said, successful securing of the venues as such depends on the support of various venue management in the districts to make available the venues for use in the elections. Besides, to prevent the electors from going to the wrong polling stations because of the change of venue, the REO should add on the poll cards a remark to remind the electors that the polling stations allocated to them might be different from those in previous elections. The REO should also include messages in its publicity programme for reminding electors that they must pay attention to the

designated polling stations as shown on their poll cards.

(B) Candidates Engaging in Canvassing Activities within the No Canvassing Zone

7.7 In the morning of the polling day, as reported in the media, when a candidate (“candidate A”) and his electioneering team were conducting canvassing activities in a Chinese restaurant adjacent to the Shek Kip Mei Community Hall Polling Station (Code: F0401), they were requested by the PRO concerned to leave the restaurant on the grounds that the restaurant was located within the NCZ of the polling station. The electioneering team said that the restaurant was located in private premises, and that they had obtained the permission of the restaurant operator for conducting canvassing activities therein. According to media reports, there was another candidate (“candidate B”) in the same restaurant engaging in canvassing activities at the same time but the PRO did not request candidate B to leave, which was opined unfair.

7.8 Under section 40 of the EAC (EP) (LC) Reg, a person must not engage in canvassing activities within an NCZ, including displaying or wearing in the NCZ any propaganda material, except for static display of the EAs mounted at designated spots approved by the RO. As far as those buildings within the NCZ are concerned, a person must not conduct canvassing activities in a building in which there is a polling station. However, for other buildings within the NCZ, a person may conduct canvassing activities in any storey above or below street level of the buildings (i.e. not including the storey at the street level) if prior approval has been obtained from the management of the building concerned. Pursuant to section 41 of the EAC (EP) (LC) Reg, the PRO must make

his/her best endeavours to ensure that no person engages in such canvassing activities in the NCZ in respect of his/her polling station on the polling day. Any person found to have conducted canvassing activities prohibited in the NCZ will be asked to leave the NCZ immediately.

7.9 According to the investigation by the REO, in the morning of the polling day, candidate A and his electioneering team, wearing clothes with a badge or sticker printed with the candidate's number and holding propaganda materials, entered a Chinese restaurant within the NCZ of the above-mentioned polling station and engaged in canvassing activities. The restaurant, which was adjacent to the polling station, had two storeys, namely the ground floor and the first floor. Upon receipt of the complaint at the polling station, the PRO concerned immediately headed to the restaurant together with an APRO to follow up on the matter. The PRO first advised several members of the electioneering team who were displaying propaganda materials at the front entrance of the restaurant to take away the propaganda materials and stop the canvassing activities. Then the PRO entered the ground floor of the restaurant and requested candidate A and his electioneering team to stop the canvassing activities. The persons concerned left the restaurant afterwards. As confirmed by the PRO and the APRO, they did not receive any complaint related to candidate B at that time, nor did they notice that candidate B might also be engaging in canvassing activities there.

7.10 In response to subsequent media enquiries, another APRO incorrectly said that the prohibition of canvassing activities in an NCZ was only applicable to the public passageway and that if the candidates had obtained the permission of the user of the private property, i.e. the restaurant

operator, they were allowed to conduct canvassing activities inside the restaurant.

7.11 **Recommendation:** Under section 40 of the EAC (EP) (LC) Reg, canvassing activities are strictly prohibited on the storey at the street level of all the buildings within an NCZ (please see paragraph 7.8 above). As the ground floor of the restaurant concerned is an area where canvassing activities are prohibited, the EAC considers that it is appropriate and in line with the relevant legislation for the PRO to request candidate A and his electioneering team to stop conducting canvassing activities there. As the PRO did not receive any complaint nor was he aware of candidate B, he could not have taken action on him.

7.12 During the briefing session for candidates held on 22 October 2018, the EAC Chairman had already briefed the candidates on the major provisions of the relevant electoral legislation and the Guidelines, including the requirements in respect of the NCZ. The EAC recommends that the REO should include in the Candidates' Folders a notice to remind candidates to pay special attention to the legislative requirements and restrictions in relation to the NCZ.

