

PART ONE

PREFACE

CHAPTER 1

OVERVIEW

Section 1 – Introduction

1.1 The 2020 Legislative Council (“LegCo”) General Election was originally scheduled for 6 September 2020 to return Members of the seventh term LegCo. However, the Government announced on 31 July 2020 that amid the severe COVID-19 epidemic situation, the Chief Executive (“CE”) in Council had, in order to protect public safety and public health and ensure that the Election would be conducted openly and fairly, decided to postpone the Election for a year to 5 September 2021.

Number of Members to be Returned

1.2 Of the 70 LegCo Members to be returned from the seventh term LegCo election originally scheduled for 6 September 2020, 35 were to be returned by Functional Constituencies (“FCs”), while the other 35 were to be returned by Geographical Constituencies (“GCs”). The number of Members to be returned for the five GCs and the 29 FCs respectively are listed in **Appendix I**.

The Election

1.3 In accordance with section 6(1) of the Legislative Council Ordinance (Cap 542) (“LCO”), the date for holding a LegCo general election is to be specified by the CE by a notice published in the Gazette. As for the date of the general election of the seventh term LegCo, the CE gave notice in the Gazette on 12 June 2020 specifying 6 September 2020 as the date for holding the said general election. Thereafter, a notice in the Gazette on 19 June 2020 given by the Chief Electoral Officer (“CEO”) specified that the nomination forms of candidates should be submitted to the respective Returning Officers (“ROs”) from 18 July 2020 to 31 July 2020.

1.4 As regards the COVID-19 epidemic which had been spreading rampantly since early 2020, the Constitutional and Mainland Affairs Bureau (“CMAB”), Food and Health Bureau (“FHB”), Centre for Health Protection (“CHP”) and Registration and Electoral Office (“REO”) had all along been in touch closely to carefully monitor the development of the epidemic and assess its impact on this LegCo General Election to early formulate contingency plans to tackle different possibilities in accordance with the development of the epidemic.

1.5 The two main measures of epidemic prevention are to maintain social distancing and pay attention to personal hygiene. While the two measures complement each other, co-operation from members of the public is of particular importance. Based on the experience from the 2019 District Council (“DC”) Ordinary Election, more than 70 per cent of electors has cast their votes. Given the

fact that Hong Kong is densely populated and the environment is very crowded, it goes without saying that there would be gathering of crowds inside and outside the polling stations making it difficult to maintain safe social distancing. Furthermore, under the subsisting law, the counting of all FC votes must be conducted in a central counting station (“CCS”). Apart from the electoral staff responsible for various counting procedures, candidates and their teams, media, and the public would also gather in the CCS. For this LegCo General Election, the CCS planned to be set up by the REO was expected to accommodate around 10 000 people. Basically, it would be difficult to maintain social distancing there. Besides, there would be over 30 000 electoral staff in total in this Election. The REO would need to arrange several tens training and rehearsing sessions on polling and counting duties for them before the polling day. This would also pose the risk of transmission of the virus due to group gatherings.

1.6 Although the Government had already implemented various social distancing measures under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap 599G), there was still an upsurge in the number of new confirmed cases since mid-July 2020. Taking into account that more than 4.46 million eligible electors could vote on the polling day of this LegCo General Election, and that there would be gathering of crowds during both the polling and counting processes, the Electoral Affairs Commission (“EAC”) considered that this would bring about infection risks exponentially. Even though the REO made endeavours to put in place various disease prevention measures at the polling and counting stations, mass group gatherings would still be unavoidable, and to require all electoral staff and electors to maintain social distancing at all times would be

difficult. In this regard, the EAC had written to the CE on 28 July 2020 detailing the actual arrangements of this LegCo General Election and the public health risks associated with the Election were it to be held as scheduled (see paragraph 7.14 of Chapter 7 for details).

Postponement of the Election

1.7 In view of the severity of the COVID-19 epidemic situation, the CE in Council decided to postpone the 2020 LegCo General Election which was originally scheduled for 6 September 2020 for a year to 5 September 2021 in order to protect public safety and public health as well as to ensure that the Election would be conducted openly and fairly.

1.8 The Government pointed out that the epidemic situation was extremely severe in early July 2020. There was an increasing risk of a major community outbreak that might bring down the local public hospital system, constituting a major public crisis. The scale of the LegCo General Election is massive and if millions of voters were to cast their votes on the same day, it would create a very high infection risk. Since the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation was in force at that time, it would not be possible for candidates to conduct any meaningful electioneering activities. Furthermore, a large number of voters were living, working or studying in the Mainland, and many voters were stranded overseas. These voters would not be able to return to Hong Kong to vote in view of the border control measures. In addition, it was likely that elderly voters might refrain from voting due to their higher infection risk amid the severe epidemic

situation. In view of the above factors, the Government was of the view that if the Election were to be held on 6 September 2020 as scheduled, it would be difficult to fulfil the requirement of fairness and openness. It might also undermine the safety of the voters, candidates, supporters, and polling/counting staff. Therefore, the Government announced on 31 July 2020 that the CE in Council had decided to postpone the LegCo General Election which was originally scheduled for 6 September 2020 for a year to 5 September 2021. The EAC well understood and respected the Government's decision, and would make the practical arrangements for the postponement accordingly.

1.9 Both the LCO and the Prevention and Control of Disease Ordinance (Cap 599) do not contain any provision for the Government to postpone the LegCo General Election for a year for ensuring the fairness and openness of the Election and protecting public health. Therefore, the CE in Council invoked the Emergency Regulations Ordinance (Cap 241) to make the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation (Cap 241L) which brings the electoral process of the 2020 LegCo General Election to an end, specifies the new election date, and deals with such matters as election expenses and donations. The relevant Regulation was gazetted on 31 July 2020 and came into effect on 1 August 2020.

1.10 The Government stated on 31 July 2020 that Article 69 of the Basic Law stipulates that the term of LegCo shall be four years, except the first term for two years. As such, the sixth term LegCo must end on 30 September 2020. However, the Emergency (Date of General Election) (Seventh Term of the Legislative Council)

Regulation can only postpone the election date of the seventh term LegCo for a year, it cannot deal with the vacuum in LegCo between 30 September 2020 and the election of the seventh term LegCo. For this, the CE submitted an urgent report to the Central People's Government seeking its support and guidance. In its reply, the State Council expressed support for the decision made by the CE in Council in accordance with the law to postpone the election of the seventh term LegCo by one year on the grounds of public interest and in the light of the actual circumstances of Hong Kong. With respect to how to deal with the issue of vacuum in LegCo arising from the postponement of the seventh term LegCo, the Central People's Government made a submission to the Standing Committee of the National People's Congress ("NPCSC") for its decision. According to the decision made by the NPCSC on 11 August 2020, the sixth term LegCo would continue to discharge its duties for not less than one year until the commencement of the seventh term LegCo. The seventh term LegCo would have a term of four years after it has been formed in accordance with the law.

1.11 The Government published in the Gazette on 14 August 2020 the decision of the NPCSC and the withdrawal of the decision made by the CE earlier in accordance with section 6 of the LCO on the prorogation of the sixth term LegCo for the General Election. Such would enable the sixth term LegCo to continue to operate.

Section 2 – Election Report to the Chief Executive

1.12 As at the Government’s announcement on the postponement of the LegCo General Election, the EAC and REO had already carried out various preparatory work for different stages of the general election of the seventh term LegCo, including proactively securing polling stations and recruiting polling staff, implementing various personal hygiene measures at the polling stations in response to the COVID-19 epidemic situation, conducting the voter registration (“VR”) campaign, publishing the Guidelines on Election-related Activities, etc.

1.13 This report detailed the preparatory work conducted by the EAC and REO in respect of this LegCo General Election. Apart from that, the EAC noted the suggested measures for enhancing or altering the current electoral arrangements as put forward in society. The EAC seeks to set out in this report the relevant factual background and legal basis, and attempts to examine the feasibility and pros and cons of the suggested measures, with a view to facilitating discussions among the public, and for the reference and consideration by the Government, if necessary, to introduce amendment of the electoral law to LegCo with a view to enhancing electoral arrangements.

PART TWO

VARIOUS PREPARATORY WORK

CHAPTER 2

DELINEATION OF GEOGRAPHICAL CONSTITUENCIES

2.1 One of the important tasks that the EAC has to undertake during the preparation stage of the election is the delineation of GCs. According to section 4(a) of the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”), the EAC has to make recommendations on the boundaries and names of GCs for a LegCo general election. Under section 18 of the EACO, the EAC is required to submit to the CE a report on its recommendations within 36 months after the preceding LegCo general election is held. As the last LegCo General Election was held on 4 September 2016, the EAC was required to submit the report to the CE by 3 September 2019.

2.2 Section 20(6) of the EACO stipulates that for the purpose of making recommendations on the delineation of GCs, the EAC shall endeavour to estimate the total population of Hong Kong or any proposed GC in the year in which the LegCo general election is to be held. In this regard, the necessary projected population figures are provided by an Ad Hoc Subgroup (“AHS”) set up specially for the purpose of the delineation exercise under the Working Group on Population Distribution Projections in the Planning Department for conducting the delineation exercise. To ensure that the projections could cater for the 2020 LegCo General Election, the AHS was requested by the EAC to project the population distribution figures as at a date as close to the election date as practicable. For this reason, the AHS followed the practice in past delineation exercises, and having regard that this LegCo General Election was to be held in the third quarter of 2020,

provided the EAC with the projected population figures as at 30 June 2020.

2.3 According to the stipulations under sections 18 and 19 of the LCO:

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

2.4 Provisional recommendations were drawn up based on the stipulated number of GCs, the number of Members to be returned by each GC and the upper or lower limit of seats permitted for each GC, the statutory criteria stipulated in section 20 of the EACO as well as the working principles¹ adopted by the EAC.

2.5 Pursuant to section 19 of the EACO, the EAC conducted a public consultation on its provisional recommendations from 8 May to 6 June 2019 (30 days). The provisional recommendations together with the maps showing the proposed boundaries of the GCs were made available for public inspection at the specified locations and the website of the EAC during the public consultation period. During this period, members of the public could submit written representations to the EAC to express their views on the provisional

¹ Having reviewed the working principle adopted in the past, the EAC slightly revised one of the working principles from the original working principle of “Hong Kong Island, Kowloon and the New Territories are to be treated separately, as these areas are traditionally regarded as distinct from one another” to read as “Hong Kong Island, Kowloon and the New Territories are to be treated separately as far as possible having regard to the statutory criteria under the EACO”.

recommendations on the boundaries and names of the GCs. A public forum was also held by the EAC at the Lai Chi Kok Community Hall on 16 May 2019, where members of the public could express their representations on the provisional recommendations orally.

2.6 During the consultation period, the EAC has received a total of 12 written representations. Besides, nine persons attended the above-mentioned public forum. Four oral representations were received at the forum.

2.7 Having carefully considered all the public representations, the EAC concluded that it was neither necessary nor appropriate to make any alteration to its provisional recommendations which were adopted as its final recommendations. In accordance with section 18 of the EACO, the EAC submitted a report on its recommendations for the boundaries and names of the GCs to the CE on 3 September 2019. The report contained a detailed account of the EAC's work in the delineation exercise, representations received during the public consultation period and the EAC's analysis on them.

2.8 On 8 October 2019, the CE in Council adopted the recommendations in the EAC report and made the Declaration of Geographical Constituencies (Legislative Council) Order 2019 (Cap 542M). The subsidiary legislation concerned was then tabled at LegCo for negative vetting on 23 October 2019 and came into operation on 1 January 2020. The final maps showing the delineations were then published by the EAC in the same month for public viewing.

CHAPTER 3

REGISTRATION OF ELECTORS

Section 1 – Qualification for Registration

3.1 The qualifications for registration as electors for GCs and FCs are stipulated in the LCO. Only a registered elector, i.e. a person whose name appeared on the Final Register of Electors (“FR”) published in July 2020, was eligible to vote in this Election.

Geographical Constituencies

3.2 An individual is eligible to be registered as a GC elector and registered in the 2020 FR if he/she:

- (a) is aged 18 years or above as at 25 July 2020;
- (b) is a permanent resident of Hong Kong;
- (c) ordinarily resides in Hong Kong (see section 7 below for details) and at the time of applying for registration, his/her residential address provided in the application form is his/her only or principal residence in Hong Kong;

(d) holds a valid identity document or has applied for a new/replacement identity document; and

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

3.3 Section 24(2) of the LCO provides that a person is not, by virtue of being registered as an elector in an existing FR of GCs, entitled to be included as an elector in any subsequent register if the Electoral Registration Officer (“ERO”) is satisfied on reasonable grounds that the person no longer resides at the residential address recorded against the person’s name in that existing register and the ERO does not know the person’s new principal residential address (if any) in Hong Kong. The system for registration as electors in Hong Kong operates on a system of self-declaration. The subsisting legislation does not make it mandatory for electors to update their residential addresses. Therefore, even if an elector has failed to report changes in the registered residential address, as long as his/her registration particulars remain in the register, he/she remains eligible under the relevant legislation to vote in the GC according to the principal address as recorded against his/her name in the register.

Functional Constituencies

3.4 The LCO stipulates the qualification for registration as electors of the 29 FCs. In brief, the electorates of the 28 traditional FCs are from specified professionals, industries or trade groups, etc. The electorate of the District Council (second) Functional Constituency (“DC (second) FC”) is composed of persons who

are registered as electors for GCs but are not registered as electors in any of the other 28 traditional FCs.

3.5 The FC electorate consists of both natural persons and corporate bodies. For a natural person to be an FC elector, apart from fulfilling the qualification for registration for the corresponding FCs, he/she must be a registered GC elector. Among the 29 FCs, 18 consist of corporate electors. A corporate elector is required to cast its vote through an authorised representative (“AR”) who is a natural person and a GC elector appointed by the corporate elector to vote on its behalf.

3.6 The appointment or replacement of the AR must be registered with the ERO. An FC elector cannot be an AR for the same FC, but can be an AR for another FC. Besides, an AR of a corporate elector cannot be appointed as the AR of another corporate elector at the same time. A person who is qualified to be an elector of more than one FC can only register as an elector of one of the FCs of the person’s choice. If a person is eligible to be registered as an elector for the District Council (first) Functional Constituency (“DC (first) FC”), the person can only be registered as an elector of that FC. If a person is eligible to be registered as an elector in one of the four special FCs², the person can only be registered as an elector of that special FC unless he/she is eligible for registration in the DC (first) FC.

² The four special FCs are Heung Yee Kuk FC, Agriculture and Fisheries FC, Insurance FC and Transport FC.

Section 2 – Registration Regulations

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

3.8 To enhance the accuracy of the particulars in the registers of electors, from 1 February 2018 onwards, electors who submit applications for change of registered residential address are required to submit address proof issued in the last three months at the same time. For electors who are the authorised occupants of public rental housing under the Housing Department (“HD”) or registered residents in the tenancy of subsidised housing under the Hong Kong Housing Society (“HKHS”) applying for change of registered residential address, if the addresses in the tenancy records match the residential addresses provided by the electors, address proof requirement for such electors may be exempted.

Section 3 – The Voter Registration Campaign

3.9 The Government conducted a large-scale VR campaign from 26 February to 25 June 2020. The VR campaign was co-ordinated by the CMAB

with the joint efforts of the REO, Home Affairs Department (“HAD”), Information Services Department (“ISD”), Radio Television Hong Kong (“RTHK”) and Independent Commission Against Corruption (“ICAC”). The overall objectives of the VR campaign were to encourage eligible persons of all relevant age groups to register as electors, remind registered electors the importance of updating their registration particulars (especially their residential addresses) with the REO, promote the Online Voter Information Enquiry System (website: www.voterinfo.gov.hk) and the service of the REO hotline (2891 1001), encourage registered electors or applicants to provide their telephone numbers and email addresses to facilitate communication and remind electors to reply to the inquiry letters issued by the REO by the statutory deadline (i.e. 2 May 2020).

3.10 Throughout the VR campaign period, a wide range of publicity activities were staged by the Government to achieve the objectives set out in paragraph 3.9 above. They included broadcasting Announcements of Public Interest (“APIs”) on television and radio, placing advertisements on corporate journals, at major MTR stations, bus stops and other public transport systems, on websites and mobile device applications, and at government and non-government venues, as well as displaying posters, buntings and banners.

3.11 Throughout the campaign, persons of different age groups and backgrounds were reached through community outreach programmes to encourage registration as electors and updating of residential addresses. Leaflets prepared by the ICAC were also distributed to remind the public of the importance of providing true and accurate information for registration as electors, and disseminate the message that any person who knowingly or recklessly gives false or misleading

information for VR commits an offence no matter the person concerned has voted at an election or not. Besides, roving registration counters were set up by the REO at five Registration of Persons Offices and nine centres for the Territory-wide Identity Card Replacement Exercise of the Immigration Department (“ImmD”). VR Assistants were deployed thereat to assist the public in registering as electors or updating their registration particulars.

3.12 In addition, the REO had sent appeal letters to households who had moved into newly completed housing estates to remind them to report changes of residential addresses and, if they had not registered as electors, invite them to make registration before the statutory deadline (i.e. 2 May 2020).

3.13 The REO had also sent letters to appeal to specified bodies under the LCO to encourage eligible members to register in FCs.

3.14 Furthermore, the REO also wrote to those GC electors who had not yet registered under the DC (second) FC in December 2019 to appeal to them to register in the FC concerned.

Section 4 – Enhanced Checking on Voter Registration

3.15 Ever since the 2012 VR cycle, the REO has stepped up publicity efforts to remind the public of the importance of providing true and accurate information for registration as electors and updating their registration particulars, especially the principal residential addresses provided. To enhance the accuracy and integrity of the registration particulars of electors, the REO implemented various checking

measures, including verification checks on electors' registration particulars through cross-matching of particulars with other government departments and conduct of the inquiry process. These checking measures included inquiries on cases of undelivered poll cards for the previous elections, verification checks on the registered residential addresses of electors through cross-matching with the HD, HKHS, HAD and ImmD, checks on registered residential addresses with multiple electors or multiple surnames of electors, random sample checks on existing and newly registered electors, checks on incomplete or suspected non-residential addresses, and checks on addresses situated at demolished buildings or buildings pending demolition.

3.16 Apart from the above-mentioned checking measures, the REO had further strengthened verification of address data through cross-matching with other government departments with inclusion of ImmD in order to enhance the accuracy of the registration particulars of electors. Measures taken included:

- (a) liaising with the Buildings Department to obtain the latest list of demolished buildings or vacated buildings pending demolition;
- (b) liaising with the Urban Renewal Authority to obtain the information on buildings which had completed acquisition and occupier relocation;
- (c) implementing collaborative arrangement with District Offices to identify buildings to be demolished or already vacated; and

- (d) working with the ImmD under the collaborative arrangement on updating registered residential addresses obtained in the course of smart Identity Card replacement to follow up on cases of electors who failed to respond to the reminding letters.

