

## **CHAPTER 1 - PROLOGUE**

### *Section 1 - Vacancies*

1.1 In the 2021 Legislative Council (“LegCo”) General Election, Miss Alice MAK Mei-kuen, Mr CHEUNG Kwok-kwan, Mr Nelson LAM Chi-yuen and Professor SUN Dong were elected as the LegCo members of the Election Committee constituency (“ECC”). On 19 June 2022, they were appointed by the Central People’s Government as the Principal Officials of the sixth-term Government of the Hong Kong Special Administrative Region (“HKSAR”). Pursuant to Article 79 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (“Basic Law”), when a LegCo member accepts a government appointment and becomes a public servant, the LegCo President shall declare that he/she is no longer qualified for the office.

1.2 In accordance with section 35(1) of the Legislative Council Ordinance (Cap 542) (“LCO”), the Clerk to LegCo published notices in the Gazette on 20 June 2022, announcing that four LegCo seats previously held by Ms Alice MAK Mei-kuen, Mr CHEUNG Kwok-kwan, Mr Nelson LAM Chi-yuen and Professor SUN Dong had become vacant. Pursuant to section 36(1)(a) of the LCO, the Electoral Affairs Commission (“EAC”) must arrange a by-election to return LegCo members for filling the relevant vacancies.

## ***Section 2 - By-election Date***

1.3 Section 8 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”) stipulates that the Chief Electoral Officer (“CEO”) must publish in the Gazette a notice to hold a by-election as soon as practicable after a declaration as to the existence of a vacancy in the membership of LegCo is made. When determining the date of the by-election, the EAC had to give due consideration to various practical and objective factors, such as the time required to recruit and train electoral staff; identification of suitable venues for the election (including the polling station, the Central Counting Station (“CCS”) and the Media Centre (“MC”)); procurement and delivery of electoral materials; the time required for arranging electronic counting of votes, etc.

1.4 To ensure the Registration and Electoral Office (“REO”) has sufficient time and resources for the preparation of this by-election, and taking into account the various practical and objective factors mentioned in paragraph 1.3 above, the EAC eventually decided to conduct this by-election on 18 December 2022.

1.5 In accordance with section 8 of the EAC (EP) (LC) Reg, the CEO published in the Gazette on 21 October 2022 a notice announcing that a by-election for the ECC of LegCo would be held on 18 December 2022. The nomination period ran from 1 to 14 November 2022 for a total of 14 days.

## **CHAPTER 2 - APPOINTMENTS AND NOMINATIONS**

### ***Section 1 - Appointment of Returning Officer and Assistant Returning Officers and Briefing for Returning Officer***

2.1 The EAC published a notice in the Gazette on 21 October 2022 appointing the Assistant Commissioner for the Development of the Guangdong-Hong Kong-Macao Greater Bay Area (2) of the Constitutional and Mainland Affairs Bureau (“CMAB”) as the Returning Officer (“RO”) for the 2022 LegCo ECC By-election.

2.2 To assist the RO in discharging his duties, the EAC appointed two officers of the CMAB as the Assistant Returning Officers (“AROs”) at the same time. Moreover, four legal officers of the Department of Justice (“DoJ”) were appointed as the AROs (Legal) to provide legal advice to the RO and the Presiding Officers (“PROs”) on the polling day.

2.3 The EAC Chairman held a briefing session for the RO at the REO’s office in Harbour Centre on 25 October 2022. Representatives of the CMAB, the REO (including the CEO), the DoJ and the Independent Commission Against Corruption (“ICAC”) also attended the briefing session. The EAC Chairman highlighted to the RO various important electoral matters and relevant arrangements, including nomination procedures, the Candidate Eligibility Review Committee (“CERC”) of the

HKSAR and duties of the RO, appointment of agents, polling and counting arrangements, the Electronic Poll Register (“EPR”) System and arrangement of special queue, precautionary measures against Coronavirus Disease 2019 (“COVID-19”), matters relating to the No Canvassing Zone (“NCZ”) and No Staying Zone, relevant legislation and the Guidelines on Election-related Activities in respect of the Legislative Council Election governing election advertisements (“EAs”), electioneering activities and election expenses, and the handling of complaints. The representative from the ICAC also briefly introduced the major provisions of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) during the briefing session.

2.4 Besides, the REO held a briefing on the counting procedures and the determination of questionable ballot papers for the RO, AROs and AROs (Legal) at its office in Wan Chai Revenue Tower on 7 December 2022.

### ***Section 2 - Appointment of Nominations Advisory Committee***

2.5 The EAC, under the Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap 541C) (“EAC (NAC) (LC) Reg”), appointed Mr Derek CHAN, Senior Counsel, to serve as the Nominations Advisory Committee (“NAC”) to provide the RO with advice on matters relating to whether a

candidate is eligible to be nominated, or disqualified from being nominated or elected as a LegCo member (i.e. the matters provided in sections 37 and 39 of the LCO), when necessary. Nevertheless, section 1(2) of EAC (NAC) (LC) Reg stipulates that the NAC is not empowered to advise on any matter relating to the requirements stipulated in section 40 of the LCO (including the declarations by candidates on upholding the Basic Law and pledging allegiance to the HKSAR, and the lodging of deposit by candidates). The relevant appointment, covering the period from 1 to 16 November 2022, was published in the Gazette on 21 October 2022.

### ***Section 3 – Candidate Eligibility Review Committee***

2.6 On 11 March 2021, the National People’s Congress (“NPC”) passed the “Decision of the NPC on Improving the Electoral System of the HKSAR”, under which the CERC shall be established. According to Annex II to the Basic Law, the CERC is responsible for reviewing and confirming the eligibility of candidates for the LegCo members. The Committee for Safeguarding National Security of the HKSAR (“Committee on National Security”) shall, on the basis of the review by the National Security Department of the Hong Kong Police Force (“Police”), make findings as to whether a candidate for a LegCo member meets the legal requirements and conditions of upholding the Basic Law and swearing allegiance to the HKSAR of the People’s Republic of China

(“PRC”), and issue an opinion to the CERC in respect of a candidate who fails to meet such legal requirements and conditions.