7.13 As mentioned in paragraph 4.4 above, the REO had provided training for all polling staff prior to the By-election, including briefing them on the requirements related to the NCZ. The EAC recommends that the REO should, in future elections, continue its efforts to strengthen the relevant training for polling staff and remind them to pay attention to the legislative requirements and restrictions in relation to the NCZ.

(C) **Reports in the Print Media Alleged to be Election Advertisements (“EAs”)**

7.14 On the polling day, there were newspapers carrying extensive coverage of individual candidate(s) and his/her election platforms and free copies of these newspapers were distributed in certain areas, which had aroused public concern. There were queries that those newspaper reports were promoting particular candidates and should be treated as EAs, and that the cost incurred might have to be counted towards the election expenses of the candidates concerned.

7.15 Under section 2 of the ECICO, “EA” means any form of publication published for the purpose of promoting or prejudicing the election of any candidates at an election, and “election expenses” means expenses incurred before, during or after the election period by or on behalf of a candidate for the purpose of promoting the election of the candidate or prejudicing the election of other candidates. The maximum amount of election expenses is prescribed by the law with a view to ensuring that the amount of election expenses of each candidate is kept within a reasonable and equal level. Under section 23 of the ECICO, it is an offence for anyone not authorised by a candidate as his/her election expense agent to incur election expenses, and offenders are liable to a fine of \$200,000 and to imprisonment for three years².

7.16 Besides, as stated in paragraph 11.19 of the Guidelines issued by

² In accordance with section 23(1A) of the ECICO, which took effect from 25 January 2019, a person (other than candidates or election expense agents) is exempted from the relevant criminal liability under section 23(1) if the person publishes an EA on the Internet, and the only election expenses incurred by the person for the purpose of publishing the EA are either or both of the following charges:

- (i) electricity charges;
- (ii) charges necessary for accessing the Internet.

the EAC, the print media should ensure that, during the election period, any news reporting or reference made in its publications will not give unfair publicity to any particular candidate(s), or lead to a public perception that such reporting or reference is made for the publicity of a particular candidate. Therefore, publishers have the responsibility to handle carefully any news reporting or reference made in relation to the election or candidate(s), and ensure that no favourable or unfavourable treatment is given to any of the candidate(s) in accordance with the “fair and equal treatment” principle. The Guidelines also cautioned that any publications (including special newspaper editions or leaflets), whether for free or otherwise, which serve to promote or prejudice the election of a particular candidate may be construed as EAs, and in the circumstances in which election expenses had been incurred without authorisation, the publisher may engage in illegal conduct under section 23 of the ECICO (please see paragraph 7.15 above).

7.17 **Recommendation:** The EAC once again appeals to the media for special attention to paragraph 11.19 of the Guidelines which states that the media should ensure any reporting, during the election period, will not give unfair publicity to any particular candidate or lead to a public perception that such reporting is made for the publicity of a particular candidate. Any publications (including special newspaper editions or leaflets) promoting or prejudicing the election of a particular candidate may be construed as EAs. Hence, the media must handle carefully any reporting made in relation to the election or candidates during the election period, so as not to breach the legislations on EAs and election expenses. The EAC has referred the relevant complaints received to the LEA for investigation and follow-up actions.

Section 8 – Acknowledgement

8.1 The successful conclusion of this 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

Civil Engineering and Development Department

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Health

Department of Justice

Drainage Services Department

Education Bureau

Electrical and Mechanical Services Department

Fire Services Department

Food and Environmental Hygiene Department

Government Flying Service

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

Official Languages Division of the Civil Service Bureau

Official Receiver's Office

Radio Television Hong Kong

Social Welfare Department

Transport Department

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

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

8.5 The EAC would also like to express its appreciation to the CSD, the 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 grateful to members of the media for enhancing the transparency of this By-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 this By-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 Yau Tsim Mong District Council Tai Nan Constituency By-election to be held in March 2019. The EAC remains committed to fulfilling its mission of safeguarding the 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 the 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 this By-election.