3.17 In the 2020 VR cycle, the number of electors covered by various checking measures implemented by the REO totalled about 1.83 million out of 4.13 million electors on the FR for 2019. Based on the results of checking, the REO had reasonable grounds to believe that the registered residential addresses of about 97 000 electors were no longer their only or principal residence in Hong Kong. The REO therefore issued statutory inquiry letters to these electors in accordance with the relevant electoral law and requested the electors concerned to confirm whether their registered residential addresses in the FR were still their only or principal residential addresses. About 41 000 from these electors replied before the statutory deadline. The remaining approximately 56 000 electors who failed to respond under the inquiry process were included in the omission list (“OL”). Electors who were included in the OL and wished to reinstate their VR had to reply to the reminding letters issued by the REO or lodge a claim before the statutory deadline of 25 June 2020 for consideration by the Revising Officer (“RevO”) in accordance with the electoral law. Out of the 56 000 electors concerned, about 9 000 electors replied to the reminding letters before the statutory deadline and, with the approval of the RevO, they were reinstated in the FR. For the remaining some 47 000 electors, they were not included in the FR because they failed to provide the relevant information in accordance with the electoral law. The outcome of the checking exercise showed that the inaccuracies detected in respect of registered residential addresses were mostly because of the failure on the part of

electors to update their registered residential addresses with the REO in a timely manner after moving home.

3.18 Besides enhancing the accuracy of electors' registered residential addresses for GCs, the REO continued to verify the registration particulars of electors for traditional FCs in the 2020 VR cycle. The electorates of traditional FCs consist of individual and corporate electors. Eligibilities for registering in traditional FCs include (1) listed bodies under the LCO; (2) licence/registered qualification holders under specified legislation under the LCO; and (3) members (bodies or individuals) or staff of the specified bodies under the LCO.

3.19 In order to ensure the accuracy of the registration particulars of the FC electors, the REO collects in every VR cycle from the relevant specified bodies information about their members or staff so as to verify and ascertain the registration eligibility of individuals/bodies in the FCs concerned, and to remove those who are no longer eligible for registration. During the checking process, if it is confirmed that the registration eligibility of individuals/bodies does not fulfil the relevant statutory requirements, the REO will issue inquiry letters to the individuals/bodies concerned in accordance with the electoral law and request them to present proof that they are still eligible for registration before the statutory deadline concerned. If the individuals/bodies concerned fail to provide the requested information before the deadline, the REO will include them in the OL of the FCs. For the purpose of VR, all specified bodies must provide the REO with information about their members who meet the eligibility requirements in the relevant FCs under the LCO upon its request. The information provided must be

true and accurate and failure to do so will constitute a breach of the relevant electoral law.

3.20 Generally speaking, if an elector of a particular FC is a member of a specified body, this means that he/she/it is entitled to vote at the general meetings of the specified bodies as provided by its constitution which has been approved by the Secretary for Constitutional and Mainland Affairs for voter registration purpose. The relevant provisions under the LCO clearly state the governing of the registration of FC electors. The specified bodies should strictly follow the application criteria and approval procedures as stipulated in their constitutions when processing applications for membership. There are views querying a lack of transparency in membership administration of some of the specified bodies. Starting from the 2012 VR cycle, the REO issues letters to the specified bodies annually to appeal to them to strengthen their membership administration and comply with their constitutions, and to adopt proper procedures to ensure propriety in membership administration, as well as enhance transparency and exercise due diligence in providing up-to-date membership information to the REO. In respect of the 2020 LegCo General Election, the REO joined hands with the ICAC to conduct visits to 54 specified bodies to provide corruption prevention advisory services to further disseminate the message of good corporate governance and the importance of transparent membership administration. The CMAB, REO and ICAC will review the effectiveness of the measures implemented in connection with the VR for FCs to ensure that the specified bodies understand their obligation in maintaining a proper and transparent membership administration system.

3.21 According to the subsisting electoral law, the registration eligibility of corporate FC electors (i.e. listed bodies and members of specified bodies) does not include address. Besides, the electoral law does not impose any requirement as to whether the relevant bodies are under the same business group or use the same business address as their correspondence address. Individual organisations or companies may use the same business address for VR and communication without affecting their registration eligibility. If there is any change in a corporate elector's business address, the corporate elector concerned should promptly provide the latest address information to the REO for updating. According to the LCO, some organisations must have been in operation for the 12 months prior to its VR application so as to be eligible to be registered in the relevant FC. If there is information or evidence showing that individual registered corporate electors have dissolved and are no longer in operation, the REO will initiate the statutory inquiry process for such electors and strike off their registration if they fail to give a valid reply.

Section 5 – The Provisional and Final Registers

3.22 A total of 496 320 and 67 876 VR forms were received for GCs and FCs respectively by the statutory deadline on 2 May 2020. Among them, 364 565 (73.45%) VR forms for GCs and 44 896 (66.14%) VR forms for FCs (including the DC (second) FC and traditional FCs) were received within the eight weeks prior to the deadline for VR. In the 2020 FRs, there were 407 450 (9.12%), 423 861

(10.10%) and 28 323³ (11.30%) newly registered electors for GCs, the DC (second) FC and traditional FCs respectively.

3.23 The REO published the Provisional Registers of Electors (“PRs”) for GCs and FCs on 1 June 2020. The PRs for GCs and FCs contained the names and principal residential addresses of electors who were included in the previous FRs and whose particulars had been updated by the REO based on information reported by the electors concerned or obtained from other sources. The PRs also contained the particulars of qualified applicants who had applied for registration as electors on or before 2 May 2020 (i.e. the deadline for new application for registration).

3.24 An OL was also published by the REO on 1 June 2020. The OL contained the particulars of persons who were formerly in the 2019 FR but were not included in the 2020 PR and were proposed to be omitted from the 2020 FR on the grounds that the ERO had reasons to believe that these persons had been disqualified or had ceased to be eligible for registration (e.g. persons who had passed away, persons who had informed the ERO that they did not wish to be registered, persons who had changed their principal residential addresses but the new residential addresses were not known to the ERO, or persons who were no longer qualified members of the specified bodies of the relevant FCs).

3.25 On 15 October 2019, the Junior Police Officers’ Association of the Hong Kong Police Force (“JPOA”) made a leave application to the Court of First Instance of the High Court (HCAL 3042/2019) for judicial review against the

³ The number of newly registered electors for traditional FCs did not include the number of electors transferred from one traditional FC to another traditional FC.

release of linked information of the names and principal residential addresses of the registered electors to the public and candidates (“the Impugned Measures”) on the ground of doxxing (i.e. extensive leaking of personal information and cyber-bullying on the Internet) against serving police officers and their family members and also sought an urgent interim injunction to prohibit the ERO from making the FRs available for public inspection or providing the particulars of electors to any person. On 16 October 2019, the Court of First Instance refused an urgent application for interim injunction, but granted leave for appeal to the Court of Appeal, and granted an interim injunction pending appeal. The REO temporarily suspended the public inspection of the 2019 FRs and the release of the particulars of electors to candidates. The Court of Appeal (CACV 489/2019) conducted a hearing on 21 October 2019 and allowed the appeal in part on 22 October 2019, i.e. prohibiting the inspection by and provision of extracts of any registers to the public pending the hearing of the judicial review application, but allowed the supply of extracts of FRs to the validly nominated candidates. From 24 October 2019 onwards the REO proceeded to provide relevant extracts of the FRs to validly nominated candidates or their election agents who had applied for provision of the information.

3.26 On 25 November 2019, Hong Kong Journalists Association applied for and was granted leave to join these proceedings as Intervener. On 16 and 17 December 2019, the Court of First Instance heard the rolled-up hearing of the application for leave to apply for judicial review and the substantive application for judicial review. On 8 April 2020 the Court of First Instance handed down the judgment granting leave to apply for judicial review on the basis that the Impugned Measures engaged the registered voters’ rights to privacy, family and

home (Article 14 of Hong Kong Bill of Rights) and their right to vote (Article 26 of the Basic Law), but dismissed the substantive application, finding the Impugned Measures to be lawful and proportionate. Hence, the REO announced on 9 April 2020 that the arrangement for inspection of the 2019 FRs for GCs, FCs and Election Committee subsectors would resume on 15 April 2020.

3.27 On 14 April 2020, the JPOA lodged an appeal against the judgment of the Court of First Instance and sought and obtained from the Court of Appeal an interim injunction pending appeal to prohibit public inspection of the FRs. Pursuant to the interim injunction, the REO continued the suspension of the arrangement relating to the inspection of the FRs.

3.28 On 5 May 2020, the appeal on the judicial review was heard and the judgment was handed down by the Court of Appeal on 21 May 2020, prohibiting the inspections of the FRs generally, but allowing inspection of the FRs by political parties and the press, and the provision of extracts of the relevant constituencies to the candidates, and ordered the parties to propose the terms of the order.

3.29 On 26 May 2020, an affirmation was filed on behalf of the REO proposing that: (1) as to bodies to be regarded as members of the press, the REO shall adopt the list of subscribers to the Government News and Media Information System; and (2) as to political parties, the definition of “political parties” under the

Chief Executive Election Ordinance (Cap 569)⁴ are to be allowed to inspect the FRs.

3.30 On 27 May 2020, the Court of Appeal heard the parties' proposed terms of the order and the definitions proposed by the REO were agreed to. In accordance with the Court's order, the PRs and OLs were made available for inspection by members of the press and political parties at the two specified REO's offices located at 10/F, Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong and 13/F, Kowloonbay International Trade & Exhibition Centre, 1 Trademart Drive, Kowloon Bay, Kowloon during the REO's ordinary business hours with effect from 1 to 24 June 2020. As to the PRs for FCs and Election Committee subsectors as well as the corresponding parts of the OLs, that do not show the linked information of individual electors (i.e. their names and principal residential addresses), the general public are at liberty to inspect them. The normal procedure for claims and objections against any entries in the PRs could be lodged with the ERO from 1 to 25 June 2020.

3.31 Upon the deadline for lodging claims and objections (i.e. 25 June 2020), 34 notices of claim (involving the same number of electors) and 456 notices of objection (involving 501 electors) were received by the ERO. Among them, 2 notices of claim and 69 notices of objection (involving the same number of electors) were withdrawn. From June to early July 2020, the RevO processed 32

⁴ While there is no prevailing law governing the official recognition of "political party", reference could be made to section 31 of the Chief Executive Election Ordinance that a political party means:

- (a) a political body or organisation (whether operating in Hong Kong or elsewhere) which purports to be a political party; or
- (b) a body or organisation the principal function or main object of which is to promote or prepare a candidate for election as a member of LegCo or any DC.

notices of claim (involving the same number of electors) and 387 notices of objection (involving 432 electors). For cases of claims, the RevO allowed the inclusion of 7 electors and change of registration particulars of 6 electors in the FRs, and dismissed 19 requests lodged by claimants. As for cases of objection, the RevO allowed the removal of registration of 45 electors and change of registration particulars of 42 electors in the FRs while dismissing objections involving 345 electors.

3.32 The 2020 FRs were published on 17 July 2020, listing in total the particulars of 4 466 944 GC electors, 4 196 680 DC (second) FC electors and 250 452 traditional FC electors. A breakdown of electors by GCs and traditional FCs is at **Appendices II to IV**. In accordance with the judgment on the above-mentioned judicial review case handed down by the Court of Appeal on 21 May 2020 and the order granted at the hearing on 27 May 2020, the FR was made available for inspection by validly nominated candidates, members of the press and political parties during the REO's ordinary business hours. The FRs for FCs and Election Committee subsectors that did not show the linked information of individual electors were also made available for inspection by the general public.

Section 6 – Follow up Actions and Checking Measures Regarding Undelivered Election Mails

3.33 Complaints were received by the REO alleging inaction of the REO towards undelivered election mails. The allegation is factually incorrect. After completing the process of an application for new VR or change of registration particulars, a registration notice will be issued to the elector by post. At every

contested election, the REO will issue a poll card to every eligible elector before the polling day. The REO has all along advised members of the public to return election mails (including poll cards) issued by the REO if they find that the addressee does not live at that place via the Hongkong Post, or by email with attachment of a photograph of the front cover of the mail which clearly shows the information of the addressee to facilitate the REO to follow up.

3.34 The REO will properly follow up on cases of unsuccessful mail delivery. Undelivered mail returned by the Hongkong Post will bear a “Return” stamp or “Return” label on it and the reason for unsuccessful delivery (e.g. “No such person”, “Refused”, “Incomplete address”, “No such address”, “Moved”, etc.) will be marked on it clearly. Upon receipt of such returned mail from the Hongkong Post, the REO will follow up according to the stated reasons for unsuccessful delivery. For example, if the mail is labelled with “Incomplete address” or “No such address”, the REO will first double-check the VR application forms to ascertain whether any clerical mistakes are involved. This includes contacting the elector concerned by phone, email or other means to find out whether inaccurate particulars were furnished in the application form submitted, ensuring that staff members had accurately inputted data into the REO’s internal system, and rectifying the records whenever necessary. Moreover, the REO will also check whether the unsuccessful delivery is caused by ambiguous addressing. For instance, the floor numbers of some buildings in Hong Kong (mostly old buildings such as tenement buildings) may follow different presentation in Chinese and English, and the non-unified address format for some rural areas may also affect the delivery of mail.

3.35 When the REO receives undelivered poll cards labelled with “Addressee unknown” or “Moved, redirection service not arranged by addressee” by the Hongkong Post, or with “No such person” or “Moved” on the envelopes marked by the residents, the REO will then have reasonable grounds to suspect that the electors no longer reside at the registered addresses or have moved out without updating their principal residential addresses with the REO. If possible, the REO will try to contact the electors concerned by phone, email or other means to remind them to update their registration particulars with the REO as soon as possible and provide address proof to comply with the statutory requirement. If the REO cannot get in touch with the elector concerned or the elector concerned did not update his/her registered residential addresses, the REO will conduct statutory inquiry and follow-up actions in accordance with the EAC (ROE) (GC) Reg, and send an inquiry letter to the registered residential address of the elector concerned to ascertain whether the address is still the elector’s only or principal residence in Hong Kong. Upon receipt of the inquiry letter, the elector must complete and return the reply slip attached to the letter and provide the address proof required before the specified deadline so as to confirm or update his/her registered address. If the elector fails to reply to the REO or submit the necessary address proof by the specified deadline, his/her registration particulars will be included in the OL to be published in the relevant VR cycle. After completion of the inquiry process, the REO will remove the entries of the electors who fail to provide valid replies when compiling the next FR.

3.36 If suspected cases of false statements in VR are found, the REO will handle the cases strictly in accordance with the legislation and refer them to law enforcement agencies for investigation and follow-up actions. A person who

knowingly or recklessly gives false information to the REO for VR or votes at the election knowing that he/she is not eligible to do so commits an offence.

Section 7 – “Ordinarily Residing in Hong Kong”

3.37 During the preparation of the 2020 LegCo General Election, people’s movement in many countries and areas around the world was affected by the COVID-19 epidemic. Some Hong Kong residents could not travel to and from Hong Kong as usual, and this has triggered off public discussions of “ordinarily residing in Hong Kong” and the eligibility of GC electors under the LCO.

3.38 Under section 28 of the LCO, a person is not eligible to be registered as a GC elector unless the person ordinarily resides in Hong Kong and at the time of application for registration, the elector provides in his/her application for registration his/her only or principal residence in Hong Kong. The REO will assign a GC and a polling station to each elector according to the elector’s registered address in Hong Kong.

3.39 The subsisting electoral law does not have any definition of “ordinarily residing in Hong Kong”. In assessing whether a person “ordinarily resides in Hong Kong”, one needs to take into account a host of factors and the specific situation of each case, and determine according to the relevant judgments of the Court, and the conclusion cannot be generalised. One cannot say someone does not “ordinarily reside in Hong Kong” simply because he/she has a place of residence abroad.

According to a precedent of the Court⁵, a person is considered ordinarily residing in a place if he/she remains in that place legally, voluntarily and for a settlement purpose (such as for education, employment or residence, etc.), regardless of the duration, and even if he/she is temporarily absent from that place due to some reasons. The Court also pointed out that a person may ordinarily reside in two places at the same time.

3.40 In general, if a Hong Kong permanent resident who used to reside in Hong Kong all along set up for personal reasons another residence elsewhere, but still returns to Hong Kong from time to time to live here (for example, to deal with his affairs, social activities or family reunion), that person still can be regarded as maintaining a reasonable connection with Hong Kong. A condition which must be considered in parallel is that according to the electoral law, the applicant must provide, for the purpose of registration as an elector, a residential address which is his/her only or principal residence in Hong Kong (that is not a correspondence address but a residential address where he/she habitually resides when he/she is in Hong Kong). Under such circumstances, whether the person satisfies the statutory requirement of “ordinarily residing in Hong Kong” must be determined on a case-by-case basis taking into account the actual circumstances.

3.41 On the other hand, if a Hong Kong permanent resident has left Hong Kong to reside in other place without maintaining connections with Hong Kong, or with no intention to reside in Hong Kong again, or no longer having an only or

⁵ *Lau San Ching v Liu, Apollonia* (1995) 5 HKPLR 23 citing *R. v Barnet London Borough Council, ex parte Shah* [1983] 2 AC 309

principal residence in Hong Kong, that person no longer meets the statutory requirements for registration.

3.42 To sum up, the individual circumstances of the person must be considered when determining whether that person is “ordinarily residing in Hong Kong”, and it is not a matter capable of summary determination. The REO will examine the details and actual circumstances of the relevant VR cases carefully, and seek legal advice where necessary.

3.43 The system for registration as electors in Hong Kong operates on a system of self-declaration in order to facilitate registration as electors by eligible persons. It is not mandatory under the subsisting legislation to provide address proof when applying for registration as electors, but the applicant must provide true and accurate information. If the REO has any doubts when processing a new VR application, it will exercise its power under the relevant electoral law to request the applicant to submit address proof. Any person who knowingly or recklessly gives false or misleading information in a VR application form and becomes an elector (commonly known as “vote-rigging”) commits an offence, regardless of whether the elector has subsequently voted in an election or not.

3.44 Furthermore, there is no mandatory requirement under the subsisting legislation for registered electors to update their residential addresses with the REO upon moving home⁶, save they are required to provide address proof when they report such changes in their registered addresses.

⁶ In the case of *Chong Wing Fai Winfield v Cheung Kwok Kwan & Another* (HCAL 10/2012), the Court has pointed out that it is the civic duty of registered electors to update their residential addresses with the REO when there are changes.