2.7 Under section 9A of the Chief Executive Election Ordinance (Cap 569), the CERC consists of a chairperson, at least 2 but not more than 4 official members and at least 1 but not more than 3 non-official members. Each member of the CERC is to be appointed by the Chief Executive (“CE”) by a notice published in the Gazette. Only a principal official appointed pursuant to a nomination under Article 48(5) of the Basic Law is eligible for appointment as the chairperson or an official member, and only a person who is not a public officer is eligible for appointment as a non-official member.

2.8 With effect from 19 September 2022, the CERC comprises seven members, including the Chief Secretary for Administration, Mr CHAN Kwok-ki, as the Chairperson; three official members including the Secretary for Constitutional and Mainland Affairs (“SCMA”), Mr Erick TSANG Kwok-wai, the Secretary for Security, Mr TANG Ping-keung and the Secretary for Home and Youth Affairs, Miss Alice MAK Mei-kuen; and three non-official members including Miss Elsie LEUNG Oi-sie, Mrs Rita FAN HSU Lai-tai and Professor Lawrence LAU Juen-yee.

#### ***Section 4 – Nomination of Candidates***

2.9 According to Annex II to the Basic Law and the LCO, the CERC is responsible for reviewing and confirming the eligibility of candidates for LegCo members. The CERC may request the RO to provide advice to the CERC regarding the nominations of candidates. If the CERC is in doubt about the eligibility for nomination of a candidate, it may request the RO or the candidate direct to provide the required information. The candidate must submit relevant information in the manner specified by the CERC. It may also make decision pursuant to the opinion of the Committee on National Security. The Committee on National Security shall, on the basis of the review by the National Security Department of the Police, decide whether a candidate standing for this By-election meets the legal requirements and conditions on “upholding the Basic Law and swearing allegiance to the HKSAR of the PRC”, and issue an opinion to the CERC in respect of a candidate who fails to meet such legal requirements and conditions. According to Article 14 of The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, no institution, organisation or individual in the HKSAR shall interfere with the work of the Committee on National Security. Also, information relating to the work of the Committee on National Security shall not be subject to disclosure.

2.10 Under the subsisting law, the validity of a candidate's nomination is solely determined by the CERC. The EAC is neither empowered nor involved in the making of such decision and will not provide any advice. The EAC will only make arrangements for this by-election according to the list of validly nominated candidates determined by the CERC. In accordance with section 19 of the EAC (EP) (LC) Reg, if the CERC decides that a nomination is invalid, the CERC must endorse on the nomination form the decision and the reason(s) for it, and the RO will make available a copy of the nomination form for public inspection pursuant to section 14 of the EAC (EP) (LC) Reg. If any person is disqualified from being a candidate at an election, he/she may make an election petition to question the result of the election in accordance with section 61 of the LCO. However, by virtue of Annex II to the Basic Law and the electoral law, no legal proceedings may be instituted in respect of a decision made by the CERC on the eligibility of a candidate pursuant to the opinion of the Committee on National Security.

2.11 The nomination period of this by-election commenced on 1 November 2022 and ended on 14 November 2022. The 14-day nomination period was gazetted on 21 October 2022 by the CEO. Persons seeking candidature were required to submit their nomination forms in person to the RO during the nomination period.



2.12 Legal provisions governing the eligibility for being nominated as a candidate in this by-election, the disqualification from being nominated as a candidate or elected as a LegCo member, and the requirements to be complied with by nominated candidates are set out in sections 37, 39 and 40 of the LCO respectively. As stipulated in section 40(1)(b)(i) of the LCO, the nomination of a candidate is invalid unless a declaration is made in the nomination form to the effect that he/she will uphold the Basic Law and pledge allegiance to the HKSAR.

2.13 By the end of the nomination period, the RO received a total of six nomination forms. Having reviewed the eligibility of the persons concerned, the CERC published a notice in the Gazette on 26 November 2022 to declare that the following persons were validly nominated as candidates for the ECC: Mr William WONG Kam-fai, Mr CHAN Wing-kwong, Mr Adrian Pedro HO King-hong, Mr WONG Chi-him, Mr SHANG Hailong and Mr LEE Kwong-yu.

2.14 As the number of validly nominated candidates was more than the number of seats to be returned in this by-election (i.e. more than four validly nominated candidates), a poll had to be conducted.

*Section 5 – Briefing Session for Candidates and Introduction to Candidates*

2.15 The EAC organises a briefing session for all validly nominated candidates at each election for the purpose of explaining the important information of the election to them and reminding them of the major requirements under the relevant electoral law and guidelines. The RO also conducts lots drawing to determine the order of the names of candidates on the ballot paper and allocate designated spots for the display of EAs.

2.16 For this by-election, taking into consideration the COVID-19 epidemic and social distancing measures, the EAC made arrangements to hold the lots drawing session conducted by the RO and the briefing session for candidates hosted by the EAC Chairman on two separate days. Besides, the briefing session for candidates was held online.

2.17 The RO determined the order of the names of candidates on the ballot paper and allocated the designated spots for the display of EAs by means of lots drawing at the North Point Community Hall on 25 November 2022. The briefing session for candidates was conducted online on 28 November 2022 and at the same time broadcast live on television and the Internet for public viewing. The briefing session mainly covered the electoral law, the Guidelines on Election-related

Activities in respect of the Legislative Council Election and its supplementary information, appointment of agents, polling station and polling arrangements, measures in response to COVID-19, counting arrangements, arrangements for the public to observe the count and announcement of election results, requirements pertaining to the EAs and election expenses, and matters requiring attention for conducting election meetings. Representatives from the ICAC and Hongkong Post also introduced the ECICO as well as the arrangement and requirements of the free postage service for election mail respectively. Relevant information of the briefing session was also uploaded onto the dedicated website of the 2022 LegCo ECC By-election (“election website”) for the candidates’ and the public’s reference.