3.45 In order to enhance the accuracy of the registration particulars of electors in the FR, the REO conducts various checking measures in each year's VR cycle. Details are set out in paragraphs 3.15 and 3.16 above.

3.46 When there are doubts on an elector's registered residential address upon conducting the above-mentioned checking measures, the REO will issue a statutory inquiry letter to the elector concerned in accordance with the relevant electoral law and request the elector to confirm or update the registered residential address and provide address proof. If the REO suspects that the elector no longer ordinarily resides in Hong Kong during the inquiry process, the REO will request the elector to provide additional information and explanation by filling in a specified form for determination of whether he/she is still eligible for registration. Should it be concluded that he/she is ineligible for registration, his/her registration particulars will be removed in the next FR in accordance with the statutory procedures.

3.47 According to the statutory inquiry process, electors failing to reply to the inquiry or provide the information required by the specified deadline will be included in the OL by the REO. Electors included in the OL are entitled to lodge a claim to the RevO⁷ before the statutory deadline to request for reinstating their status as an elector. If the electors concerned have not replied to the reminding letters issued by the REO with regard to their inclusion in the OL or have failed to obtain the RevO's approval for their claims, their entries will be removed from the next FR. It has to be emphasised that removal of electors from the FR is a serious matter and must be handled in accordance with the statutory procedures.

⁷ Under section 77 of the LCO, the RevO may be any magistrate, former magistrate, retired magistrate or any legal officer within the meaning of the Legal Officers Ordinance (Cap 87), appointed by the Chief Justice.

3.48 Under section 48(5) of the LCO, a person registered as an elector for a constituency may not be prevented from voting at an election only because the person's name should not have been included in the FR prepared for the constituency. Any person who is found no longer eligible to be an elector after the publication of the FR will not have his/her registration particulars instantly removed from the FR. The REO must deal with the relevant cases in the next VR cycle and include such cases in the above-mentioned statutory inquiry process.

3.49 Nevertheless, in accordance with section 53 of the LCO, any person who is no longer eligible for registration (for example, because he/she no longer ordinarily resides in Hong Kong or no longer keeps an only or principal residence in Hong Kong) will be disqualified from voting at elections. It is an offence of engaging in corrupt conduct under section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) ("ECICO") if a person votes in an election **knowing** that he/she is not entitled to do so. Upon receipt of relevant complaints, the REO will initiate the statutory inquiry process and refer the cases to the ICAC for investigation.

CHAPTER 4

LEGISLATION GOVERNING THE ELECTION

Section 1 – Ordinances and Subsidiary Legislation

4.1 The 2020 LegCo General Election was governed by the following ordinances:

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

4.2 The above ordinances are complemented by the following 10 pieces of subsidiary legislation stipulating the detailed procedures for the conduct of the election:

- (a) the EAC (ROE) (GC) Reg;
- (b) the EAC (ROE) (FCSEC) Reg;

- (c) the Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap 541C) (“EAC (NAC) (LC) Reg”);
- (d) the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”);
- (e) the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap 541M);
- (f) the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap 541N);
- (g) the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap 542C);
- (h) the Legislative Council (Election Petition) Rules (Cap 542F);
- (i) the Maximum Amount of Election Expenses (Legislative Council Election) Regulation (Cap 554D); and
- (j) the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation.

Section 2 – Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2017

4.3 In the light of the incident that certain electors were able to collect ballot papers by producing photocopies of their Hong Kong Permanent Identity Cards (“HKIDs”) in the 2016 LegCo General Election, the EAC made five Amendment Regulations on 19 June 2017 to amend five regulations under the EACO so as to implement the EAC’s recommendations in its Report on the 2016 LegCo General Election. Among them, the amendments made to the EAC (EP) (LC) Reg include:

- (a) specifying that a Presiding Officer (“PRO”) must not give a ballot paper to a person unless the PRO is satisfied, by inspecting the original of that person’s identity document (typically his/her HKID), that he/she is the person registered in the FR;
- (b) putting in place alternative measures to cater for electors who are not able to produce the original of their identity documents, such that the PRO may still issue a ballot paper to an elector upon inspection of the following document(s) which bear(s) the holder’s name, photograph and HKID number, and is commonly accepted as proof of identity:
 - (i) a document issued by the Commissioner of Registration acknowledging that the elector has applied:
 - (A) to be registered under the Registration of Persons Ordinance (Cap 177); or

- (B) for a new HKID under regulation 13 or 14 of the Registration of Persons Regulations (Cap 177A) and is awaiting its issuance;
 - (ii) a valid Hong Kong Special Administrative Region (“HKSAR”) Passport issued to the elector under the Hong Kong Special Administrative Region Passport Ordinance (Cap 539);
 - (iii) a valid identity book for a HKSAR seaman issued to the elector under regulation 3 of the Immigration Regulations (Cap 115A);
 - (iv) a valid document of identity for visa purposes issued to the elector under regulation 3 of the Immigration Regulations; or
 - (v) a document evidencing the elector’s report to a police officer of the loss or destruction of his/her identity document (commonly referred to as “memo of loss property”), along with the original of a valid passport or similar travel document (not being referred to in (i) to (iv) above) issued to him/her showing his/her name and photograph, and a copy of his/her HKID in paper form showing his/her name, photograph and HKID number; and
- (c) specifying that an elector applying for a ballot paper at a Dedicated Polling Station (“DPS”) situated in a prison shall produce the document issued by the Commissioner of Correctional Services

showing the elector's name, photograph and the prisoner registration number allocated by that Commissioner to the person for identification purposes.

4.4 The Amendment Regulations were tabled at LegCo on 28 June 2017 for negative vetting and came into operation on 1 December 2017.

Section 3 – Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2017 and Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2017

4.5 The CMAB issued the Consultation Document on Enhancement of Voter Registration System on 26 November 2015 to consult members of the public on a series of proposed measures to enhance the VR system. Majority of the views received during the public consultation was in support of introducing the address proof requirement for VR. After balancing the various factors, such as facilitating VR and allowing adequate time for the public to adapt to the new requirement, etc., the Government decided to take a gradual approach by first implementing the address proof requirement for change of registered principal residential address. Accordingly, the EAC amended three regulations under the EACO. Among them, the following amendments made to the EAC (ROE) (GC) Reg and EAC (ROE) (FCSEC) Reg are related to LegCo elections:

- (a) requiring electors to submit address proofs for applications for change of registered principal residential address; and
- (b) advancing the statutory deadline for change of registration particulars by 30 days to allow sufficient time for processing the applications (i.e. 2 April in a non-DC election year, 2 June in a DC election year).

4.6 The Amendment Regulations were tabled at LegCo on 25 October 2017 for negative vetting and came into operation on 1 February 2018.

Section 4 – Electoral Legislation (Miscellaneous Amendments) Bill 2018

4.7 The Government introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2018 to LegCo on 11 July 2018 with a view to enhancing the VR arrangements and the electoral procedures. The amendments made by the Bill relating to LegCo elections include the following:

- (a) increasing the maximum penalties for making false statements in VR;
- (b) specifying in the law that it is the duty of the person lodging a claim/an objection (“the appellant”) to provide sufficient information about the case so that the RevO, the ERO and the elector(s) being objected to in those objection cases will be informed of the grounds of the claim/objection;

- (c) providing an option for the RevO to directly dismiss the claim/objection case if the appellant or his/her representative does not attend the hearing of the claim/objection case concerned;
- (d) specifying in the law that the RevO may process incontrovertible claim/objection cases by written submissions;
- (e) revising the statutory deadline for forwarding notices to the RevO to 29 June (for a non-DC election year) or 29 August (for a DC election year), so as to allow more time for the RevO to process the claim/objection cases, whether by hearings or written submissions;
- (f) for claim/objection cases handled by written submissions in lieu of hearing, setting a deadline for informing the appellant and the elector being objected to in an objection case of the RevO's ruling, i.e. 7 July (for a non-DC election year) or 7 September (for a DC election year);
- (g) amending the relevant arrangement so that notices issued by the RevO to the appellants and the electors being objected to (in the case of objections) shall be sent by surface mail instead of registered post;
- (h) including former and retired magistrates in the pool of eligible candidates for appointment as RevO;

- (i) introducing an exemption from the criminal liability under section 23(1) of the ECICO for a third party (other than a candidate and his/her election expense agents) publishing an election advertisement (“EA”) on the Internet and the election expenses thus incurred are merely electricity and/or Internet access charges; and
- (j) stipulating that a ballot paper with a vote recorded for a deceased or disqualified candidate should be treated as clearly invalid and not be counted so as to streamline the counting process.

4.8 The Electoral Legislation (Miscellaneous Amendments) Bill 2018 was passed by LegCo on 16 January 2019. The amendments came into operation on the date of publication in the Gazette (i.e. 25 January 2019).

Section 5 – Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2018

4.9 In order to improve the requirements that electors must produce identity documents in applying for ballot papers, the EAC made five Amendment Regulations on 1 August 2018 to amend five regulations under the EACO. Among them, the amendments made to the EAC (EP) (LC) Reg are as follows:

- (a) relaxing the document requirement in paragraph 4.3(b)(v) above, such that an elector would be allowed to collect a ballot paper by producing the memo of lost property and the original of a valid passport or similar travel document showing his/her name and photograph, without presenting a copy of his/her HKID in paper

form at the same time; and

- (b) to more clearly set out the identity document to be accepted, i.e. HKIDs and the Certificates of Exemption issued by the Commissioner of Registration.

4.10 The Amendment Regulations were tabled at LegCo on 10 October 2018 for negative vetting and came into operation on 10 December 2018.

Section 6 – Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2019

4.11 Having regard to the increasing concern for the protection of personal data of the candidates in public elections, the EAC amended two regulations under the EACO on 14 October 2019. Among them, the amendments made to the EAC (EP) (LC) Reg are as follows:

- (a) revising the relevant provisions on the publication of the notice of valid nominations in the Gazette by replacing the requirement of disclosing the “principal residential address” of the validly nominated candidates with “address” so that candidates can be given the flexibility to disclose an address that they prefer;
- (b) revising the relevant provisions on the information to be provided in nomination forms by replacing the requirement of providing the “principal residential address” of the candidates with “address”; and

- (c) removing the legislative provisions on printing the principal residential address of the candidates on ballot papers.

4.12 The Amendment Regulations were tabled at LegCo on 23 October 2019 for negative vetting and came into operation on 1 January 2020.

Section 7 – Electoral Legislation (Miscellaneous Amendments) Bill 2019

4.13 The Government introduced the Electoral Legislation (Miscellaneous Amendments) Bill 2019 to LegCo on 22 March 2019 in order to refine the VR arrangements and the electoral procedures. The amendments relating to LegCo elections include the following:

- (a) updating the electorate of the FCs in LegCo;
- (b) allowing candidate lists for a GC or the DC (second) FC of the LegCo general election or by-election to submit the nomination form in a way authorised by the CEO;
- (c) revising the requirements on the size and thickness of mail that may be sent free of postage by candidates such that each piece of mail must not be larger than 165 mm x 245 mm in size and must not exceed 5 mm in thickness;

- (d) revising the limits in relation to the relief for minor errors in election returns to the following amounts:

<u>LegCo Elections</u>	<u>Prescribed Limits</u>
(i) DC (second) FC	\$50,000
(ii) Any GC	\$30,000
(iii) Any FC other than (i)	\$5,000

; and

- (e) revising the threshold for submission of invoices and receipts giving particulars of the election expenses for the purpose of election returns from \$100 to \$500.

4.14 The Electoral Legislation (Miscellaneous Amendments) Bill 2019 was passed by LegCo on 28 November 2019. The amendments came into operation on the date of publication in the Gazette (i.e. 6 December 2019).

Section 8 – Legislative Council Ordinance (Amendment of Schedule 5) Order 2020 and Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2020

4.15 The CE in Council made the Legislative Council Ordinance (Amendment of Schedule 5) Order 2020 and the Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2020 at the meeting on 21 February 2020, proposing that, starting from this LegCo General Election, the subsidy rate of the financial assistance for eligible candidates of a

LegCo election be increased from \$14 per vote to \$15 per vote⁸. In addition, it was proposed that the maximum amount of election expenses that could be incurred by a candidate or list of candidates in a LegCo election be increased to the following amounts:

<u>GCs</u>	<u>Election Expenses Limits</u>
(a) Hong Kong Island	\$2,661,000
(b) Kowloon West	\$1,996,000
(c) Kowloon East	\$1,996,000
(d) New Territories West	\$3,326,000
(e) New Territories East	\$3,326,000
<u>FCs</u>	<u>Election Expenses Limits</u>
(a) Heung Yee Kuk, Agriculture and Fisheries, Insurance, and Transport FCs	\$133,000
(b) Traditional FCs other than those in (a) above	
(i) FCs with not more than 5 000 registered electors	\$213,000

⁸ Under the current scheme, a candidate or list of candidates standing in a LegCo election who gets elected or who has received 5% or more of valid votes cast in the constituency concerned will be eligible for financial assistance. The amount payable would be the lowest of the following:

- (a) the amount obtained by multiplying the specified rate by the total number of valid votes cast for the candidate or list of candidates (if the election is contested) or 50% of the number of registered electors for the constituency concerned (if the election is uncontested);
- (b) 50% of the election expenses limit applicable to the constituency concerned; and
- (c) the declared election expenses of the candidate or list of candidates.

(ii) FCs with 5 001 to 10 000 registered electors	\$425,000
(iii) FCs with over 10 000 registered electors	\$639,000
(c) DC (second) FC	\$7,602,000

4.16 The Legislative Council Ordinance (Amendment of Schedule 5) Order 2020 and the Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2020 were tabled at LegCo on 26 February 2020 and came into operation on 1 May 2020.

Section 9 – Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation

4.17 The Government announced on 31 July 2020 that amid the severe COVID-19 epidemic situation, the CE in Council had decided to postpone the 2020 LegCo General Election, originally scheduled for 6 September 2020, for a year to 5 September 2021 in order to protect public safety and public health as well as to ensure that the Election would be conducted openly and fairly.

4.18 For this, the CE in Council has invoked the Emergency Regulations Ordinance to make the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation to the effect that, inter alia:

- (a) notices relating to holding the general election on 6 September 2020 are revoked, thereby bringing the election to an end at the beginning of 1 August 2020;

- (b) 5 September 2021 is specified as the date of General Election for the seventh term LegCo;
- (c) except preparing documents in relation to EAs and the copies of authorisation of election expense agents for public inspection, the electoral officers and candidates are not required to perform any function;
- (d) candidates must lodge their election returns in accordance with the ECICO, setting out their election expenses and election donations received; and
- (e) the Government will return the deposit lodged by all candidates and pay the eligible candidates⁹ an amount equal to the election expenses declared in their election return.

4.19 The Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation was gazetted on 31 July 2020 and came into effect on 1 August 2020.

4.20 As mentioned in paragraph 1.10 above, to deal with the vacuum in LegCo between 30 September 2020 and the election of the seventh term LegCo as arising from the postponement of the 2020 LegCo General Election for a year to

⁹ Any candidate whose nomination form is accepted by an RO is entitled to receive a payment from the Government in an amount equal to the declared election expenses. However, if the RO has decided that the nomination form or nomination concerned was invalid, or the RO has refused to accept the nomination list, or the nomination concerned has been withdrawn before the discontinuation date of the election, the Government will not arrange for such payment.

5 September 2021, the NPCSC decided on 11 August 2020 that the sixth term LegCo would continue to discharge its duties for not less than one year until the commencement of the seventh term LegCo. The NPCSC's decision was published in the Gazette on 14 August 2020 (L.N. 154 of 2020).

CHAPTER 5

THE GUIDELINES

Section 1 – The Preparatory Work

5.1 The EAC is empowered under section 6(1)(a) of the EACO to issue electoral guidelines to facilitate the conduct or supervision of an election. The purpose of issuing the electoral guidelines is to ensure that all public elections are conducted in an open, fair and honest manner. The electoral guidelines cover two aspects. Firstly, to explain in simple language the subsisting electoral law so as to remind candidates and other stakeholders of the provisions and requirements under the electoral law. Secondly, with regard to election-related activities not stipulated by the law, to promulgate a code of conduct based on the principle of fairness and equality.

5.2 The EAC has at all times made its best endeavours to refine the electoral arrangements. Before each general election, the EAC will update the electoral guidelines. The revision is made on the basis of the existing guidelines taking into account amendments to the electoral law as well as the experience of previous elections. Before issuing each set of the guidelines, a public consultation is conducted in accordance with the EACO, during which representations on the proposed guidelines are invited from the public and all parties concerned. Having considered the views received during the public consultation period, the guidelines are then finalised for issuance.

5.3 In October 2019, the EAC started updating the Guidelines on Election-related Activities in respect of the Legislative Council Election (“the Guidelines”) applicable to the 2020 LegCo General Election. The proposed Guidelines were published for public consultation on 9 March 2020 for a period of 30 days up to 7 April 2020. The proposed Guidelines were prepared on the basis of the most recent version of the Guidelines (June 2016 edition) and by making reference to the changes in other electoral guidelines published between September 2016 and September 2019, the legislative amendments in respect of the LegCo elections as mentioned in Chapter 4, the operational experience gained in past elections, as well as the adjustments made in response to the related suggestions raised by members of the public and various parties.

Section 2 – The Proposed Guidelines

5.4 The major changes made in the proposed Guidelines, as compared with the Guidelines issued in June 2016, included the following:

(I) Changes Pursuant to Amendments to Electoral Legislation

- (a) specifying that the electors should submit address proofs together with the applications for change of registered principal residential address;
- (b) revising the statutory deadline for electors to report on change of registration particulars;

- (c) setting out clearly the fine and imprisonment that electors who knowingly or recklessly give false or misleading information for VR are liable to;
- (d) specifying that a person who lodges an objection or a claim of VR must provide sufficient information so as to inform the RevO of the grounds of the objection or claim, and specifying that the RevO may dismiss the objection or claim if the person does not attend the hearing;
- (e) specifying that ROs would state the “address” instead of the “principal residential address” of each candidate in the notice of validly nominated candidates published in the Gazette;
- (f) setting out precisely the types of identity document that an elector should produce before a ballot paper can be issued to him/her;
- (g) updating the category of invalid ballot papers to include the ballot paper on which a vote for a deceased or disqualified candidate/list of candidates is recorded and the name of, and other information relating to, the candidate/list of candidates are crossed out;
- (h) specifying clearly that during the counting of votes, questionable ballot papers must be separated and forwarded to the RO or the PRO to decide whether the vote is valid and to be counted;

- (i) specifying that a person (other than a candidate and his/her election expense agents) who publishes an EA on the Internet is exempted from the relevant criminal liability under section 23(1) of the ECICO in accordance with section 23(1A) of the ECICO if the only election expenses incurred are either or both of electricity charges and charges necessary for accessing the Internet;
- (j) reflecting the amended size and thickness requirements on postage-free mails that may be sent by candidates;
- (k) revising the maximum amount of election expenses which can be incurred by or on behalf of a candidate¹⁰;
- (l) revising the threshold for submission of invoices and receipts giving particulars of the election expenses for the purpose of election returns;
- (m) revising the limit in relation to relief for minor errors in election returns; and
- (n) revising the subsidy rate of financial assistance for the eligible candidate/list of candidates¹¹.

¹⁰ The Government introduced to LegCo the Maximum Amount of Election Expenses (Legislative Council Election) (Amendment) Regulation 2020 in February 2020 to propose increasing the maximum amount of election expenses which can be incurred by candidates of GCs/FCs. The Amendment Regulation was tabled at LegCo on 26 February 2020 for negative vetting and came into operation on 1 May 2020 (see paragraph 4.15 above).

¹¹ The Government introduced to LegCo the Legislative Council Ordinance (Amendment of Schedule 5) Order 2020 in February 2020 to propose increasing the subsidy rate of financial assistance for the eligible candidate/list of candidates of LegCo elections. The Order was tabled at LegCo on 26 February 2020 for negative vetting and came into operation on 1 May 2020 (see paragraph 4.15 above).

(II) Providing Further Explanation on Certain Subsisting Legislative Provisions

- (a) reminding candidates that according to the requirements of the electoral legislation, votes cast at small polling stations and DPSs will not be counted in the same polling stations after the close of poll, and to note the delivery and counting arrangements of the relevant ballot papers;
- (b) setting out the provisions on the postponement or adjournment of a LegCo general election as a whole, or the election of a particular GC/FC, or the poll/count of a particular polling station/counting station;
- (c) reminding candidates that information relating to an elector contained in any register of electors or in any extract of any register of electors can only be used for election-related purposes under the electoral legislation and that any abuse or misuse of such information is an offence;
- (d) reminding candidates of the canvassing activities which are forbidden in the No Canvassing Zone (“NCZ”), and setting out clearly the statutory requirement under section 40 of the EAC (EP) (LC) Reg that canvassing activities are strictly prohibited on the storey at street level of all the buildings within the NCZ;

- (e) reminding candidates to comply with the requirements of electoral legislation and remove the EAs on the windows or the bodywork of a public service vehicle before the polling day if it will pass through or be parked within the NCZ on the polling day;
- (f) reminding persons who intend to stand as a candidate at an election to note that under the electoral law, the term “candidate” includes a person who has publicly declared an intention to stand as a candidate at an election before the close of nominations for the election regardless of whether the persons concerned has submitted his/her nomination form or not. Whether a person has publicly declared an intention to stand for election is to be considered on the basis of substance and not form, including the intention to stand for election, whether the intention to stand for election is made public, and/or whether the acts constitute part of the machinery of the election. In this regard, prospective candidates must exercise due care to avoid incurring any legal liability inadvertently;
- (g) reminding candidates to comply with the requirements under the Personal Data (Privacy) Ordinance (Cap 486) in handling the personal data of his/her supporters; and
- (h) setting out clearly the guidelines on the legislative requirements for seeking prior written consent from supporters when a candidate publishes EAs and live broadcast of electioneering activities through online platforms.

(III) Suggestions Made in the Light of Operational Experience and Alignment with Other Electoral Guidelines

- (a) the Confirmation Form which has been adopted since the 2016 LegCo General Election for submission by the candidates on a voluntary basis together with the nomination form so as to confirm that they understand the legal requirements and also to assist ROs in determining the validity of a nomination;
- (b) PROs may make special arrangement to facilitate electors with special needs (e.g. senior citizens aged 70 or above, pregnant women and physically-handicapped persons with mobility difficulties) (“persons-in-need”) to vote;
- (c) specifying that an elector may request to check that a line has been drawn across his/her name and identity document number in the copy of the register of electors when applying for a ballot paper to denote that the ballot paper has been collected;
- (d) specifying the seating capacity and admission arrangement of the public area for observation of counting of votes so as to maintain the order at counting stations;
- (e) adjusting the allocation ratio of designated spots between GCs/FCs for candidates to display EAs on government land and property;

- (f) revising the deadline for candidates to post corrective information in relation to EAs after the polling day;
- (g) reflecting the guidelines issued by the Office of the Privacy Commissioner for Personal Data to remind candidates to adopt security measures when transferring personal data of electors to election agents or other contractors for electioneering purpose;
- (h) specifying that for the purpose of the principle of fair and equal treatment of candidates in relation to merely election broadcasting, media coverage and election forums, “candidate” refers to a person whose nomination form has been received by relevant RO; and
- (i) setting out the requirements of the fair and equal treatment principle for producing and publishing election-related programmes and reports by broadcasters licensed under the Broadcasting Ordinance (Cap 562) and the Telecommunications Ordinance (Cap 106) as well as the print media. When determining whether any media is in breach of the principle of fair and equal treatment, the EAC may take into consideration the overall reporting by the media organisation during the election period.

5.5 In accordance with section 6(2) of the EACO, the EAC conducted a 30-day public consultation from 9 March to 7 April 2020. As in the past, a “Message from the Chairman” enclosed in the proposed Guidelines highlighted the major changes set out in paragraph 5.4 above and explained the consultation

mechanism, thereby providing a more focused basis for the public to give their views. During the consultation period, members of the public could submit their written representations on the proposed Guidelines to the EAC. Due to public health considerations, the EAC did not arrange a public forum for this consultation so as to minimise the risk of spreading COVID-19 in the community arising from public gatherings. Nevertheless, members of the public could still submit their written representations by post, fax or e-mail before the end of the public consultation period. The proposed Guidelines were also tabled at the LegCo Panel on Constitutional Affairs for discussion and comments. In addition to the views from the LegCo Members, the EAC received about 108 000 written representations during the public consultation period.

Section 3 – Changes after Public Consultation

5.6 Among the representations received by the EAC during the public consultation period, many raised concerns about the arrangements for queuing at polling stations, collection of ballot papers by electors, maintenance of order at counting stations, and the definition of “candidate” in the context of election expenses and election donations. After considering all the views gathered during public consultation, the EAC made a number of amendments to the proposed Guidelines. Major changes included the following:

(I) Arrangements for Queuing at Polling Stations

5.7 The EAC received quite a number of views regarding arrangements for queuing at polling stations. There were views requesting implementation of

electronic means in issuing ballot papers (commonly known as “electronic poll register”) and setting up of a “caring queue” (「關愛隊」) for the above-mentioned persons-in-need so as to reduce their queuing time for collecting ballot papers. On the other hand, there were views received during public consultation that the queuing arrangement should be based on the principle of fairness and all electors should be treated equally. Given constraints on legal and operational perspectives, the EAC implemented various accommodating arrangements, which are set out in the Guidelines, as below:

- (a) the PROs will, as far as practicable, arrange for persons-in-need who have difficulties in standing for a long time in the queue to collect ballot papers due to their physical conditions to sit down inside the polling station to wait for the collection of their ballot paper, with the electors’ position in the queue appropriately marked. When it comes to the electors’ turn, or the allocated ballot paper issuing desk becomes available, they will be directed to collect the ballot paper(s) at the relevant issuing desk;
- (b) when electors are queuing up outside the polling station and there is any ballot paper issuing desk of any alphabetical prefix in the HKID number becoming vacant, the polling staff will ask the electors who are queuing up outside the polling station with the corresponding alphabetical prefix in the HKID number served by that issuing desk to enter the polling station forthwith to collect their ballot papers. This arrangement is also applicable to electors who are sitting down while queuing as mentioned above; and

- (c) during peak voting periods, the PROs, having regard to the actual situation of the polling stations, may flexibly adjust the grouping of alphabetical prefixes in the HKID numbers assigned to the issuing desks, or to set up additional issuing desks, if reasonably practicable, in order to speed up the handling of electors in the queue.

5.8 Besides, the Guidelines also set out a new arrangement for polling staff to enter the polling station upon presenting their polling staff identification to queue up for collecting their ballot papers with a view to shortening their queuing time. According to past experience, when the polling staff requests to go to vote in their assigned polling stations, the PROs will make arrangement as far as practicable, normally during lunch time or such time where the polling stations are less crowded. However, some polling stations are busy with stringent manpower and the operation of the polling station may be affected with the polling staff going away to vote. In view of this, in order to enable the polling staff to return as soon as possible to their work posts to serve the electors, if there is a queue of electors outside their assigned polling stations, they may present to the polling staff of the relevant polling station their polling staff identification for admission into the polling station to queue up for collecting their ballot papers and to cast their votes so that they can return to the polling station where they work as soon as possible. The said polling staff will still have to queue up inside the polling station but hopefully their queuing time will be reduced.

5.9 All along, ballot papers are issued to electors manually by reference to the hardcopy FR in the elections in Hong Kong. Under the subsisting law, when an

elector collects the ballot paper(s), the staff at the ballot paper issuing desk will draw a line across the name and HKID number of the elector in the hardcopy FR for record, so as to avoid repeated collection of ballot papers by electors. A number of ballot paper issuing desks are set up in a polling station. The hardcopy FR is split into the number of parts as the number of issuing desks, according to the alphabetical prefixes in the HKID number of the electors. Each ballot paper issuing desk will be assigned with only one of the separate parts of the FR, i.e. they will only be responsible for serving the electors with a designated group of alphabetical prefixes in the HKID numbers. Since the alphabetical prefixes in the HKID number of the electors have generally divided the electors into different age groups, if electors of the same age group all come to cast their vote at the same time, there will still be a long queue even if a dedicated queue is set up, and the problem of the persons-in-need having to stand in the queue for a long time will not be resolved completely.

5.10 Because of lack of flexibility, to a certain extent, in issuing ballot papers under the current arrangement, the EAC is not able to set up “caring queue” for the persons-in-need at the moment. However, if the electronic poll register is adopted for the issue of ballot papers in future elections, the issuing desks will then not be limited by the restrictions of the splitting of the hardcopy FR, and the issuing desks can serve electors with any alphabetical prefixes in HKID number, thus allowing higher flexibility to the deployment of ballot paper issuing desks and staff. Under this new flexible mode of operation, the setting up of dedicated queues and dedicated issuing desks for the persons-in-need on the polling day will become more practicable.

5.11 For the recommendations of implementation of the electronic poll register in future elections and arrangement for queuing on the polling days, please refer to paragraphs 10.7 to 10.16 and paragraphs 10.44 to 10.54 of Chapter 10 respectively.

(II) Checking of Personal Entry in the Copy of Register by Electors

5.12 To enhance transparency of the ballot paper issuing process, the EAC set out clearly in the Guidelines that the polling staff would draw the line crossing out the relevant entry in the FR copy signifying the collection of the ballot paper under the observation of the elector concerned while at the same time cover up the entries of other electors in the copy of the FR to ensure that the personal data of the other electors are protected.

(III) Maintaining Order at Counting Stations

5.13 As regards the arrangement for members of the public to observe the count at the counting stations, there has always been a maximum capacity for entrants allowed to the counting stations depending on the size and other constraints of the venues. All along, the PRO would not allow further entrants to the counting station when the area designated for the public is full so as to maintain the order at the counting stations effectively. In order to enhance the transparency of the admission arrangement, the Guidelines set out clearly that a notice showing the maximum capacity of the public area will be displayed outside the counting station.

5.14 Besides, the Guidelines included a new arrangement for installing recording devices by the REO at the counting stations. All along, there is no prohibition on photography and/or video-recording inside the counting stations (excluding the counting zone). Members of the public and the media could take photographs and/or videos inside the public area. In view of the incidents of disorderly conduct in past elections, recording equipment will be installed at counting stations for video recording which will help keep order and maintain a safe environment for members of the public and staff inside the counting stations.

(IV) Definition of “Candidate”

5.15 There were some representations querying whether the definition of “candidate” mentioned in Chapter 16 regarding “Election Expenses and Election Donations” of the Guidelines has been changed. In fact, the definition of “candidate” is clearly defined in the ECICO. The definition of “candidate” in the Guidelines makes direct reference to what is stipulated in the ECICO and has all along been set out in all the electoral guidelines published by the EAC in the past. The EAC does not nor has the authority to change that definition. The EAC has the responsibility to remind those who intend to run for elections of the requirements in relevant electoral law, especially to mention the main points covered in a relevant court case so that persons running for the election may avoid breaking the law inadvertently. In view of the concerns raised in the representations, the EAC has revised the Guidelines to quote the comments from the relevant court case directly instead.

(V) *Publication of the Final Guidelines*

5.16 The EAC released the final Guidelines on 18 June 2020 and issued a press release to inform the public of it. The Guidelines were uploaded to the EAC's website and made available for public inspection at the Home Affairs Enquiry Centres and the REO on the same date. Besides, each candidate/list of candidates of the election was provided with the Guidelines in CD-ROM format for reference at the time of his/her/their submission of the nomination form.

CHAPTER 6

APPOINTMENTS AND NOMINATIONS

Section 1 – Appointment of Nominations Advisory Committees

6.1 The EAC appointed six legal professionals each constituting a Nominations Advisory Committee (“NAC”) under the EAC (NAC) (LC) Reg to provide the prospective candidates and ROs with free legal advice on matters relating to eligibility (i.e. whether the prospective candidate or a candidate is eligible to be nominated, or disqualified from being nominated as provided in sections 37 and 39 of the LCO), when necessary (see paragraph 6.8 below). Nevertheless, according to section 1(2)(a) of EAC (NAC) (LC) Reg, the NACs are not empowered to advise on any matter relating to the requirements stipulated in section 40 of the LCO (including the candidate’s declaration made to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR (see paragraph 6.9 below)). Members of the NACs included Mr Wong Ching-yue, Senior Counsel, Mr Jin Pao, Senior Counsel, Mr Derek Chan, Senior Counsel, Mr Kevin Chan, Mr Lewis Law and Mr Mike Lui. They were experienced members of the legal profession not affiliated with any political organisations. Their appointment was published in the Gazette on 12 June 2020. During their appointment period, the NACs received a total of 12 requests from prospective candidates and ROs for legal advice. The advice provided by the NAC on a prospective candidate’s eligibility to be nominated as a candidate does not indicate whether his/her nomination is valid or not. The decision on the validity of the nomination remains finally with the RO.

Section 2 – Appointment of Returning Officers and Briefings for Returning Officers

6.2 The EAC published a notice in the Gazette on 19 June 2020 appointing five District Officers of the HAD and 21 directorate officers of the relevant policy bureaux and departments as ROs for GCs and FCs respectively.

6.3 The EAC Chairman held a briefing session for ROs at the North Point Community Hall on 3 July 2020. The briefing session was also attended by the CEO of the REO, and representatives of the Department of Justice (“DoJ”) and ICAC. The EAC Chairman highlighted the major electoral arrangements for the ROs’ attention, including the nomination procedures, appointment of agents, polling and counting arrangements, matters relating to the NCZ and No Staying Zone, provisions in the legislation and the Guidelines governing EAs and election expenses, and handling of complaints. Representative from the ICAC also briefed the participants on the major provisions of the ECICO and the procedures for referring complaints related to the Ordinance to the ICAC while the DoJ briefed the ROs on the general procedures for consulting legal advice.

Section 3 – Appointment of Assistant Returning Officers

6.4 To provide assistance to the ROs in discharging their duties, the EAC appointed 94 Assistant Returning Officers (“AROs”) who were senior officers of the HAD or relevant policy bureaux and departments. In addition, 130 AROs (Legal) were also appointed to provide legal advice to the ROs and PROs during the count and to determine the validity of questionable DC (second) FC ballot

papers. They were all legally qualified persons in the civil service, the majority of whom came from the DoJ and the rest from policy bureaux and departments such as the Intellectual Property Department and Official Receiver's Office.

Section 4 – Nomination of Candidates

6.5 The nomination period commenced on 18 July 2020 and ended on 31 July 2020. The two-week period of nomination was published in the Gazette on 19 June 2020 by the CEO. Persons seeking candidature were required to submit their nomination forms in person to the respective ROs during the nomination period.

6.6 The NPCSC passed on 30 June 2020 The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law") and listed the law in Annex III to the Basic Law after consultation with the NPCSC's Committee for the Basic Law of the HKSAR and the HKSAR Government as required under Article 18 of the Basic Law. The National Security Law took effect upon gazettal at 11 p.m. on 30 June 2020. Article 6 of the National Security Law stipulates that "a resident of the Region who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China in accordance with the law".

6.7 In relation to the LegCo election, candidates nominated for the election must satisfy the requirements in two parts, namely (1) the eligibility to be nominated as a candidate, and (2) the requirements to be complied with by nominated candidates (including making a statutory declaration). Otherwise, he/she is not a validly nominated candidate.

6.8 Regarding the first requirement, the candidate must fulfil the nomination eligibility as set out in section 37 of the LCO and must not be disqualified from being nominated as a candidate or elected as an elected member under the circumstances stipulated in section 39 of the LCO.

6.9 The second part is mainly concerned with making a statutory declaration in the nomination form. Under subsisting electoral law, all candidates of the CE elections, LegCo elections, DC elections and Rural Representative elections are required to make a declaration in the nomination form to the effect that they will uphold the Basic Law and pledge allegiance to the HKSAR. Otherwise, their nominations are invalid. Such requirement is stipulated in section 40(1)(b)(i) of the LCO. In accordance with section 103 of the EAC (EP) (LC) Reg, a person who makes a false statement in the nomination form commits a criminal offence. Upon conviction, he/she will be liable to criminal sanction.

6.10 To ensure that all candidates clearly understand the provisions of the Basic Law and the legal requirements and responsibilities involved in making the declaration, the EAC has prepared a Confirmation Form to be signed by the candidates since the 2016 LegCo General Election, and has adopted the arrangement in various elections and by-elections (including LegCo by-elections)

held thereafter.

6.11 The Confirmation Form is not part of the nomination form. It is to reflect the requirements under the subsisting law and remind candidates of the relevant legal provisions lest they may commit a criminal offence due to lack of understanding or awareness. Candidates may sign the Confirmation Form on a voluntary basis to confirm that they have understood the legal requirements. Regardless of whether candidates have signed the Confirmation Form or not, they should be bona fide in signing the declaration in the nomination form. Otherwise their nominations are invalid.