2.18 In accordance with section 31 of the EAC (EP) (LC) Reg, the poll card should be mailed to each Election Committee (“EC”) member at least 10 days before the polling day. The package also enclosed relevant election documents, including a transportation map to the Hong Kong Convention and Exhibition Centre (“HKCEC”), a note on the polling and counting procedures and the voting instructions, the house rules of the CCS (including the MC), arrangement of the Penny’s Bay Polling Station (“PBPS”), a layout plan showing the extent of the NCZ of the ECC polling station, an Introduction to Candidates, and a leaflet on clean elections published by the ICAC. The Introduction to Candidates contained the name, candidate number, photograph and electoral message of each

candidate to facilitate the EC members in making an informed choice when deciding which candidates to cast their votes for.

2.19 In the mail with the aforementioned poll card enclosed, the CEO appealed to the EC members to arrive at the ECC polling station according to suggested timeslots for their respective sectors, and reminded the EC members on issues which they should pay attention to in the polling station, including:

- (a) Communication with others, using a mobile phone or other communication device to communicate with others, filming, taking photographs, making audio or video recordings, were prohibited inside the polling station, and likewise electioneering activities or displaying EAs;
- (b) Taking away any ballot paper from the polling station was not allowed;
- (c) Mobile phones must be switched off before entering the polling station, and disclosure to any person information obtained inside the polling station pertaining to the vote about to be/already cast by any EC member for candidates was not allowed;

- (d) No person should directly or indirectly induce an EC member to display his/her marked ballot paper, which would result in making known to any person the vote for whom the EC member had cast/not cast; and
- (e) Showing their choice on the ballot papers to others was not allowed.

2.20 On environmental considerations, the poll card and the Introduction to Candidates were both printed on paper made from wood-pulp derived from sustainable forests with environmentally friendly ink. Besides, to assist persons with visual impairment in reading the content of the Introduction to Candidates, the REO appealed to candidates to provide the information to be included in the Introduction to Candidates in computer-typed text format for uploading onto the election website, to enable persons with visual impairment to read the content of the document with the aid of computer software. All candidates of this by-election heeded the advice of the REO and provided the REO with the aforementioned information in typed text format.

## **CHAPTER 3 - PREPARATORY WORK BEFORE THE POLL**

### ***Section 1 – Guidelines on Election-related Activities in respect of the Legislative Council Election and the Supplementary Information***

3.1 The Guidelines on Election-related Activities in respect of the Legislative Council Election published in October 2021 were applicable to this by-election. To remind candidates of certain matters requiring special attention, the EAC issued supplementary information to the above-mentioned Guidelines on Election-related Activities in October 2022 which highlighted the criminal sanctions under the subsisting law for candidates failing to comply with the requirements relating to the publication of EAs, and reminded candidates and their supporters to take into account the needs of visually impaired persons when using loudspeakers in electioneering activities. Besides, the above supplementary information was distributed to the candidates by the REO and also uploaded onto the election website for the public's reference since the commencement of the nomination period.

### ***Section 2 – Updating of the Final Register of Election Committee***

3.2 According to sections 3(1) and 48(3D) of the LCO, only the EC members are entitled to vote at an election for the ECC of the LegCo. The final register ("FR") of the EC, which was applicable to this by-election, was amended a number of times since it was published on 22 October 2021 to reflect changes in the membership of the EC (the last amendment before

this by-election was made on 16 December 2022). On the polling day, the EC FR contained the particulars of a total of 1 441 EC members.

### ***Section 3 – Recruitment of Polling and Counting Staff***

3.3 In view of the relatively small number of the EC members, only one ECC polling station, one Dedicated Polling Station (“DPS”), one polling station at the Penny’s Bay Community Isolation Facility (viz. the PBPS), and one CCS (including the counting zone and the MC) were set up for this by-election. Therefore, the REO did not launch a service-wide recruitment exercise for electoral staff as in other public elections, but mainly deployed its own staff and invited the staff from other government bureaux/departments who had relevant experience in electoral work as well as satisfactory performance to serve as electoral staff for this by-election. In total, around 1 100 staff were recruited to serve as polling and counting staff as well as to provide supporting services on the polling day in this by-election.

### ***Section 4 – Training for Polling and Counting Staff***

3.4 To ensure that the polling staff and the electoral staff of other functional units were fully equipped with the necessary knowledge and skills for discharging their electoral duties, the REO provided them with a series of training before the polling day. This included online general briefing sessions on 1 December 2022 to explain various major arrangements of this by-election, including the venue set-up and operation of the ECC polling station, the operation of the EPR System and the contingency arrangements, the appropriate assistance to be provided to the EC members in need, the compilation of statistical returns, the work after

the close of poll, etc. Besides, for the staff of the ECC polling station, the REO also arranged the following training, drills and rehearsals:

- (a) A two-hour polling station management training was held on 6 December 2022 in the Kowloonbay International Trade & Exhibition Centre for the Deputy Presiding Officers (“DPROs”) and Assistant Presiding Officers (“APROs”) responsible for supervisory work. The PRO and REO staff briefed them on the major duties of various positions, the co-ordination among different positions, crisis management and keys to building team spirit. The DPROs and APROs were particularly reminded not only to ensure that the election was conducted in an open, honest and fair manner, but also to ensure that the electoral arrangements were highly efficient and user-friendly so as to best facilitate EC members; and
- (b) Eight drill sessions were held between 7 and 9 December 2022 in the Wan Chai Activities Centre, and on-site drills and rehearsals were held between 14 and 17 December 2022 in the HKCEC to familiarise staff responsible for different positions with the election procedures, including the workflow of using the EPR System to issue ballot papers and the contingency plan, the checking of the marked ballot papers using the ballot paper checking machines equipped with the Ballot Paper Checking and Vote Counting System (“ballot paper checking machines”), the venue management of the polling station, the compilation of statistical returns and the consolidation



of electoral documents, various anti-epidemic arrangements, etc.