6.12 According to the judgment on an election petition in relation to the 2016 LegCo General Election (HCAL 162/2016), the Court held that “the EAC is entitled and empowered to issue the non-mandatory Confirmation Form requesting a candidate to further the information contained therein to assist the Returning Officer’s decision on the validity of a nomination. As such, the Returning Officer is also entitled to take into account a candidate’s failure to return the Confirmation Form in deciding the validity of the nomination”. Furthermore, the judgment handed down by the High Court on two judicial review cases in relation to Confirmation Form (HCAL 133/2016 and HCAL 134/2016) reiterated that “it is lawful for the EAC to ask a candidate to submit the Confirmation Form together with the Nomination Form on voluntary basis but not as a mandatory requirement, and it is lawful for the Returning Officer to take that into account in determining the substantive validity of the nomination”.

6.13 Under the subsisting law, whether a candidate's nomination is valid or not is solely determined by the RO. The EAC is neither empowered nor involved in the making of such decision, and would not provide any advice or guidelines on the decision made by the RO. The RO may under sections 10(10) and 11(11) of the EAC (EP) (LC) Reg request a candidate to provide additional information that he/she considers necessary to satisfy him/her that the candidate is eligible to be nominated as a candidate or that the nomination of the candidate is valid. In accordance with section 19 of the EAC (EP) (LC) Reg, if an RO decides that a nomination is invalid, the RO must endorse the decision and the reason(s) for it, which will be made available for public inspection pursuant to section 14 of the EAC (EP) (LC) Reg.

6.14 By the end of the nomination period, a total of 184 nomination forms were received by the ROs for the five GCs and 29 FCs. Out of these nomination forms, 99 were received by the ROs for the GCs (two candidates from a nomination list withdrew their nominations during the nomination period), 79 were received by the ROs for the traditional FCs and 6 were received by the RO for the DC (second) FC.

6.15 As mentioned in paragraph 1.7 above, amid the severe COVID-19 epidemic situation in Hong Kong, the Government announced on 31 July 2020 that, in order to protect public safety and public health as well as to ensure that the Election would be conducted openly and fairly, the CE in Council decided to postpone the 2020 LegCo General Election which was originally scheduled for 6 September 2020 for a year to 5 September 2021. In this connection, the CE in Council invoked the Emergency Regulations Ordinance to make the Emergency

(Date of General Election) (Seventh Term of the Legislative Council) Regulation which brings the electoral process of the 2020 LegCo General Election to an end on 1 August 2020, specifies the new election date, and deals with such matters as election expenses and donations. As such, starting from this date, the ROs were not required to perform any function provided in the electoral law in relation to the nomination of the discontinued election.

6.16 The number of nomination forms received by the ROs for the GCs, traditional FCs and DC (second) FC, as well as the number of nominations ruled valid or invalid by the relevant ROs as at 31 July 2020 are tabulated below:

	No. of nomination forms received	No. of validly nominated candidates	No. of invalidly nominated candidates
GC*	99 (214 persons in total)	84 (involving 18 nomination forms)	9 (involving 9 nomination forms)
Traditional FC	79	31	2
DC (second) FC*	6 (12 persons in total)	0	1 (involving 1 nomination form)

*The nomination of candidates for GC and DC (second) FC is to be by a list of candidates.

The ROs concerned had endorsed on the nomination forms of the candidates their decisions and reasons for the decisions in accordance with section 19 of the EAC (EP) (LC) Reg, and make them available for public inspection.

6.17 Regarding the discontinued 2020 LegCo General Election, the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation also stipulates that:

- (a) candidates should continue to make available the electronic copies of their EAs and the relevant information, permission or consent in relation to the EAs for public inspection until the end of the public inspection period;
- (b) candidates should lodge the election return before the expiry of the period of 60 days beginning with 1 August 2020, i.e. on or before 29 September 2020; and
- (c) candidates whose nomination forms are accepted by ROs are entitled to receive payment from the Government in an amount equal to the declared election expenses. However, if the ROs have decided that the nomination forms or nominations concerned were invalid, or the ROs have refused to accept the nomination lists, or the nominations concerned have been withdrawn before the discontinuation date of the election, the Government will not arrange for such payment.

The above-mentioned requirements on the lodging of election returns and making available the EAs for public inspection help ensure that public elections are conducted in a fair, open and honest manner. In line with past practice, the REO

would examine the election returns and forward them to the ICAC for follow-up if there is a prima facie case of contravention of the ECICO.

Section 5 – Briefing Session for Candidates

6.18 The EAC organises a briefing session for validly nominated candidates at each election for the purpose of providing them with important information of the election and reminding them of the essential requirements under the relevant electoral law and Guidelines. On the same occasion, the RO conducts lots drawing to determine the order of the names of candidates/lists of candidates on the ballot paper and to allocate a set of designated spots for display of EAs.

6.19 For this LegCo General Election, the EAC has made alternative arrangements with regard to the actual situation. Having regard to the need to maintain social distancing amid the COVID-19 epidemic, and also the disruption of order at the candidates' briefings held in recent years, the EAC originally planned to conduct the session for lots drawing by the ROs and the briefing session for candidates on two separate days. Besides, the briefing session for candidates was planned to be conducted online for the very first time. The session for lots drawing for the election was originally scheduled for 4 August 2020 at the Hong Kong Convention and Exhibition Centre. During the session, the RO would allocate to each candidate or list of candidates a candidate number shown on the ballot paper and a set of designated spots for display of EAs by means of lots drawing in the presence of the candidates and their agents. As for the briefing session for candidates, it was originally scheduled for 6 August 2020 and would be at the same time broadcast live on TV and the Internet. The information of the briefing would

also be uploaded onto the Internet right after the session for viewing by the members of the public. As the electoral process of this LegCo General Election came to an end on 1 August 2020, both the lots drawing and online briefing for candidates were cancelled. In this connection, the REO had informed the candidates and their agents concerned of the arrangements by email, and made the relevant announcement on its website.

CHAPTER 7

PREPARATORY WORK RELATED TO POLLING AND COUNTING

Section 1 – Identifying Suitable Venues as Polling Stations

7.1 For the 2020 LegCo General Election, the REO originally planned to set up over 610 ordinary polling stations (“OPSs”). The essential factors for consideration in identifying venues as polling stations include convenience of the location, accessibility to electors with mobility difficulties, the availability of sufficient space, etc. When identifying polling stations, the REO endeavours to secure bigger venues and also asks the venue management to make available more space as far as possible in order to provide a better environment for electors to queue up for collection of ballot papers. Besides, where practicable, the REO would select venues which have been used as polling stations in the same election cycle as polling stations for this LegCo General Election. That said, a few venues that had been used as polling stations in the 2019 DC Ordinary Election but found overly small or unsuitable for various reasons would be replaced by other venues.

7.2 Generally, schools are located conveniently, and their premises are relatively spacious. More than half of the polling stations in previous elections were set up at schools. Given the ever rising number of newly registered electors and voter turnout, the time to complete counting was prolonged. Some school premises used as polling stations in the past few years could only be returned late in the morning following the polling day, hence affecting the normal operation of

those schools. As a result, quite a few schools refused to lend their premises for use as polling stations and counting stations. To minimise the impact of elections on the schools' operation and facilitate the smooth conduct of major public elections, the Education Bureau ("EDB"), after consulting the school sector, decided to implement the proposal of designating the day after the election day as a school holiday, and issued a circular on 9 June 2020 to inform all schools offering formal curriculum that section 82 of the Education Regulations (Cap 279A) was invoked to that effect.

7.3 According to the current arrangement, whether a venue owner or management body lends its venue for use as a polling station is entirely voluntary. Therefore, successful requisition of a suitable venue may depend on whether the venue management is willing to cooperate and whether the venue has been set aside for other use on the polling day. Besides, amid the COVID-19 epidemic, many venue owners or management bodies were worried about the infection cases occurring on their premises and therefore refused to lend their venues for use as polling stations. In addition, the polling day of this LegCo General Election coincided with the commencement of a new school year of a majority of schools, whose operations had been disrupted by the COVID-19 epidemic since early 2020. It was originally planned to set up over 610 OPSs across the territories for this Election. However, after the commencement of relevant work, the management of around 140 venues refused to lend their venues to the REO for use as polling stations. In view of this, the REO was required to appeal to the venue management concerned through relevant policy bureaux and departments (the CMAB, EDB, etc.) for lending their venues. In addition, the REO acceded to the requests of venue owners/management bodies and put in place various COVID-19 prevention

measures, such as arranging cleaning staff at the venues and disinfecting the venues after the election. After all efforts, the REO managed to secure a total of 611 venues for use as polling stations in the end.

7.4 Following the Government's postponement of the LegCo General Election to 5 September 2021, the REO would liaise with owners or management bodies of suitable venues afresh in order to borrow their venues as polling stations at that time. Furthermore, to address the difficulties the REO encountered in securing venues as polling stations, the EAC has reviewed the issues and made recommendations for consideration by the Government as detailed in paragraphs 10.64 to 10.70 below.

Section 2 – Recruitment of Polling and Counting Staff

7.5 The REO launched a recruitment exercise in April 2020 to invite serving civil servants from various policy bureaux/departments to serve as electoral staff. For the GC elections, where the arrangement of polling-cum-counting in the same stations was adopted, electoral staff were required to take up both polling and counting duties to serve electors who went to the polling stations to cast both the GC and FC votes. Since the ballot papers of FCs were counted centrally at the CCS, additional electoral staff had to be recruited for the counting of FC votes at the CCS.

7.6 The REO was poised to implement a series of improvement measures in this LegCo General Election having regard to the rising voter turnout, an expanding scale of election as well as the experience gained from the 2019 DC Ordinary

Election. Coupled with other factors, such as strengthened prevention measures against the COVID-19 epidemic, 34 000 electoral staff would need to be recruited for this LegCo General Election, which is 44% more than the 23 600 electoral staff in the 2016 LegCo General Election. As insufficient applications were received since the recruitment was launched in April 2020, the REO extended the application deadline time and again, and raised the rates of honoraria for different grades of electoral staff of the CCS and those electoral posts with recruitment difficulties in order to attract applicants and to retain experienced electoral staff. Given the enormous difficulties the REO encountered in recruiting electoral staff in the 2019 DC Ordinary Election, in order to cope with the demand, the REO has for the first time extended the recruitment of electoral staff for this Election from serving civil servants to retired civil servants (see paragraphs 10.59 to 10.63 below).

7.7 Besides, to protect the health of electors and electoral staff and to prevent the spread of COVID-19 in polling stations, the REO created the new post, Polling Assistant (Hygiene), to perform cleaning and disinfection duties at each OPS and invited serving civil servants to apply.

7.8 The REO received about 34 000 and 2 600 applications from serving and retired civil servants, respectively, to serve as electoral staff in the end.

7.9 Following the postponement of the LegCo General Election to 5 September 2021 as announced by the Government on 31 July 2020, the above recruitment exercise was discontinued. Nevertheless, to address the difficulties the REO encountered in recruiting electoral staff, the EAC has reviewed the issues and

made recommendations for consideration by the Government as detailed in paragraphs 10.59 to 10.63 below.

Section 3 – Training for Polling and Counting Staff

7.10 To enhance the service of electoral staff of all levels and to implement various improvement measures as set out in the Guidelines issued in June 2020 (details in paragraphs 5.7 to 5.14 above), the REO had put sufficient resources into improving, updating and redeveloping electoral staff training materials and operational manuals. Besides, the REO produced training videos for polling staff of different types of polling stations, featuring polling/counting arrangements as well as various problems and situations that polling staff often encountered at polling stations on the polling day and their proper ways of handling. The REO also produced a training video for counting staff of the CCS, demonstrating different work flows of individual units, so that counting staff could view it together with relevant operational manuals and gain a better understanding of the operations.

7.11 The REO planned to organise training sessions for the polling staff of OPSs at the Queen Elizabeth Stadium and the Southorn Stadium in Wan Chai in August and September 2020 respectively. As the COVID-19 epidemic persisted, in order to maintain proper social distancing between participants of the training sessions and to strengthen the preventive measures at individual venues against the pandemic, the REO increased the planned number of training sessions and workshops from 26 to 44. In addition to that, in view of the important roles of PROs and Deputy Presiding Officers in the election, the REO also planned to

organise two polling management training sessions for them at the Queen Elizabeth Stadium in Wan Chai and the Kowloonbay International Trade and Exhibition Centre on 10 and 17 August 2020, respectively, for enhancement of the quality of polling management. New arrangements and major issues in the LegCo General Election, ways to maintain order during the counting of votes, ways to determine the validity of questionable ballot papers, complaints handling, and crisis management would be covered specifically, and there would be an experience-sharing session with previous PROs.

7.12 With the postponement of the LegCo General Election, all the above training sessions and workshops were cancelled.

Section 4 – Safety and Epidemic Prevention Measures amid the COVID-19 Epidemic

7.13 To protect electors' health and prevent the spread of COVID-19 at polling stations and counting stations, the REO, after consulting the CHP, planned to implement the following health protection measures at polling stations/counting stations in this LegCo General Election:

- (a) requiring all polling/counting staff to wear face masks and forbidding those staff showing signs of fever (i.e. body temperature higher than 38°C) from discharging duties;
- (b) requiring electors, candidates and agents to wear their own face masks properly before entering polling stations. They should

sanitise their hands with the alcohol-based handrub supplied at the entrance of polling stations;

- (c) setting up infrared thermographic cameras at every polling station/counting station as far as practicable to identify electors, candidates and agents showing signs of fever, and providing handheld electronic thermometers for the polling stations/counting stations where thermographic cameras could not be set up;
- (d) directing electors with signs of fever or under compulsory home quarantine to cast votes in the relatively secluded special voting compartments, which would be disinfected each time after use;
- (e) candidates, agents and public showing signs of fever would be advised not to enter polling stations/counting stations;
- (f) assigning the Polling Assistant (Hygiene), the new dedicated post created by the REO, to discharge cleaning and disinfection duties at each OPS;
- (g) considering setting up polling stations in individual quarantine centres for electors under compulsory quarantine to cast votes, if the Government decided to allow them to do so;

- (h) providing bleach and instant sanitisers for polling staff to disinfect polling tables, tick chops, cardboards, etc. regularly; and
- (i) setting the seats inside the public areas of counting stations at least one metre apart from each other as far as practicable.

7.14 In view of the upsurge in the number of new confirmed cases of COVID-19 in mid-July 2020, and according to the latest public health risk assessment issued by the FHB on 22 July 2020, which indicated that the risk of a large-scale community outbreak at that time was the highest since the emergence of the pandemic in Hong Kong, the EAC wrote to the CE on 28 July 2020 to set out in detail the public health risks arising from the conduct of this LegCo General Election on the scheduled polling day for her consideration:

- (a) the REO estimated that on the scheduled polling day, some 40% of polling stations would need to serve as many as 8 000 to 15 000 electors, and about 30% of polling stations would need to serve 4 000 to 8 000 electors. As high voter turnout was anticipated and some polling stations were small with their space being utilised to set up as many ballot paper issuing desks and voting compartments as possible, it was expected that there would be difficulties in strictly enforcing the minimum one-metre social distancing inside polling stations;

- (b) owing to a large number of electors and limited space inside many polling stations, it would be difficult for the REO to arrange for electors in home quarantine to enter polling stations at designated time separately to cast their votes while maintaining social distancing of at least one metre from other electors at all times;
- (c) during the issue of ballot papers and counting of votes, electoral staff would have to work together in groups for prolonged periods, making it extremely difficult to require those working at the polling stations and the CCS to maintain social distancing of at least one metre at all times;
- (d) the REO estimated that at the CCS and media centre, there would be about 10 000 candidates and agents, the media, members of the public and staff, and electoral staff needed to move electoral documents and ballot papers in the CCS all the time. Despite the health protection measures to be put in place at those venues, gathering of such a crowd would run counter to the advice of health experts on keeping a minimum number of people within any indoor environment. In addition, there would be worries about the health hazard posed by close contacts of the people inside the venues and the frequent movement of electoral documents and ballot papers by the electoral staff; and

- (e) as the elderly was a few times more likely to be infected than younger persons, there would be a considerable health risk to elderly electors when they went to polling stations to cast their votes on the scheduled polling day.

7.15 In summary, as it was anticipated that over 3 million electors would cast their votes, the EAC considered that the Government should consider from a public health perspective whether the Election could still be held safely. Subsequently, the Government announced on 31 July 2020 that, in view of the severe COVID-19 pandemic situation, the CE in Council decided to postpone the 2020 LegCo General Election originally scheduled for 6 September 2020 for one year to 5 September 2021 in order to protect public health and to ensure that the Election would be conducted openly and fairly. The EAC understood and respected the Government's decision.

CHAPTER 8

PUBLICITY

Section 1 – An Introductory Note

8.1 Publicity is an important element in arranging elections. It arouses public awareness and also appeals to the public to register as electors, to stand as candidates and to vote on the polling day. It will also reinforce the message of integrity in elections.

8.2 In the 2020 LegCo General Election, the Government allocated \$32 million for the publicity activities to be coordinated by an inter-departmental working group led by the CMAB and comprised of the HAD, ISD, ICAC, RTHK and REO. The relevant publicity activities were meant to last for around two months, starting in mid-July and then stepped up in phases. According to the original plan, the Government would focus on publicising the nomination period of the election starting from 13 July, and roll out a series of publicity programmes and activities to encourage voter turnout, introduce electoral procedures and promote a clean and fair election starting from August (to tie in with the canvassing period). In the week before the polling day, publicity would be stepped up further to call upon electors to cast their votes.

8.3 Apart from the VR campaign described in Chapter 3, details of all relevant publicity activities are set out in the ensuing paragraphs.

Section 2 – Publicity Activities

8.4 The Government arranged a comprehensive publicity programme for this LegCo General Election, including broadcasting APIs on television, radio, giant outdoor displays, government venues and the Internet; producing special television and radio programmes; setting up a dedicated election website and a Facebook page; displaying posters, putting up banners, lamppost buntings and billboards; advertising on public transport, vantage points, newspapers and the Internet; as well as organising district activities, etc. Besides, in order to promote general awareness of the polling arrangements, the Government produced APIs on television and radio to introduce relevant voting procedures and remind electors to follow the proper voting procedures so as to ensure the secrecy of their votes. Electors with mobility difficulties or those using wheelchairs should apply in a timely manner for reallocation to a special polling stations if they have difficulty in accessing their assigned polling stations. Circumstances permitting, the REO would, on request, arrange Rehabus shuttling to and from polling stations. The publicity materials, together with relevant polling information, would be uploaded onto the dedicated election website for public viewing.

8.5 To provide electors who do not read Chinese or English with the information on this LegCo General Election and the voting procedures, the Government translated the election briefs and voting procedures into 10 languages (other than Chinese and English) and uploaded them onto the dedicated election website. The relevant information was also uploaded onto the website of the Race Relations Unit of the HAD and displayed at some support centres for ethnic minorities to attract their attention to this Election. The Government had planned

to advertise in the newspapers and newsletters that targeted ethnic minorities to encourage them to seek candidature and vote, and to broadcast the voting procedures and the appeals for voting in different ethnic minority languages on radio. Because of the postponement of this LegCo General Election, those publicity plans were terminated.

8.6 The ISD helped set up the dedicated election website mentioned in paragraphs 8.4 and 8.5 above to make available election information for viewing and downloading by electors. The REO also issued press releases from time to time to keep the public informed of various important events at different stages of the election.

8.7 To promote the message of clean elections, the ICAC launched a series of educational and publicity activities on the theme of “Abide by the Rules, Support Clean Elections” for this LegCo General Election, which included:

- (a) conducting briefing sessions for candidates, election agents, electioneering helpers, political parties, specified bodies of FCs and members of district organisations to explain the major provisions of the ECICO;
- (b) producing Clean Election Information Booklet, Checklist for Candidates and Guidelines for Candidates on Election Return to expound on relevant legal requirements and the points that candidates and their election agents should note in engaging in electioneering activities and completing election returns;

- (c) producing and distributing two leaflets on “anti-vote-rigging” to electors of GCs and FCs respectively through the REO during the VR period. Owing to the postponement of the election, the Guidelines for Electors originally planned for mail together with the poll cards was not issued;
- (d) arranging educational and publicity activities for elderly centres and tertiary institutes, such as talks, quizzes, publication of feature articles and film shows, etc.;
- (e) organising the “Flash Roadshow”, a flexible publicity campaign at district level, to promote the message of clean elections and to distribute to participating members of the public the tailor-made information packages of this LegCo General Election, with a view to promoting awareness of the ECICO and the importance of clean elections. Owing to the COVID-19 epidemic, the activity was suspended in mid-July, and eventually ended on 1 August due to the postponement of the election;
- (f) launching a large-scale advertising campaign that made use of various publicity platforms, including television, radio, public transport network (namely MTR, bus and ferry), online advertising, infotainment channels of residential buildings and government facilities, printed advertising sites (including digital panels and posters), as well as the channels of the Water Supplies Department, Hongkong Post and avenues of other public utilities, to promote a

clean election culture and a message against the use of force or deception to influence the voting preferences of electors. Owing to the postponement of the election, some of the advertisements were cancelled;

- (g) publishing feature articles on clean elections in the newsletters and journals of various government departments, public bodies, district organisations, professional bodies and chambers of commerce; and displaying e-banners on their websites;
- (h) disseminating the message of clean elections through radio programmes and newsletters that targeted electors of different races; and translating the key provisions of the ECICO into 10 languages and uploading them onto the dedicated election website;
- (i) launching a thematic website to provide relevant reference information for the public; and
- (j) setting up a “Clean Election Enquiry Hotline” to answer public enquiries about the ECICO as well as related educational and publicity activities.

8.8 However, because of the COVID-19 epidemic and postponement of the election, the following educational and publicity activities planned by the ICAC were not carried out:

- (a) giving talks to members of elderly centres and staff of elderly homes; and

- (b) giving talks, in collaboration with the REO, to over 30 000 supervisory and general staff of polling and counting stations, to introduce the laws and points to note about the handling of electoral matters.

PART THREE

COMPLAINTS

CHAPTER 9

COMPLAINTS

Section 1 – Introduction

9.1 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 may reveal deficiencies in certain aspects of the electoral arrangements and helped the EAC make better arrangements in future elections.

9.2 The complaints mechanism also acts as mutual monitoring among candidates, and they may better understand the requirements of the electoral law and Guidelines. The EAC is committed to handling complaints received fairly and efficiently.

Section 2 – The Complaints Handling Period

9.3 The complaints handling period for the 2020 LegCo General Election started from 18 July 2020, i.e. the day when the nomination period commenced, and would end on 14 September 2020, i.e. 45 days after the Election was discontinued¹².

¹² In accordance with the EACO, the EAC is required to handle election-related complaints. The EAC would designate a complaints handling period (normally starting from the commencement of the nomination period until 45 days after the polling day) at every election. The CE in Council invoked the Emergency Regulations Ordinance to make the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation, which brought the electoral process of the 2020 LegCo General Election to an end on 1 August 2020. To facilitate the handling of complaints in relation to this Election, the EAC has set the end date of the complaints handling period as 14 September 2020 (i.e. the 45th day after the Election was discontinued).

Section 3 – The Complaints Handling Parties

9.4 Altogether four parties are responsible for handling complaints. They are the EAC, the ROs, the Police and the ICAC. Each of these parties has their respective areas of responsibilities depending on the nature of the complaints:

- (a) the EAC is responsible for handling complaint cases generally not covered by any statutory provisions involving criminal liability;
- (b) the ROs are responsible for handling complaints of a lesser nature under the authority delegated to them by the EAC, e.g. those relating to display of EAs, disputes over electioneering activities, use of sound amplifying devices, etc.;
- (c) the Police handles cases involving possible criminal offences, e.g. breaches of the EAC (EP) (LC) Reg and criminal damage of EAs, etc.; and
- (d) the ICAC handles cases involving possible breaches of the ECICO, the Prevention of Bribery Ordinance (Cap 201) and the ICAC Ordinance (Cap 204).

Complainants could lodge their complaints with any of the above parties, and cases would be referred to the relevant authority.

9.5 The EAC Secretariat undertakes the role of the co-ordinator for collating complaints related statistics from other parties and compiling consolidated reports for submission to the EAC during the complaints handling period.

Section 4 – The Number and Nature of Complaints

9.6 The complaints handling period ended on 14 September 2020. A total of 1 037 complaints were received from the public by the aforementioned four parties.

Details are as follows:

Complaints Handling Party	No. of Complaints Received from the Public
EAC	973 cases
ROs	32 cases
Police	26 cases
ICAC	6 cases
Total:	1 037 cases

The majority of the complaints were related to the “primary election(s)” held by individual organiser(s) before the commencement of the nomination period (861 cases), in which the activities concerned were alleged to have induced others to stand or not to stand as a candidate by bribery, force, duress or deception, thereby violating the relevant requirements of the ECICO. After the EAC was aware of the complaints, it issued press statements on 8 and 14 July 2020 respectively to remind those who wished to run for the election and other stakeholders to study and

comply with the electoral law (see paragraphs 10.71 to 10.80 below for details). The EAC has also referred the complaint to the law enforcement agency for follow-up in accordance with the established procedures. Other complaints were mainly related to display of EAs (35 cases) and disturbances to electors caused by canvassing activities (26 cases). A breakdown of the complaints by receiving party and nature is shown at **Appendices V (A) – (E)**.

Section 5 – The Outcome of Investigations

EAC and ROs

9.7 As at 14 September 2020 (i.e. when the complaints handling period ended), the EAC and ROs received 986 cases and 66 cases respectively (**Appendices V (B) and (C)**). Of the cases which have been dealt with, no cases were found substantiated by the EAC while 24 cases were found substantiated or partially substantiated by the ROs who issued a total of 30 warning letters to the infringing parties. There were still 9 cases under investigation by the EAC and ROs.

9.8 A breakdown of the outcome of investigations as at 5 October 2020 is shown at **Appendices VI (A) and (B)**.

Police and ICAC

9.9 Out of the 26 cases handled by the Police (**Appendix V (D)**), 1 case was found substantiated after investigation. The ICAC handled 7 cases (**Appendix V**

(E)) and none was found substantiated for the time being. There are still 7 cases under investigation by the Police and ICAC.

9.10 A breakdown of the outcome of investigations as at 5 October 2020 is shown at **Appendices VI (C) and (D)**.

PART FOUR

REVIEW AND RECOMMENDATIONS

CHAPTER 10

REVIEW AND RECOMMENDATIONS

Section 1 – A General Remark

10.1 Under the EACO, the EAC is an independent statutory body responsible for conducting and supervising public elections, to ensure that the elections are held in an open, fair and honest manner in accordance with the law. The EAC makes the subsidiary legislation on electoral procedures, the guidelines on election-related activities, and the related practical arrangements. The EAC is not part of the Government. All along, the EAC does not formulate electoral policies nor take into account any political considerations, but considers whether the relevant arrangements do comply with the law and are reasonably practicable and will facilitate the smooth operation of the election. The REO is the executive arm of the EAC. Apart from making the practical arrangements for the elections, the REO also advises the EAC on the practicality on the various electoral arrangements.

10.2 As pointed out in the EAC's Report on the 2019 DC Ordinary Election, the conduct of public elections, by virtue of their substantial scale, requires enormous manpower and resources. Along with the development of public affairs and the rising expectations of the public, more and more problems are emerging in society. It would be very difficult, if not impossible, to organise the elections with the manpower and resources within the establishment of the REO alone. Hence, in order that the elections can be conducted smoothly, all relevant Government policy

bureaux and departments, as well as the organisations which lend out their venues must join force in synergy to resolve the many operational problems.

10.3 All electoral arrangements in Hong Kong are regulated under the relevant primary ordinances and subsidiary legislation. The EAC must conduct and supervise the conduct of elections in strict compliance with the subsisting law. Under the present institution, matters relating to electoral policies and the system are under the purview of the executive organ, whereas the legislature is responsible for making the enactment and amendment of the primary ordinances. On the other hand, pursuant to the principles and provisions in the primary ordinances, the EAC makes the corresponding subsidiary legislation to set out the detailed electoral procedures for the various elections. The EAC cannot act beyond the power conferred by the primary ordinances. Where necessary, the EAC would provide its advice from practical and operational points of views for reference of the Government. Under the existing arrangement, any enactment or amendment of the primary ordinances must be introduced by the Government in the form of bills to LegCo for deliberation and resolution. Subsidiary legislation must also be submitted by the Government to LegCo by way of the negative vetting procedure.

10.4 Apart from the electoral law and regulations, the EAC is empowered by section 6 of the EACO to issue guidelines on election-related activities. The electoral guidelines are not law and cover two aspects. Firstly, to explain in simple language the subsisting electoral law so as to remind candidates and other stakeholders of the provisions and requirements under the electoral law. As the EAC is not a court of law, it has no authority to make judicial interpretation for

disputed provisions of the statutes. Secondly, with regard to election-related activities not stipulated by the law, to promulgate a code of conduct based on the principle of fairness and equality. However, the guidelines promulgated by the EAC are not legally binding. Any breaches of the guidelines will not constitute a legal offence. Where necessary, the EAC will issue public statements of censure in order to inform the electors and the general public of important matters that have occurred during the elections.

10.5 The EAC has submitted reports to the CE after the past LegCo General Elections and DC Ordinary Elections. Having regard to the experience gained in the elections, the EAC had put forward recommendations to enhance the electoral arrangements in future. These include, among other things, studying the feasibility of using information technology in the process of elections. In view of the public health risks posed by the COVID-19 epidemic, the Government postponed the 2020 LegCo General Election. There were calls in society for alteration and enhancement of the current electoral arrangements, including the introduction of the electronic poll register for the issuance of ballot papers, electronic voting, electronic counting, voting outside Hong Kong, and providing dedicated queues for elderly, etc., so that disruptions to the conduct of elections caused by an epidemic could be avoided in future.

10.6 On the basis of the above-mentioned principles, the EAC would like to make use of this report to set out the relevant factual background and legal basis for the various suggested measures for enhancing or altering the current electoral arrangements, and attempt to examine the feasibility and pros and cons of the

suggested measures, with a view to facilitating discussions among the public, and for the reference and consideration by the Government, if necessary, to introduce amendment of the electoral law to LegCo with a view to enhancing the electoral arrangements.

Section 2 – Proposals for Enhancing or Altering the Current Electoral Arrangements

(A) Electronic Poll Register

10.7 All along, the FR used in the Hong Kong elections for verifying the electors' identity and recording the issuance of ballot papers to the electors is in hardcopy paper form.

10.8 Each elector is assigned a polling station to cast the vote according to his/her registered residential address and constituency. Each polling station has a number of ballot paper issuing desks, and depending on the size of the electors assigned and the number of ballot paper issuing desks therein, the PRO would split the hardcopy FR into separate parts in accordance with the alphabetical prefixes of the electors' HKID numbers. Staff at each ballot paper issuing desk is then given a separate part of the FR and tasked to serve electors with corresponding HKID alphabetical prefixes.

10.9 In accordance with the above-mentioned arrangement, an elector must collect his/her ballot paper at a designated ballot paper issuing desk corresponding to the alphabetical prefixes in his/her HKID number, rather than any desk at random,

so that staff at the ballot paper issuing desk could verify his/her identity and issue him/her with the ballot paper based on the relevant part of the FR. No doubt that such arrangement would make the issuance of ballot papers less flexible and efficient. For instance, the number of electors queuing up at different ballot paper issuing desks at one time could be different and uneven but it would be difficult for the PRO to quickly and effectively re-arrange the splitting of the FR and re-assign the queuing electors to a desk with a shorter queue.

10.10 Besides, there were concerns in society over the accuracy of the record by the staff at ballot paper issuing desks when issuing the ballot papers. According to section 53(7) of the EAC (EP) (LC) Reg, immediately before issuing a ballot paper, the PRO or other polling staff must place a line in the copy of the FR across the name and identity document number of the elector to denote that the ballot paper has already been issued to that person so as to ensure that each elector can only collect his/her ballot paper once, and to prevent repeated issuance of ballot papers.

10.11 When an elector produces an original HKID or a prescribed alternative document to apply for ballot papers and the staff at the ballot paper issuing desk finds out that the name and identity card number of that elector in the hardcopy FR have already been crossed out, the PRO will only issue a ballot paper with the words “TENDERED” and “重複” endorsed on the front of it to that elector in accordance with the relevant law. However, such a ballot paper shall not be regarded as valid and shall not be counted during the count. In the 2019 DC Ordinary Election, nearly three million electors cast their votes and there were about 50 complaint cases in that regard. There were queries about the accuracy of crossing out entries in the

hardcopy FR manually before issuing ballot papers, and it was suggested that the paper form FR should be replaced by an electronic poll register. After an elector produces the prescribed identity document, the polling staff will check in the electronic poll register in the computer the entry of the elector concerned and, upon issuance of the ballot paper(s), a record will be made on the electronic poll register to show that the elector has been issued with the ballot paper(s) so that human error may be minimised.

10.12 The EAC has all along advocated the wider use of information technology in the electoral process and made recommendations accordingly in the Report on the 2016 LegCo General Election and Report on the 2019 DC Ordinary Election. In fact, a study on the use of electronic poll register was begun by the REO in 2019, and it was originally planned that the electronic poll register would be introduced for issuing ballot papers in the Election Committee Subsector (“ECSS”) Ordinary Elections to be held in December 2021.

10.13 The detailed provisions for the compilation, publication and use of the FR, and the ballot paper issuing process in elections are set out in detail in the relevant regulations. The use of electronic poll register is however not provided for thereunder. In order to introduce the relevant procedures for using electronic poll register, amendments have to be made to the subsidiary legislation for an established legal basis. Currently, the REO is developing an electronic poll register for use in the elections and has planned to procure the system by open tender. As the system will contain the personal data of over four million electors, the use of information technology and security measures must be properly handled to ensure that the system

design and operation are safe. Besides, repeated testing and certification must be conducted before the implementation of the arrangement.

10.14 By using an electronic poll register for the issuance of ballot papers, the practice of collecting ballot papers from designated ballot paper issuing desks with corresponding HKID alphabetical prefixes will no longer be necessary, and the electors may go to any desk under the direction of the polling staff. It will make the issuance of ballot papers more flexible, efficient and accurate.

10.15 During the preparation for the 2020 LegCo General Election, there were suggestions in society that the REO should use the electronic poll register for the issuance of ballot papers in the Election. However, relevant legislative amendment had yet to be made, and the procurement procedures for the system, such as open tendering, testings, certification, etc. were still in the startup stage. It was impossible for the REO to advance by 14 months the launch of the electronic poll register scheduled for use in the ECSS Ordinary Elections in December 2021 to the LegCo General Election in September 2020. As the personal data of more than four million electors is involved in the LegCo General Election, any mishaps to the system on the polling day would be detrimental not just to the conduct of the poll, but also to the public confidence in the electoral system.

10.16 **Recommendation:** In the light of the postponement of the LegCo General Election for one year due to the COVID-19 epidemic, the EAC recommends that the REO should make its best endeavours not only to have the electronic poll register ready for use in the 2021 ECSS Ordinary Elections, but at the same time, to expedite

the development and preparation for the introduction of the electronic poll register to the LegCo General Election to be held next year. The electronic poll register must only be introduced after the legislative amendments, open tendering, information technology and loading capacity are all ready and in place, and the new system have passed the information security risk assessments and reviews, privacy impact assessments, as well as the testing and certification by an independent and accredited computer audit and testing service agent.

(B) Electronic Voting

10.17 Electronic voting means the use of computers instead of hardcopy ballot papers to cast the votes. Generally speaking, there are two ways of electronic voting, namely (i) installing computer voting equipment in the polling stations for electors to cast their votes electronically; and (ii) conducting electronic voting on the Internet so that electors can cast votes anywhere via personal computers or smartphones.

10.18 The electoral arrangements in Hong Kong have always embraced the fair and equal principle, and autonomy and secrecy of the vote are the cornerstones of fair elections. Secrecy of the vote is a prerequisite to ensuring voting autonomy of the electors. Under the subsisting electoral law, electors are required to go to the polling stations, to personally mark the ballot paper(s) inside a voting compartment,

and to fold the ballot papers to conceal their choices¹³, and insert the ballot papers into the ballot boxes, free from any interference or influence. Without compromising the secrecy in voting, candidates and/or their agents are allowed to observe the entire process of polling in the polling station.

10.19 From overseas experience, although electronic voting may bring about convenience to the electors, there also exists certain problems and technical risks, such as disruptions to the poll caused by computer network failure, personal data breaches or influence on the election results due to hacker attacks, etc. Moreover, it is difficult to verify the identity of electors and effectively safeguard the autonomy and secrecy of the vote if the votes were cast outside the polling stations, with also a higher risk of election corruption.

10.20 If electronic voting is adopted, there will no longer be hardcopy paper ballots. Therefore, there will be no manual counting or re-count of votes. The roles of the candidates and/or their agents and the public to monitor the counting of votes at the counting stations will also be replaced, reducing the transparency of the election as a whole. Therefore, considerations must be given on how to effectively monitor the elections.

10.21 **Recommendation:** The EAC is of the view that adopting electronic voting in elections may have the benefits of bringing convenience to the electors and

¹³ In the elections for traditional FCs (FCs other than the DC (second) FC), electors are not required to fold the ballot papers after marking. Instead, they should insert their ballot papers facing down into the ballot box in order to protect the secrecy of their votes.

enhancing the efficiency of the poll and count. However, it will be so different from the long established practice of allowing candidates and their agents to monitor the polling and counting of votes, and the public to observe the counting of votes. If internet voting is also allowed, careful consideration and study must be made on the issues of verification of the elector's identity, autonomy and secrecy of the vote, matters concerning technology and system security, the arrangement for monitoring the poll and count, etc. Otherwise, the openness, fairness and integrity of the election may be seriously impinged. In fact, several places overseas¹⁴ where electronic voting was once adopted had eventually given it up and reverted to the use of hardcopy paper ballots in elections.