3.5 For the staff of the DPS and the PBPS, the REO held a drill for each station respectively on 9 December 2022 to familiarise them with the operation of the DPS and PBPS.

3.6 In addition, the REO compiled two sets of operational manuals, one for the PROs, DPROs and APROs and the other for Polling Officers and Polling Assistants. A training video and an online quiz were also produced for the polling staff to assist them in getting familiarised with the workflow of the by-election.

3.7 In addition to providing trainings for the polling staff, the REO also organised briefings, on-site drills and rehearsals between 14 and 17 December 2022 in the HKCEC for the staff of the support services unit, the admission unit, the venue security unit and the transportation unit to familiarise them with the control arrangements at various access control points in the HKCEC, the routes for the EC members entering the ECC polling station and the MC, as well as the venue security arrangements. This included an introduction, demonstration and hands-on practices of the Radio Frequency Identification access control system, so that the staff could facilitate the EC members' smooth access to the venue and maintain order at the venue on the polling day.

3.8 Concerning the training for the counting staff, the REO set up a mock counting area at the office of the Central Counting Team for training and practice purposes. The REO also organised 12 sessions of training cum counting rehearsals for the counting staff between 25 November and

9 December 2022. Apart from the introduction to the operational arrangements and counting procedures of the CCS, there were hands-on practices and exercises on handling simulated scenarios in each training session to ensure that the counting staff were familiar with all the detailed arrangements of the counting procedures. The REO also arranged specifically joint training sessions for the counting staff responsible for different zones (including the Counting Table, the Administrative Table, Ballot Paper Scanning Zone and Manual Key Entry Zone) with a view to enhancing their understanding of the counting procedures and fostering team spirit.

3.9 With a view to reinforcing the work knowledge and quick response capability of counting staff, the REO made reference to the arrangements of the 2021 LegCo General Election and the 2022 CE Election, and organised three on-site simulated rehearsals in the HKCEC for around 160 counting staff on 16 December 2022 (i.e. two days before the polling day). More than 1 400 marked mock ballot papers were provided in each rehearsal to enhance the authenticity of the rehearsal. The EAC, the SCMA, the RO and the CEO were also present to inspect the drill. As in the past, the REO also organised a half-day briefing cum on-site mock operation session for all counting staff on the day before the polling day (i.e. 17 December 2022) to enhance their understanding of their own duties.

3.10 In addition to the above training and hands-on practice sessions, the REO also produced an operational manual and training videos for the counting staff to enable them to grasp the details and arrangements of each workflow.

### *Section 5 – Venue of Polling Station*

3.11 The REO began searching for suitable venues for the polling station and the CCS (including the MC) for this by-election in June 2022. As in the past, the EAC, the CMAB and the REO had to consider various factors when deciding the suitable venue, including venue availability, security concerns, ancillary facilities, transportation arrangements, etc. In fact, the REO encountered much difficulty at the time given that some comparatively suitable venues, such as the AsiaWorld-Expo, the Kai Tak Cruise Terminal, the Sun Yat Sen Memorial Park Sports Centre, as well as certain community halls and sports centres, were all being deployed for anti-epidemic use due to the pandemic, and hence were not available for use by the REO.

3.12 As the HKCEC was spacious enough to comply with the prevailing anti-pandemic policies and measures of the authorities, as well as being conveniently located and well-supported by ancillary facilities and transport arrangements, the REO eventually rented Halls 3B to 3E (around 15 000 m<sup>2</sup>) on Level 3 of the HKCEC for the polling station and the CCS (including the counting zone and the MC) for this by-election. In addition, the REO also rented Traders on Level 2, the Chancellor Room on Level 4 and part of the lobby areas on Level 2 to Level 4 of the HKCEC for the registration counters and the security check point. Not only were the venues concerned accessible to wheelchair users, dedicated passageways could also be set up for the transportation of the ballot boxes by polling staff from the polling station to the counting zone after the close of poll, and for EC members who wished to head to the MC to observe the count after casting their votes.

3.13 In view of the COVID-19 epidemic situation, the REO had also set up the PBPS for the EC members who were unable to cast their votes at the ECC polling station on the polling day due to local isolation or quarantine measures<sup>1</sup>. Moreover, the REO also set up a DPS at the Happy Valley Police Station for the EC members (if any) who were remanded in custody or detained on the polling day by the law enforcement agencies (“LEAs”) other than the Correctional Services Department (“CSD”). If any EC members were imprisoned or remanded under the custody of the CSD on the polling day, the REO would also set up DPS(s) at the penal institution(s) concerned for the relevant EC member(s) to vote.

### ***Section 6 – Polling Arrangements***

#### ***Adoption of EPR System to Issue Ballot Papers***

3.14 Since the application of the EPR System in the 2022 CE Election was very smooth and the outcome was satisfactory, the REO continued to adopt the EPR System for issuance of ballot papers in the ECC polling station for this by-election<sup>2</sup>. After an EC member presented his/her identity document, the polling staff would issue the ballot paper upon verification of the identity of the EC member through the EPR System, without having to use the printed copy of the FR, whereas the EC member could collect the ballot paper at any ballot paper issuing desk in the polling station as directed by the polling staff. This helped to even out and make optimal use of each ballot paper issuing desk, thereby making the process of ballot paper

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<sup>1</sup> Including undergoing quarantine/isolation at community isolation facilities, quarantine facilities, hotels/guest houses or at home; and EC members staying in their premises to undergo compulsory testing under the “restriction-testing declaration” made by the Government.

<sup>2</sup> Due to the smaller number of electors expected in the PBPS and other DPSs, the polling stations concerned did not adopt the EPR System but the conventional approach to issue the ballot papers using the printed copy of the FR.

issuance smoother and more flexible, in addition to enhancing the accuracy of ballot paper issuance.

### ***Special Queue Arrangement***

3.15 As stipulated in section 49A of the EAC (EP) (LC) Reg, the PRO may make special queuing arrangements for electors with special needs (including persons aged 70 or above, pregnant women or persons who are not able to queue for a long time or have difficulty in queuing because of illness, injury, disability or dependence on mobility aids). The PRO set up a special queue outside the ECC polling station for the EC members in need. Besides, a seating area was also set up outside the polling station for the EC members in need to take a rest, and to join the special queue afterwards for collecting the ballot paper.

### ***Polling Hours***

3.16 The polling hours for this by-election were from 9:00 am to 11:30 am for the ECC polling station and the DPS set up at the Happy Valley Police Station. To avoid gathering of crowds and minimise the risk of the transmission of COVID-19 in the polling station, the REO assigned five suggested voting timeslots for the EC members according to the five EC sectors. However, even if an EC member was unable to cast his/her vote at the suggested timeslot, he/she could still proceed to vote as long as he/she arrived at the ECC polling station within the polling hours. As for the DPS(s) set up at the penal institutions (if any), the polling hours were from 9:00 am to 10:30 am. Considering that sufficient time was required for disinfection and delivery of ballot papers to the CCS after the close of poll for the PBPS, the polling hours of the PBPS were specified to run from

9:00 am to 10:30 am. The CEO published the above-mentioned polling hours for this by-election in the Gazette on 25 November 2022.

### ***Design of Ballot Paper and Set Up of Ballot Paper Checking Machines***

3.17 The design of ballot papers is stipulated in Form 5(a) in Schedule 3 to the EAC (EP) (LC) Reg and must fulfill the technical requirements for automated vote counting.

3.18 For this by-election, EC members must vote for no more than and no less than four candidates as required under section 58A of the EAC (EP) (LC) Reg, otherwise the ballot paper would be regarded as invalid and would not be counted. Therefore, the REO set up ballot paper checking machines in the ECC polling station for the EC members to check whether no more than and no less than four candidates were marked on the ballot papers. The ballot paper checking machines concerned would neither record nor count the EC members' choices marked on the ballot papers. Although the use of such machines was entirely voluntary, under the encouragement of the EAC and the polling staff, most of the EC members used the ballot paper checking machines to verify the number of candidates they voted for on the marked ballot papers, hence there was no invalid ballot paper in this by-election which contained votes with either more or less than four candidates.

### ***Special Polling Arrangements for Imprisoned, Remanded and Detained EC Members***

3.19 To enable EC members who were imprisoned or remanded in custody by the CSD to vote on the polling day, the REO had planned to set up DPS(s) at penal institutions where the EC members were imprisoned or

remanded in custody. The REO released and updated on the election website the number of EC members who were imprisoned or remanded in custody at penal institutions from Monday to Friday (other than a general holiday) starting three weeks before the polling day and on the Saturday immediately before the polling day for candidates' reference. As of 17 December 2022 (i.e. the day before the polling day), there was no EC member imprisoned or remanded in custody at the penal institutions of the CSD. Therefore, no DPS was required to be set up by the REO at penal institutions on the polling day.

3.20 A DPS was set up by the REO at the Happy Valley Police Station for any EC member who was remanded in custody or detained by LEAs other than the CSD on the polling day and expressed their wish to vote. Since LEAs might make an arrest any time on the polling day, the polling hours of the DPS were the same as those of the ECC polling station. At the close of poll, the PRO of the DPS would lock and seal the ballot box and deliver it to the CCS under police escort. Candidates or their agents were allowed to accompany the delivery process.

3.21 In this by-election, no EC member voted in the DPS in the Happy Valley Police Station.

### ***Special Polling Arrangements for EC Members Undergoing Isolation or Quarantine***

3.22 To cater for the EC members who were unable to cast their votes at the ECC polling station on the polling day due to local isolation or quarantine measures, the REO, as in the 2022 CE Election, set up the PBPS at the Penny's Bay Community Isolation Facility for the affected EC

members to vote. The polling hours ran from 9:00 am to 10:30 am. Having sought the advice of the Centre for Health Protection, the REO put in place a series of anti-epidemic measures at the polling station to reduce the risk of viral infection and transmission. Moreover, each ballot paper was disinfected in an ultraviolet light chamber before departure from the PBPS to the CCS, to ensure that virus would not be transmitted via the ballot papers.

### ***Section 7 – Central Counting Station***

3.23 The CCS of this by-election was set up in the HKCEC, comprising a counting zone and a MC for the counting of votes and announcement of election results respectively. After the close of poll, ballot boxes in all polling stations (including the DPS and the PBPS) were delivered to the counting zone from their respective polling stations for counting of votes. During the count, the counting staff conducted visual screening of each ballot paper and separated the clearly invalid ones, whereas questionable ballot papers were handed over to the RO for determination. The remaining ballot papers were delivered to the Ballot Paper Scanning Zone for counting by the Optical Mark Recognition (“OMR”) machines. All ballot papers which were not accepted and appeared unreadable by the OMR machines were referred to the RO for consideration. The choices on the ballot papers which were ruled valid by the RO were then input manually for counting. The data input by the OMR machines and manual method were integrated and counted by the Ballot Paper Checking and Vote Counting System (“BPCVCS”).



### ***Section 8 – Measures Against the COVID-19 Epidemic***

3.24 Notwithstanding the impact of the COVID-19 epidemic, the EAC was committed to ensuring that the EC members could exercise their right to vote. In addition to setting up the PBPS, the REO also made reference to the 2022 CE Election and implemented a number of measures to minimise the risk of spread of virus in the polling station and the CCS, including requiring all persons entering the polling station and the CCS (including the counting zone and the MC) to wear surgical masks properly and undergo temperature check; staff with fever were not allowed to perform electoral duties; transparent partitions were erected at ballot paper issuing desks to separate polling staff from the EC members; EC members with fever or symptoms of respiratory tract infection were directed to cast votes in the special voting compartments, which would be disinfected each time after use; candidates and agents with fever were not allowed to enter the polling station, and the candidates concerned could assign other agents to observe the poll at the polling station.