10.22 After all, introducing electronic voting to elections in Hong Kong is an issue of far-reaching impact. There must be extensive and in-depth discussions in society and give and take before the decision on whether the well-established, effective and credible model of hardcopy paper ballots is replaced.

(C) Voting Outside Hong Kong

10.23 According to the LCO, a permanent resident of Hong Kong aged 18 years or above, who ordinarily resides in Hong Kong¹⁵, and with the residential address provided in the application for registration being his/her only or principal residence in Hong Kong, is eligible for registration as an elector. If registered electors have

¹⁴ Such as Germany, Ireland, the Netherlands, etc.

¹⁵ Please refer to paragraphs 3.39 to 3.42 of Chapter 3 for the elaboration on the requirement of "ordinarily residing in Hong Kong".

moved to places outside Hong Kong for residence, employment or education, they still have the right to return to Hong Kong to vote provided that they meet the requirement of “ordinarily residing in Hong Kong”.

10.24 Due to the serious situation of the COVID-19 epidemic, cross-border traffic was severely affected, with quarantine measures imposed on arriving passengers in different places. As a result, some Hong Kong residents were stranded abroad, and some Hong Kong residents might choose to stay away temporarily because of the epidemic. When preparation for this LegCo General Election was underway, there were strong calls in society that voting outside Hong Kong should be arranged for electors stranded abroad so that their right to vote could be safeguarded.

10.25 Measures for voting outside Hong Kong may include:

- (a) setting up polling stations in places outside Hong Kong so that registered electors abroad can cast the votes in person by going to those polling stations in person on the polling day without having to returned to Hong Kong; and/or
- (b) allowing registered electors abroad to send their marked ballot papers back to Hong Kong by postal voting.

Voting outside Hong Kong entails significant policy considerations, with necessary amendments to relevant electoral law, input of massive resources, cross-border

co-ordination and co-operation, etc. The relevant authorities must be prudent and undertake thorough and comprehensive considerations.

10.26 From the perspective of practical electoral arrangements, it is unrealistic to set up polling stations in each and every place where Hong Kong registered electors reside. Furthermore, the REO's operation and resources can only handle electoral arrangements within Hong Kong. If it were to set up polling stations outside Hong Kong, the bulk of the practical work (e.g. identifying and setting up polling stations, arranging electoral staff, operating the polling and counting stations on the polling day, etc.) can only be carried out by the relevant agents abroad (e.g. HKSAR Government offices in the places concerned). Also, the issues of advance registration for voting outside Hong Kong, effective monitoring of the polling and counting processes by candidates and their agents, risks involved in transporting the ballot papers and ballot boxes between Hong Kong and the polling stations abroad, application of Hong Kong's electoral law and regulations to the poll and the count, how to deal with emergencies at the polling stations abroad, enforcement actions from the maintenance of order at the polling and counting stations to breaches of electoral law, etc. all require thorough and comprehensive study.

10.27 In the event that voting outside Hong Kong is to be implemented, there must be sufficient lead time for the REO to undertake the necessary preparation work such as pre-registration of the electors in question, procuring and staff sufficient to serve the pre-registered electors and the relevant logistic operation.

10.28 While postal voting may allow electors abroad who cannot return to Hong Kong on the polling day to exercise their right to vote, and will save the efforts of setting up polling stations abroad, the issues of safeguarding the autonomy and secrecy of the vote must be addressed. Since electors are no longer required to personally attend the polling stations to cast their votes, it will be impossible for the polling staff to verify their identities and to guard against impersonation. Furthermore, without requiring electors to mark their ballot papers inside the voting compartments, polling staff and candidates/agents thereat will no longer be able to monitor the process to ascertain that the electors are voting according to their own choice and free from outside influence or interference. Besides, in view of the nature of the postal process, there must be effective security measures to prevent the ballot papers from being intercepted or inspected, or the votes concerned being uncounted due to postal delay, thereby affecting the results of the poll.

10.29 **Recommendation:** The EAC understands the impact of the COVID-19 epidemic might have on the electors abroad in exercising their voting rights. Nevertheless, voting outside Hong Kong involves substantial considerations in electoral policies. The Government should study the policy perspectives and the legal aspects, and to consider objectively such factors as the overall impact of the epidemic on the election, feasibility in setting up polling stations outside Hong Kong, and the number of eligible electors in the places concerned in order to draw up the necessary proposals to amend the law, so as to facilitate thorough discussions in society and then introduction to LegCo for deliberation. In the event that the Government do decide to implement voting outside Hong Kong, as the EAC has no experience in conducting the poll abroad, it has to rely on the relevant Government

departments familiar with the situation and operation abroad for assistance with co-ordination and support in order to implement the actual arrangements.

10.30 Regarding the monitoring of the election, there is a set of established mechanism for monitoring the poll and the count. For example, candidates and their agents can monitor the process of the poll and count in the polling and counting stations, and members of the public are also permitted to observe the count. The mechanism concerned is well-established, effective and accepted by the public. If voting outside Hong Kong is to be implemented, suitable monitoring mechanism should be in place to ensure that the credibility of the election would not be compromised. Furthermore, as to the legal aspect, the Government must carefully consider the applicability and enforcement of the subsisting electoral law in places outside Hong Kong so that the issue of law enforcement abroad can be addressed.

(D) Electronic Counting and Central Counting

10.31 The REO has adopted electronic counting, i.e. using Optical Mark Recognition (“OMR”) technology in lieu of manual labour for vote counting in the ECSS ordinary elections since 1998¹⁶. The Government has also explored the feasibility of implementing electronic counting in the counting of FC votes, which adopts the central counting arrangement, in the 2020 LegCo General Election.

¹⁶ The Voting Validation and Counting Automation System (“VVCAS”) for the ECSS ordinary elections makes use of OMR technology to convert the data on a ballot paper into digital information that can be processed by computers. When scanning a ballot paper, the OMR machine will emit beams of light to the ovals on the ballot paper to identify the choices of the voters. For ballot papers which cannot be read by OMR, the valid votes marked on the ballot papers will be manually inputted into the VVCAS.

10.32 Under the subsisting law, there are different counting arrangements for GCs and FCs in a LegCo election. GC elections adopt the poll-cum-count arrangement under which the votes are counted immediately after the close of poll at the same station. For FC elections, central counting¹⁷ is adopted under which FC ballot boxes from all polling stations are delivered to the CCS for counting of votes after the close of poll. Having regard to the practicable considerations, such as the number of counting machines required, counting procedure, cost effectiveness and technical support, etc., any study on further introduction of electronic counting should be premised on the basis of central counting.

10.33 It should be noted that the ECSS elections adopt the “block vote system” in which each voter may vote for as many as 60 candidates depending on the subsector so belonged to. As such, the system renders manual counting of votes extremely complicated and time-consuming. In fact, the design and size of ballot papers for ECSS elections in compliance with the law are compatible with electronic counting. For example, only the candidates’ names and allocated candidate’s numbers are printed on the ballot papers. Therefore, the ballot paper is smaller in size and there are applicable counting machines available in the market. Besides, the law allows the ballot papers for ECSS elections to remain unfolded when they are inserted into the ballot boxes. This prevents the problem of paper jamming.

¹⁷ In the first LegCo General Election held in 1998, the counting of votes for all GCs and FCs was conducted in a single CCS. In the 2000 LegCo General Election, a regional counting station was set up for each of the five GCs for the counting of GC votes and a separate CCS was set up for the counting of FC votes. Since 2004 LegCo General Election, the counting of votes for GCs has been conducted at the same station after the close of poll.

10.34 However, for the LegCo GC elections, putting aside the subsisting statutory requirement of counting the votes at several hundreds of polling stations, the size of the ballot papers in fact exceeded the capability of any counting machine available in the market. Under the existing list system, due to the large number of lists of candidates contesting for multiple seats in a GC, and that the ballot papers for GCs need to contain hosts of information of the candidates (apart from the names and numbers of the candidates/lists of candidates, the law allows the GC ballot papers to include relevant particulars of the candidates/lists of candidates, such as photos of the candidates, names (or abbreviations) and emblems of registered prescribed bodies, etc.), the size of GC ballot papers has become very big. Take the 2016 LegCo General Election for example, one GC had as many as 22 lists of candidates and the size of the ballot paper of the GC concerned ended up 440 mm (in width) x 428 mm (in length). According to market research by the REO, no counting machine currently in the market is capable of handling ballot paper of such size.

10.35 The EAC noted that at the meeting of the LegCo Panel on Constitutional Affairs held in June 2017, there were discussions on the possibility of adjusting the candidate particulars currently printed on a ballot paper, such as omitting the candidates' photos, but no consensus was reached. Given that the size of GC ballot papers remains unchanged, it is not possible to call for an introduction of electronic counting.

10.36 Apart from the size of ballot papers, it is stipulated in the subsisting law that the counting of the LegCo GC votes must be conducted in situ the same polling stations, so that the counting process will take place at over 600 counting stations.

If counting machines are to be installed at over 600 counting stations, there would be considerable practical difficulties in providing the corresponding technical support and not of cost-benefit. Hence, on the premise that electronic voting is not to be introduced and hardcopy ballot papers are in use (see paragraphs 10.17 to 10.22 above), it is not appropriate to adopt electronic counting under the poll-cum-count arrangement.

10.37 In the 2012 LegCo General Election, the DC (second) FC was introduced by the Government. The REO conducted a study on the counting arrangement for the FC at that time, including whether the count could be conducted at the same polling station or not, i.e. counting the DC (second) FC votes at the polling stations right after counting the GC votes. However, having considered that the counting of votes for the DC (second) FC was time-consuming as it involved a large number of electors, and that the counting of the GC votes was already time-consuming, and that the schools used as polling stations had to be returned for normal lessons in the morning following the polling day, the REO concluded that it was not advisable to count the DC (second) FC votes at the same polling stations. It was eventually decided that the central counting arrangement as the other FCs was to be adopted for counting the votes of the DC (second) FC votes (see further paragraphs 10.42 and 10.43 below).

10.38 A feasibility study on the introduction of electronic counting of the DC (second) FC votes was undertaken by the REO in 2018. According to past experience, the size of ballot papers for DC (second) FC elections are generally smaller than those for the GC, and there are counting machines available in the

market to process ballot papers of such size. However, under the subsisting law, DC (second) FC electors are required to fold their ballot papers before inserting them into the ballot boxes to prevent the electors from displaying their votes to others in the polling stations or from being glanced at, violating the secrecy in voting. During the study, REO noted that folded ballot papers would at times cause paper jamming of the counting machines. Hence, if electronic counting is to be introduced in DC (second) FC elections, the problem of jamming of the counting machines must be resolved, or alternative means must be sought to replace the folding of ballot papers in safeguarding the important principle of secrecy in voting. Furthermore, the law does allow relevant particulars of the candidates/candidate lists to be printed on the ballot papers for DC (second) FC. As such, the size of ballot papers may become larger given that there are more lists of candidates, and the size of the ballot papers may one day exceed the limits that can be handled by the counting machines available in the market.

10.39 Regarding the 28 traditional FCs, the number of votes may not be as substantial, and hence central counting can ensure secrecy in voting, and optimise the use of resources and manpower. In order to build up the relevant experience, the REO at one stage suggested to conduct a pilot scheme for implementing electronic counting in some traditional FCs in the 2020 LegCo General Election. In this connection, a demonstration on electronic counting was conducted for the LegCo Panel on Constitutional Affairs in February 2019 and members' views were sought at the subsequent panel meeting. Thereafter, open tender was launched. Upon completion of the tendering, there was a series of follow-up actions, including further research and development, and testing on the electronic counting machines, etc.

However, due to subsequent social events and the COVID-19 epidemic, progress of the relevant preparatory works of the REO was substantially delayed. Consequently, the pilot scheme was not able to be launched in the LegCo General Election originally scheduled for September this year.

10.40 To sum up, implementation of electronic counting is subject to whether central counting is adopted in the election concerned. However, on the other hand, central counting involves enormous preparation in the venues, transportation, and manpower, etc. Much time is required for conveying the ballot boxes from all polling stations to the CCS, inevitably prolonging the time for the count. Taking the 2016 LegCo General Election for example, about 20.5 hours were required to complete the counting of the 1.98 million votes for the DC (second) FC, which was the last constituency to finish the count in that LegCo General Election.

10.41 Apart from the lengthy counting hours, the number of staff responsible for counting of votes in the CCS is very large, and the exchange of electoral documents is frequent. There are more than 10 000 people, including counting staff, candidates, the media and members of the public in the CCS. As a matter of fact, one of the considerations for postponing the 2020 LegCo General Election amid the COVID-19 epidemic was that it is practically impossible for the staff in the CCS to maintain social distancing of at least one metre apart as it is unavoidable for the staff to have close contact with each other during the count. Moreover, the assembly of a large number of candidates and their agents, the media and members of the public inside the CCS would give rise to the risks from the gathering of crowds.

10.42 **Recommendation:** Electronic counting is premised upon that the CCS would be set up for central counting. Under the current system, it is not cost effective to introduce electronic counting for the counting of the GC votes, while the problem of paper jamming on the counting machines makes the counting of the DC (second) FC votes impossible to be conducted electronically. As for the traditional FCs, the difference with the ECSS elections is that most of the traditional FCs only involve a single seat and manual counting does not present much difficulty. Therefore, the cost-effectiveness of electronic counting for traditional FCs is not obvious. Having considered the improvement measures (e.g. the use of electronic register for issuance of ballot papers, etc.) to be introduced in the LegCo General Election to be held in September 2021, the EAC considers that there is no necessity to accord priority to the implementation of electronic counting for the traditional FCs.

10.43 On the other hand, in order to avoid the public health risks arising from the gathering of crowds associated with the operation of the CCS, thereby possibly affecting the conduct of LegCo elections, the EAC recommends that the REO do conduct a comprehensive review on the current central counting arrangement, particularly the possibility of counting the DC (second) FC votes at each polling station. In fact, since the EDB has designated the day following the polling day a school holiday, the EAC considers that there is room for the REO to explore whether it would be possible to conduct the counting of votes for both the GCs and the DC (second) FC at individual counting stations. The EAC appreciates that if such change were to be made, matters relating to manpower arrangement at counting stations, the counting workflow, etc. would have to be thoroughly considered before

the decision on whether the proposal should be adopted in the 2021 LegCo General Election.

(E) Queuing Arrangements on the Polling Day

10.44 All along, just like elections elsewhere, electors have to queue up for the collection of ballot papers in Hong Kong. In the 2019 DC Ordinary Election, there were more than 4 million registered electors and nearly 3 million electors had cast their votes. The turnout rate was 24% higher than that of the 2015 DC Ordinary Election, and hence queuing up to vote was inevitable. Moreover, before the poll of the 2019 DC Ordinary Election, there were false rumours that the poll would be closed three hours after the poll had begun and the votes would be counted. The EAC has rectified the rumours before the polling day. But as a result of the rumours, still more electors showed up in the morning of the polling day, leading to long queues outside many polling stations to wait for the collection of ballot papers.

10.45 Although queues were formed outside some polling stations in the morning of the polling day, some individual ballot paper issuing desks inside individual polling stations were idle or with only a few electors queuing. In view of this, some PROs went outside the polling stations and called upon electors with the corresponding alphabetical prefixes in the HKID numbers (see para 10.47 below) to enter the polling stations direct and queue up in front of the relevant issuing desks. Such practice has also been adopted in past elections. Nevertheless, amid the acute social discord last year, some electors mistook that the PROs concerned had allowed queue-jumping. Feeling disgruntled, they tried to stop the arrangement and created

disorderly scenes. Also, there were complaints alleging that some electors were queuing repeatedly, prolonging the waiting time for others in the queue in an attempt to discourage electors, especially the elderly from queuing up to vote.

10.46 Just before the 2020 LegCo General Election, there were calls in society for use of the electronic poll register and the setting up of “caring queues” to cater for the elderly, pregnant women and persons with mobility difficulties due to disabilities (“persons-in-need”) on the polling day. Given that the plan and implementation for the electronic poll register were already scheduled for the 2021 ECSS election, it was impossible both legally and technically to substantially advance the use in the 2020 LegCo General Election (see paragraph 10.15 above). In the event, the EAC made the “accommodating arrangements” to persons-in-need (see paragraph 5.7 above), against the backdrop of the limitation of the use of the hardcopy paper form FR at present, among others.

10.47 All along, ballot papers are issued to electors manually by reference to the hardcopy FR in the elections in Hong Kong. Under the subsisting law, when an elector collects the ballot paper(s), the staff at the ballot paper issuing desk will draw a line across the name and HKID number of the elector in the hardcopy FR for record, so as to avoid repeated collection of ballot papers by electors. A number of ballot paper issuing desks are set up in a polling station. The hardcopy FR is split into the same number of parts as the number of issuing desks, according to the alphabetical prefixes in the HKID number of the electors. Each ballot paper issuing desk will be assigned with only one of the separate parts of the FR, i.e. they will only be responsible for serving the electors with a designated group of alphabetical prefixes

in the HKID numbers. Since the alphabetical prefixes in the HKID number of the electors have generally divided the electors into different age groups, if electors of the same age group all come to cast their vote at the same time, there will still be a long queue even if a dedicated queue is set up, and the problem of the persons-in-need having to stand in the queue for a long time will not be resolved completely.

10.48 Besides, there were suggestions that the PROs should promptly re-arrange the alphabetical prefixes in HKID numbers assigned to the ballot paper issuing desks having regard to the number of electors queuing before each issuing desk. However, ad hoc arrangement to be made in re-adjusting of the splitting or combining of the FR parts may affect the operation of the polling station. For instance, there were polling stations having long queues in the later sessions of the polling day in the past, and there was need to increase the ballot paper issuing desks, and hence the need to re-adjust the splitting of the hardcopy FR. The process would take some time and could not be done immediately. Given the lack of flexibility, to a certain extent, of using the hardcopy FR for issuing ballot papers and the re-adjustment could not be done readily at will, the EAC considers that only by setting up of dedicated queues for the persons-in-need on the polling day would not fully utilize the ballot paper issuing desks and staff available in the polling stations. It would also not effectively solve the problem for those persons standing for a long time in the queue and easily cause disputes among electors of different age groups (see paragraph 10.9 above).