### ***Section 9 – Crisis Management Committee***

3.25 As in past elections, the EAC set up a Crisis Management Committee (“CMC”) for this by-election and formulated a detailed contingency plan to deal with incidents where the by-election might be obstructed, disrupted, undermined or seriously affected to such extent that necessitated professional advice for the EAC to consider postponement or adjournment of the by-election, the poll or the count and the handling of related matters. These incidents included inclement weather, riot, open violence or occurrences of incidents endangering public health or safety, and occurrences of material irregularity relating to this by-election, the poll

or the count in the EAC's view. Chaired by the EAC Chairman, the CMC comprised the EAC members, representatives of the CMAB, the REO, Security Bureau, the DoJ, the Police, the Information Services Department and the Office of the Government Chief Information Officer. Depending on the situation, representatives of other relevant government bureaux/departments might also be invited to attend the meetings.

3.26 A CMC meeting was held on 16 December 2022 during which the CMC was briefed by relevant government bureaux and departments on their evaluation of different situations, election-related preparations and co-ordination efforts, and the deployment on the polling day (including enhanced logistic support, security and corresponding arrangements and measures for the by-election) to ensure that the by-election would be conducted smoothly.

### ***Section 10 – Contingency Measures***

3.27 The EAC (EP) (LC) Reg stipulates the provisions on the postponement or adjournment of the poll or the count in respect of the by-election. In addition, the REO formulated the following arrangements to cater for other emergencies:

- (a) Stocking extra ballot papers, ballot boxes, etc. at the HKCEC and REO offices to cater for emergency situations;
- (b) Closely monitoring the flow of traffic to the HKCEC and its vicinity on the polling day, with the assistance of relevant departments and organisations;
- (c) Requiring the HKCEC to provide back-up electricity

supply to ensure that the poll and the count could continue in case of power disruption;

- (d) Setting up an emergency depot to provide logistic support to all polling stations, including the DPS and the PBPS;
- (e) In the event that the HKCEC might not be able to operate on 18 December 2022 (i.e. the original polling day) due to unforeseen circumstances, the REO set up the fallback ECC polling station, CCS and MC at the Exhibition Hall of the Hong Kong Central Library, the Yuen Chau Kok Sports Centre and the Yuen Chau Kok Community Hall respectively, so that the poll and the count could be conducted at these fallback venues, depending on actual circumstances and needs, on the polling day or after a five-day postponement or adjournment to 23 December 2022;
- (f) Booking vehicles for emergency delivery of ballot boxes and transport of EC members, candidates and their agents, and staff to the fallback venues when necessary; and
- (g) Getting fully prepared to make public announcements on the implementation of any emergency arrangements, including requesting EC members to provide their own and/or their assistants' mobile phone numbers and/or email addresses for contact if necessary.

## *Section 11 – Publicity*

3.28 Publicity is important to elections. It serves to disseminate information of this by-election in an efficient and effective manner to candidates and the EC members, and also to promote the importance of a clean and fair election. The scale of publicity activities of this by-election was similar to that of the previous LegCo by-elections. The Government carried out diversified publicity work from 25 October 2022 until the polling day on 18 December 2022, including broadcasting the Announcements in the Public Interest on television, radio channels and the Internet; placing advertisements on newspapers; displaying posters; mounting large banners at outdoor and prominent locations; issuing press releases; setting up an election website ([www.elections.gov.hk](http://www.elections.gov.hk)), etc. to inform the EC members of the arrangements for this by-election and appeal to them to vote. The ICAC introduced the salient points of the ECICO to candidates through its information booklets and leaflets, and promoted clean election messages by placing advertisements on newspapers and the Internet.

3.29 Detailed information about this by-election, including the electoral legislation, the Guidelines on Election-related Activities in respect of the Legislative Council Election and the supplementary information, press releases, Introduction to Candidates, relevant information of the polling station and the CCS (including the MC) and publicity materials were uploaded onto the election website to facilitate public access.

3.30 Besides, with a view to providing information of this by-election and the voting arrangements to members of the public who could not read Chinese and English, the REO translated the by-election brief and the voting

procedures into 10 languages other than Chinese and English and uploaded them onto the election website and the website of the Race Relations Unit of the Home Affairs Department, and also displayed them at some support centres for ethnic minorities.

## **CHAPTER 4 - THE POLLING DAY**

### ***Section 1 – Command Centre and Support***

#### ***Central Command Centre***

4.1 For the 2022 LegCo ECC By-election, the REO set up a Central Command Centre (“CCC”) at the HKCEC which commenced operation from 7:30 am on the polling day and ceased operation after the candidates, EC members and the public had left the polling station, the counting zone and the MC. Apart from the EAC, the CCC included representatives of the following parties: CMAB, Security Bureau, REO, Transport Department, the Police, ICAC, Fire Services Department, ISD and HKCEC.

4.2 Apart from the CCC, various functional units were deployed on the polling day to perform or oversee various specific operations and tasks, including the support services unit, venue security unit, admission unit, transportation unit, venue logistics support unit, EPR support unit, information technology support unit, enquiry hotline team, the Central Counting Team, a support unit for the RO’s Office, media relations unit, and administrative support team at the REO’s office in the Harbour Centre (for handling election-related enquiries raised by the public via email).

#### ***Complaints Centre***

4.3 The Complaints Centre was set up at the REO’s office in the Harbour Centre to handle complaints from the public.

4.4 Complainants could lodge complaints by telephone, fax or email. The Complaint Centre was manned by staff of the EAC Secretariat and operated throughout the polling hours. Details of the work of the Complaints Centre and the complaints received on the polling day and during the complaints-handling period are set out in Chapter 5.

### ***Statistical Information Centre***

4.5 The REO also set up a Statistical Information Centre (“SIC”), which was responsible for receiving reports on voter turnout rates from the PROs, reports from the RO, PROs and the Complaints Centre on their complaints received, as well as verifying the counting results. The SIC also consolidated various electoral statistics and disseminated the related information to the public and relevant departments.

### ***Section 2 - Number of Voters***

4.6 The EC consisted of 1 441 members on the polling day. For this by-election, a total of 1 307 EC members cast their votes, with the turnout rate reaching 90.70%. A breakdown showing the half-hourly turnout rate is at **Appendix I.**

### ***Section 3 - Counting Arrangements and Announcement of Election Results***

4.7 In this by-election, the CCS (including the counting zone and the MC) was also set up in the HKCEC. After the close of poll, ballot boxes in all polling stations (including the PBPS) were delivered to the counting zone of the CCS for counting of votes. It was not necessary to wait for the arrival of the ballot boxes of all polling stations at the CCS to commence the count. During the count, the counting staff conducted visual screening of each ballot paper and separated the

clearly invalid ones, whereas the questionable ballot papers were handed over to the RO for determination. The remaining ballot papers were delivered to the Ballot Paper Scanning Zone for counting by OMR machines. All ballot papers which were not accepted and seemingly unreadable by the OMR machines were referred to the RO for consideration. The ballot papers which were ruled valid by the RO were then input manually for counting. The data input by the OMR machines and manual method were integrated and counted by the BPCVCS.

4.8 As the count involved multiple steps, the ballot papers were processed by counting staff in different zones (e.g. Counting Table, Ballot Paper Scanning Zone, Questionable Ballot Paper Determination Table, etc.). Staff must place ballot papers in transparent plastic bags to prevent loss or damage during delivery. In addition, counting staff would also use forms to record information of the ballot papers they handled, such as the number of questionable ballot papers; the number of ballot papers in each scan by individual OMR machine and the result, etc. At the same time, staff would input relevant information into the Counting Information Display System for the public to monitor the progress of the count. The counting staff must sign the forms for confirmation during the handover of ballot papers to ensure proper handling. Upon completion of the count, staff would verify the number of ballot papers against the record on the forms.

4.9 Two Counting Tables, seven OMR machines, one Questionable Ballot Paper Determination Table and 10 manual key-in entry workstations were set up in the counting zone. In this by-election, no ballot papers in the ballot boxes were not counted<sup>3</sup>. An analysis of the invalid ballot papers kept by the PROs is at **Appendix II**.

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<sup>3</sup> Ballot papers which would not be counted included those endorsed with the words “重複” and “TENDERED”, unmarked, and containing votes for more or less than four candidates and containing a vote for a candidate whose information was crossed out under section 37(2) of EAC (EP) (LC) Reg as well as rejected questionable ballot papers. Eight questionable ballot papers found in the counting process were all determined to be valid by the RO and counted in this by-election.



4.10 In this by-election, REO uploaded the real-time counting information and election results onto the election website for public reference. To enhance the transparency of the counting process and dissemination of counting information, the progress of the count and the election results were displayed on the large screens or televisions set up in the MC. The election results of this by-election were also posted on the display panels in the MC.

4.11 The count of this by-election commenced at 11:43 am on the polling day and the results of the count was announced at 12:42 pm on the same day. The counting process lasted about an hour and was very smooth. The RO announced the election results at 12:58 pm.

4.12 The election results were published in the Gazette on 19 December 2022 and is reproduced at **Appendix III**.

#### *Section 4 – EAC Visit*

4.13 On 16 and 17 December 2022, the Chairman and two members of the EAC attended the on-site drill and rehearsal conducted by the REO in the HKCEC. They encouraged the polling staff to make their best endeavours to ensure that the poll and count of this by-election could be conducted smoothly and efficiently. Moreover, they met the media at 11 am on 17 December 2022. The EAC Chairman and the EAC member Professor Daniel SHEK Tan-lei inspected the PBPS in the afternoon on the same day.

4.14 As in other elections, the Chairman and two members of the EAC also visited the polling station and the CCS on the polling day to observe the polling and counting process. Before the commencement of the poll, the Chairman and members of the EAC inspected the ECC polling station and the CCS from around

7:25 am to 7:45 am to ensure that preparatory work for the poll and count was in order. They then met the media. Afterwards, they returned to the ECC polling station again to observe the poll which commenced at 9:00 am.

4.15 After the conclusion of the election, the Chairman and members of the EAC met the media at around 1:40 pm at the Meet-the-Press Area inside the MC to conclude the election and respond to media enquiries. The EAC Chairman expressed satisfaction with the overall arrangements of this by-election which had been conducted in accordance with the law in an open, honest and fair manner. He thanked the staff at all polling stations and the government bureaux and departments concerned, for their joint efforts and dedication in ensuring the smooth completion of the polling and counting process.

### ***Section 5 – Exit Polls***

4.16 No application for conducting exit polls was received in this by-election.

## **CHAPTER 5 - COMPLAINTS**

### ***Section 1 - Introduction***

5.1 The complaints handling mechanism is one of the means adopted by the EAC to safeguard the fairness and integrity of elections. Some complaints may reveal deficiencies in certain aspects of the electoral arrangements and help the EAC improve the arrangements for future elections.

5.2 The complaints handling mechanism also facilitates mutual monitoring among candidates, through which they may better understand the requirements of the electoral law and the Guidelines on Election-related Activities. The EAC is committed to handling complaints received fairly and efficiently.

### ***Section 2 - Complaints-handling Period***

5.3 The complaints-handling period for the 2022 LegCo ECC By-election ran from 1 November 2022, i.e. the day when the nomination period commenced, to 1 February 2023, i.e. 45 days after the polling day.