10.49 Nevertheless, if the electronic poll register is adopted for the issue of ballot papers in future elections, the issuing desks will then not be limited by the restrictions

of the splitting of the hardcopy FR, and the issuing desks can serve electors with any alphabetical prefixes in HKID number, thus allowing higher flexibility to the deployment of ballot paper issuing desks and staff. Under this more flexible mode of operation, the setting up of dedicated queues and dedicated issuing desks for the persons-in-need on the polling day will become more practicable. On one hand, it can address the complaints against repeated queuing for deterring elderly electors from collecting ballot papers, and on the other, it can allow optimal use of resources, i.e. whenever any dedicated issuing desks or any normal issuing desks are free, electors waiting in other queues can be flexibly directed there to collect their ballot papers. This will help reduce the overall waiting time.

10.50 Notwithstanding the above, if the majority of the persons-in-need come to cast their vote at the same time slot, setting up of the dedicated queue and dedicated issuing desks still cannot guarantee no queuing in view of the over-concentration. For argument sake, if as a further step, some people are allowed to jump the queue and collect their ballot papers without queuing upon arrival at the polling station, it may cause disgruntlement among electors who are queuing up normally, and thus not an ideal option. It must be noted that to effectively manage the queuing of electors and maintain order at the polling stations on the polling day is of foremost importance.

10.51 **Recommendations:** The use of the hardcopy FR makes the issuance of ballot papers without certain flexibility. The electors waiting in a long queue before his designated desk cannot be promptly directed to another ballot paper issuing desk with no or much fewer electors queuing.

10.52 With the introduction of the electronic poll register, as and when ready upon the completion of the necessary legislative and technical requirements, the inflexibility of issuing ballot papers can be removed. It will also improve the accuracy of issuing ballot papers and shorten the time required for electors to collect their ballot papers. In addition, the introduction of the electronic poll register allows designated queues and designated desks to be set up to serve not only designated groups of electors but also, other electors when those designated desks are not in use. The process of issuing ballot papers will be more flexible.

10.53 At the moment, the electoral law contains the provision of fair and equal treatment, but does not contain any provision for priority treatment. There are countervailing views on the matter in society. If priority treatment were to be introduced, corresponding amendment would have to be introduced by the Government for deliberation and resolution by LegCo after due consideration of the different views. The EAC is of the views that the legislative provisions should be clear and detailed enough to avoid unnecessary argument upon implementation. Upon the amendment to the electoral law, the EAC and REO will be empowered to implement the priority voting provisions according to the law.

10.54 Even with the use of the electronic poll register for the issuance of ballot papers, the REO is still required to allocate electors to polling stations in accordance with their addresses because of the operational matters, such as managing the volume of the electors and the logistics of providing sufficing electoral materials, etc. (For further recommendations on identifying venues as polling stations, see paragraphs 10.69 and 10.70 below).

(F) Electoral Arrangements under the COVID-19 Epidemic

10.55 As mentioned in paragraph 7.13 above, in order to protect the electors' health and prevent the spread of COVID-19 at polling stations and counting stations, the REO, after consulting the CHP, has planned to implement a series of measures in this LegCo General Election, such as requiring all people entering polling stations and counting stations (including electoral staff, electors, candidates and their agents) to wear face masks, to sanitise hands with alcohol-based handrub and to measure body temperature; to direct electors under compulsory home quarantine to more secluded special voting compartments to cast their votes; to create the new post of Polling Assistant (Hygiene) to discharge cleansing and disinfection duties at each OPS; to provide bleach and instant sanitisers for the polling staff to disinfect the polling tables, tick chops, cardboards, etc. regularly; and to space out seats inside the public areas of counting stations at least one metre apart as far as practicable, etc.

10.56 The LegCo General Election was postponed for one year to 5 September 2021 because of the severe COVID-19 epidemic situation. The REO would closely monitor the development of the epidemic. If the epidemic situation persists, the range of health protection measures planned for this LegCo General Election would need to be continued in the 2021 LegCo General Election in order to safeguard the health of electors and prevent the spread of COVID-19 at polling stations and counting stations.

10.57 **Recommendation:** On account of the fact that Hong Kong is densely populated and the environment is crowded, as well as the trends of a growing

electorate and higher voter turnout rates, there will surely be large groups of people gathering inside and outside polling stations on the polling day. Despite the REO's endeavours to put in place various prevention measures at polling and counting stations, it would still be difficult to maintain safe social distancing or avoid group gatherings. If an election will have to be held even when the epidemic is comparatively serious, the EAC may have to make reference to the electoral arrangements adopted in other jurisdictions against the epidemic situation, such as to designate separate voting time slots specifically for different age groups of electors. This may help control the size of the flow of people inside and outside the polling stations at different time slots and avoid a large number of electors turning up at polling stations to vote at the same time, thereby alleviating the adverse impact of groups gathering inside and outside polling stations on the prevention against the epidemic. If the relevant arrangement were to be adopted, the EAC would have to be empowered accordingly by legislation.

10.58 Furthermore, as mentioned in paragraph 1.5 above, under the subsisting law, the counting of all FC votes must be conducted centrally at a CCS, where almost 10 000 people will gather, a large volume of documents will be handed over, and it will basically be difficult to maintain social distancing and posing a risk of spreading the virus among the gathering of people. In order to avoid the public health risks arising from the central counting arrangement, thereby possibly affecting the conduct of the LegCo General Election, the REO needs to comprehensively review the existing central counting arrangement, especially as to whether the votes of the DC (second) FC can be counted at each polling station so as to reduce the risk of virus

transmission arising from a large gathering of people (see paragraphs 10.40 and 10.41 above).

Section 3 – Operational Matters

(G) Recruitment of Electoral Staff

10.59 In previous public elections, electoral staff handling ballot papers and related matters at polling stations were all along undertaken by serving civil servants. Non-civil service contract staff would only perform other supporting duties. The electoral law has provided for strict sanction on the performance and conduct of the polling and counting staff, with wilful breaches being criminal offences. Civil servants are recruited under the Government's strict recruitment procedures, and are used to working in accordance with the law and established administrative procedures. They are also bound by relevant civil service regulations and codes, and their performance is monitored by a comprehensive appraisal mechanism in order to ensure their proper discharge of duties.

10.60 As the voter turnout rises increasingly and scale of the election was ever expanding, enormous amount of manpower is required to take up different electoral posts on polling days. For this LegCo General Election, the REO required about 34 000 electoral staff to perform polling and counting duties on the polling day. About 29 000 of them were to be deployed to over 600 polling stations and the remaining staff of around 5 000 were to work at the CCS. Electoral staff deployed to OPSs would perform duties at polling stations and be responsible for counting the

GC votes, whereas staff deployed to the CCS would be responsible for counting votes of the DC (second) FC and traditional FCs.

10.61 As mentioned in paragraph 7.5 above, the REO launched the recruitment exercise of electoral staff for this LegCo General Election in April 2020. Following established practice, application for electoral posts was open to serving civil servants from all policy bureaux and departments. From the experience gained in the 2019 DC Ordinary Election, the REO planned to implement a series of improvement measures on the polling day. Also having regard to such factors as an increased number of registered electors and strengthened prevention measures against the COVID-19 epidemic, 34 000 electoral staff would need to be recruited for this LegCo General Election, which is 44% more than the 23 600 electoral staff in the 2016 LegCo General Election. As insufficient applications were received since the recruitment was launched in April 2020, the REO extended the application deadline time and again, and the CMAB made an appeal through the Permanent Secretaries and Department Heads to encourage civil servants to apply for electoral posts. Furthermore, the REO raised the rates of honoraria for different grades of electoral staff of the CCS and those electoral posts with recruitment difficulties in order to attract applicants and to retain experienced electoral staff. In order to cope with the demand, the REO has for the first time extended the recruitment of electoral staff for this Election from serving civil servants to retired civil servants. As retired civil servants have had civil service experience and the related ability to handle public service, they can be recruited to fill various electoral staff vacancies when there are recruitment difficulties with civil servants.

10.62 **Recommendation:** The EAC considers that public elections are an important civic affair, and civil servants, as the backbone of the public service, are obliged to undertake electoral duties. According to the REO's experience in the past recruitment exercises, there have been practical difficulties in recruiting sufficient civil servants to work on polling days. Moreover, from time to time there were recruited civil servants who quitted the electoral duties for different reasons before the election, presenting extra difficulties to the recruitment and manpower deployment. For example, in the 2019 DC Ordinary Election, quite a number of civil servants withdrew their applications for electoral posts out of concern for their personal safety. The EAC does hope that serving and retired civil servants could be free from the concern for various factors, stand by the mission of serving the public, and actively apply for electoral duties, so as to contribute to the electoral affairs in Hong Kong.

10.63 On the other hand, the EAC considers it not ideal to rely solely on civil servants to take up electoral posts voluntarily. The Government and REO should explore how to ensure that sufficient manpower will be available to serve as electoral staff on the polling day, such as exploring whether to change from direct recruitment to an arrangement in which the Heads of Department/Grade make available sufficient and suitable serving civil servants to serve as various electoral staff instead. In parallel, the REO should review and further enhance the training focusing on the practical problems that arose during the discharge of polling and counting duties in the past so that electoral staff could discharge the electoral duties more confidently and efficiently.

(H) Identifying Venues as Polling Stations

10.64 The voter turnout reached a record high in the 2019 DC Ordinary Election. There were long queues of people at most polling stations, especially in the morning sessions of the poll. In order to avoid the occurrence of similar situations, the REO has increased the number of polling stations significantly in the 2020 LegCo General Election and has planned to set up over 610 OPSs for electors to cast their votes, more than the 571 OPSs in the 2016 LegCo General Election.

10.65 In identifying polling stations, the REO endeavours to secure bigger venues and requests the venue management to make available more space in order to provide a better environment for electors to queue up for collection of ballot papers. Besides, for electors' convenience and to avoid their confusion with unfamiliar location of polling stations, the REO would set up polling stations in venues that have been used in previous elections as far as possible. However, for those polling stations which are found to be too small or unsuitable for use for various reasons, suitable venues must be located to replace them.

10.66 Generally, schools are located conveniently, and their premises are relatively spacious. More than half of the polling stations in previous elections were set up at schools. Given the ever rising number of newly registered electors and voter turnout, the time to complete counting was prolonged. Some school premises used as polling stations in the past few years could only be returned late in the morning following the polling day, hence affecting the normal operation of those schools. As a result, quite a few schools refused to lend their premises for use as

polling and counting stations. To minimise the impact of elections on the schools' operation and facilitate the smooth conduct of major public elections, as mentioned in paragraph 7.2 above, the EDB has designated the day after the election day a school holiday. This initiative has rendered great assistance to the REO in procuring school venues.

10.67 Apart from schools, polling stations are also set up in various government venues (such as Community Halls, Indoor Sports Centres, etc.) or venues managed by sub-vented private institutions. In any event, successful borrowing of a suitable venue as polling station all depends on the venue management's cooperation. The REO's role is rather passive.

10.68 The REO very often encountered enormous difficulties in identifying and borrowing venues for use as polling stations. When preparing for this LegCo General Election, amid the COVID-19 epidemic, many venue owners or management bodies were worried about the infection cases occurring on their premises and therefore refused to lend their venues for use as polling stations. In addition, the polling day of this LegCo General Election coincided with the commencement of a new school year of a majority of schools, whose operations had been disrupted by the COVID-19 epidemic since early 2020. As a result, the REO had encountered enormous difficulties in securing venues as polling stations.

10.69 **Recommendation:** It is impossible to conduct an election without the venues for setting up the polling stations. In the Report on the 2016 LegCo General Election and the Report on the 2019 DC Ordinary Election, the EAC pointed out that

society should face up to the problem of securing venues for use as polling stations, and recommended that the Government, when leasing premises and venues to schools or subvented organisations, should consider adding provisions in relevant land grants or leases to require that schools or subvented organisations should assist in the organisation of public elections by providing their venues and facilities for the setting up of polling stations.

10.70 The EAC is pleased to note that the EDB has made after the election day a school holiday, which undoubtedly will make the schools more willing to lend their school premises as polling stations and counting stations. In order to facilitate the REO further in securing the venues, the EAC recommends that the Government and REO should explore more options for the above-mentioned problem. Apart from Community Halls and Indoor Sports Centres, schools managed by the Government should take the lead and set the example of lending out their venues. In fact, most schools or subvented organisations have their premises and facilities provided or subsidised by the Government one way or another out of public resources. Therefore, they should fulfil their civic responsibilities and make available their venues and facilities for the setting up of polling stations. The EAC considers that the Government should explore amending the law and/or adding a provision in relevant land grants or leases to the effect that the REO, where necessary, can mandate that organisations subsidised by the Government or using Government land to lend out venues occupied or managed by them for use as polling stations and counting stations.

Section 4 – Other Matters

(I) “Primary Election(s)”

10.71 The EAC notes that certain so called “primary election(s)” were held by individuals and/or organisations before the nomination period of this LegCo General Election. The activities drew in mass involvement of the public and were widely reported by the media, causing concerns in society. The EAC had also received complaints relating to such activities afterwards and referred the complaints to the law enforcement agency for follow-up in accordance with established procedures.

10.72 The EAC issued public statements regarding the above-mentioned matter on 8 and 14 July 2020 respectively to remind those who wish to run for the election and other stakeholders to understand and comply with the electoral law relating to corrupt conduct, illegal conduct, EAs, election expenses and election donations so as to avoid breaching the law inadvertently. The EAC also emphasised that election is a solemn matter with electoral procedures strictly governed by the relevant electoral law, and that public elections must be held in an open, fair and honest manner. The relevant provisions are extracted below.

10.73 The ECICO prohibits corrupt conduct and illegal conduct at elections, regulates election advertising and election expenses, imposes requirements with respect to the receipt of donations and the expenditure of money at or in connection with elections. According to section 2 of the ECICO, “candidate” means a person who stands nominated as a candidate at an election, and also means a person who, at

any time before the close of nominations for an election, has publicly declared an intention to stand as a candidate at the election, while “election expenses” means expenses incurred or to be incurred, before, during or after the election period, by the candidate or his/her election expense agents for the purpose of promoting the election of the candidate or prejudicing the election of other candidate(s). Section 37 of the ECICO stipulates that all candidates must lodge with the relevant authority an election return setting out the candidate’s election expenses and election donations received. Besides, section 23 of the ECICO stipulates that only candidates and authorised election expense agents shall incur election expenses or else an illegal conduct is engaged. However, if a third party 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 electricity charges and charges necessary for accessing the Internet, the person is exempted from the relevant criminal liability.

10.74 In addition, according to the ECICO, a person who meets the definition of “candidate” must declare all expenses involved in the election, regardless of whether he/she has submitted his/her nomination form to run for the 2020 LegCo General Election. Even though this LegCo General Election was discontinued, the relevant legislation would still be applicable. All candidates will still be required to lodge election returns listing their election expenses and election donations received in accordance with the provisions.

10.75 There is no such mechanism of “primary election(s)” under the subsisting electoral law and procedures. Nevertheless, all election-related activities must comply with the subsisting electoral law, including the requirements on election

expenses. If a person participating in “primary election(s)” meets the definition of “candidate” under the law, he/she must not incur election expenses in excess of the prescribed maximum amount and must lodge an election return setting out all of his/her election expenses incurred and election donations received.

10.76 In fact, according to the REO’s record, for the LegCo By-election held on 11 March 2018, persons who had participated in “primary election(s)” organised by individual organisations but were not “selected” (and did not participate in the LegCo By-election at last) also lodged election returns by the statutory deadline in accordance with the statutory requirements towards candidates.

10.77 Besides, according to sections 7 to 9 of the ECICO, it will be a corrupt conduct if a person corruptly affects a person to stand or not to stand as a candidate by bribery, force, duress or deception. The person who commits an offence is liable on conviction to a fine of \$500,000 and to imprisonment for seven years. Therefore, the wish of individuals who intend to run for the election should be respected. Arrangements co-ordinating elections must not involve any corrupt or illegal conduct.

10.78 In addition, the National Security Law was implemented in Hong Kong on 30 June 2020. Under Article 29 of the National Security Law, a person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China shall be guilty of an offence; a person who requests a

foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to commit rigging or undermining an election in the Hong Kong Special Administrative Region, which is likely to cause serious consequences, shall be guilty of an offence.

10.79 **Recommendation:** The EAC needs to point out that the LegCo General Election is the one conducted and supervised by the EAC in accordance with the subsisting electoral law, and there is no mechanism of any so called “primary election(s)” under the electoral system in Hong Kong. There are views that some electors will be misled by those “primary election(s)” involving massive electors and candidates, and wrongly perceive them as part of the public election, causing confusions and affecting the outcome of the election. As members of the public are very concerned about the “primary election(s)”, the EAC is of the view that the Government should seriously look into the relevant issues so as to consider if it would be necessary to control or restrict such activities.

10.80 Since the EAC is not a law enforcement agency, and if the EAC receives any complaints involving possible breach of the law, it will refer them to the relevant law enforcement agencies for follow-up in accordance with the established procedures. Whether the election-related activity concerned constitutes an offence

would be subject to the investigation or follow-up actions of the law enforcement agencies, and ultimately determination from the Court if necessary.

PART FIVE

CONCLUSION

CHAPTER 11

A CONCLUDING NOTE

Section 1 – Acknowledgement

11.1 The EAC and REO are thankful for the support and assistance given by different Government policy bureaux/departments and public bodies when preparing the 2020 LegCo General Election.

11.2 The EAC thanks the ROs, AROs, the barristers serving on the NACs and all the staff of the REO who worked most conscientiously to contribute their efforts to the above election. In addition, the EAC is grateful to the serving and retired civil servants who applied to serve at polling and counting stations so as to contribute their efforts to the electoral affairs in Hong Kong.

Section 2 – Looking Forward

11.3 At the time of finalising this report, the REO had already started afresh in preparing for the postponed LegCo General Election to be held on 5 September 2021.

11.4 The EAC remains committed to fulfilling its mission of safeguarding the integrity of the public elections in Hong Kong. It will continue with its efforts in keeping a vigilant watch over various elections to ensure that openness, fairness and honesty are upheld in the conduct of every election. The EAC appeals to members of the public to be acquainted with the electoral law and arrangements,

and to uphold the good election culture of Hong Kong. The EAC always welcomes opinions that can help enhance current electoral arrangements. Where suggestions concerned are sound and feasible, the EAC would give serious consideration.

11.5 For various suggested measures for enhancing or altering the current electoral arrangements, the EAC sets out in this report the relevant factual background and legal basis, and attempts to examine the feasibility and pros and cons of the suggested measures, with a view to facilitating discussions among the public, and for the reference and consideration by the Government, if necessary, to introduce amendment of the electoral law to LegCo with a view to enhancing the electoral arrangements. The EAC recommends that this report be released for public viewing at a time the CE thinks appropriate.