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

5.4 Altogether five parties were responsible for handling complaints during the complaints-handling period, including the EAC, the RO, the Police, the ICAC and the PROs (who discharged the duty on the polling day only). Each of these parties had its respective area of responsibilities depending on the nature of complaints:

- (a) The EAC was responsible for handling cases that were within its jurisdiction and not covered by any statutory provisions involving criminal liability;
- (b) The RO was delegated with authority by the EAC to handle complaint cases of a minor nature (e.g. those relating to the display of EAs, disputes over electioneering activities, use of sound amplifying devices, etc.);
- (c) The Police was responsible for handling complaints involving possible criminal offences, e.g. breaches of the EAC (EP) (LC) Reg and criminal damage of EAs;
- (d) The ICAC was responsible for handling cases involving possible breaches of the ECICO, the Prevention of Bribery Ordinance (Cap 201) and the ICAC Ordinance (Cap 204); and
- (e) The PROs handled complaints received at the polling stations on the polling day and took action on cases requiring immediate attention, e.g. unlawful activities that took place in the polling station.

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

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

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

5.6 The complaints-handling period of this by-election ended on 1 February 2023 during which a total of six complaints were directly received from the public and referred from other government departments/organisations/personnel. Among the five aforementioned complaints-handling parties, only the EAC received a total of six complaints directly from the public. The majority of the complaints were related to EAs (four cases). A breakdown of the complaints by receiving party and nature lodged during the complaints-handling period is at **Appendices IV (A) to (C)**.

#### ***Section 5 - Handling of Complaints on the Polling Day***

5.7 On the polling day, as mentioned in paragraph 4.3 above, the EAC Complaints Centre was set up at the REO's office in the Harbour Centre to handle complaints. The EAC Complaints Centre was operated by staff of the EAC Secretariat. The RO also set up command centres at his office to receive and handle complaints. The PROs were responsible for receiving complaints at the polling stations and handling them on the spot as far as possible. Moreover, designated police officers were on duty in the police stations within each district to attend to complaints. Designated ICAC officers also manned a complaint hotline to deal with incoming calls on the polling day.

5.8 Only the EAC Complaints Centre received one complaint case in relation to the polling arrangement on the polling day. The case concerned was followed up and handled.

### ***Section 6 - Outcome of Investigations***

5.9 As at 1 February 2023 (i.e. on the day when the complaints-handling period ended), the EAC and the RO received six cases and four cases respectively (including cases directly received from the public and cases referred from other government departments/organisations/personnel, as detailed at **Appendices IV (B) and (C)**). Of the cases processed, none was found substantiated by the EAC, while one case was found substantiated by the RO with a warning letter issued to the infringing party. A breakdown of the outcome of investigations for cases processed by the EAC and the RO is at **Appendices V (A) and (B)** respectively.

### ***Section 7 – Election Petitions***

5.10 According to section 65(1) of the LCO, an election petition questioning an election must be lodged with the Court of First Instance during the period of 2 months following the date on which the RO has published the result of the election in the Gazette. No election petition regarding this by-election had been lodged by 17 February 2023 (i.e. the deadline for lodging election petitions).

## **CHAPTER 6 - REVIEW AND RECOMMENDATIONS**

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

### **(A) Highly Efficient and User-friendly Electoral Arrangements**

6.2 One of the major responsibilities of the EAC is the conduct and supervision of elections. Apart from the three important principles of openness, honesty and fairness, the EAC considered that, as far as practicable, the efficiency and user-friendliness of various electoral arrangements should be enhanced, covering relevant arrangements for candidates and their electioneering teams, electors, electoral staff and the general public. In this by-election, the EAC implemented the following highly efficient and user-friendly electoral arrangements.

#### ***Online Briefing Session for Candidates***

6.3 The EAC organises a briefing session for all validly nominated candidates at each election for the purposes of explaining to them the significant issues in the election and reminding them in particular of the compliance with relevant electoral law and guidelines. The RO also conducts lots drawing to determine the order of the names of candidates on the ballot paper and allocate the designated spots for display of EAs.

6.4 For this by-election, having regard to COVID-19 epidemic, the above-mentioned lots drawing session and briefing session for candidates were conducted on two separate days, with the latter held online.

6.5 **Recommendation:** The EAC considers that the briefing session for candidates should continue to be held in future elections, as it helps candidates and their election agents to better understand the relevant electoral law, the Guidelines on Election-related Activities issued by the EAC and the important points-to-note for electioneering activities. The online briefing sessions for candidates of the 2021 EC Subsector Ordinary Elections, the 2021 LegCo General Election, the 2022 CE Election and this by-election were conducted smoothly. They also have the benefits of facilitating participation of/viewing by candidates, their election agents and the public, and offering the REO greater flexibility in venue selection. In view of the above, the EAC opines that briefing session for candidates could continue to be held online in future even after the epidemic has subsided.

### ***Suggested Timeslot to Vote***

6.6 Since the considerations regarding the electorate, the venues for the poll and the count, etc. for this by-election were similar to those in the 2022 CE Election, the REO made reference to the arrangements for the said election and scheduled the polling hours of the ECC polling station at the HKCEC and the DPS in the Happy Valley Police Station to be from 9:00 am to 11:30 am (2.5 hours in total)<sup>4</sup>. Besides, the REO assigned different suggested voting timeslots (half an hour per timeslot) to the EC members according to the five EC sectors so as to reduce the gathering of crowds in the ECC polling station and minimise the risk of COVID-19 transmission:

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<sup>4</sup> Considering that after the close of the poll at the PBPS, sufficient time was required for disinfection and delivery of ballot papers to the CCS at the HKCEC, the polling hours of the PBPS were specified to run from 9:00 am to 10:30 am.



<b>Sector</b>	<b>Suggested Voting Timeslot</b>
First Sector: Industrial, commercial and financial sectors	9:00 am to 9:30 am
Second Sector: The professions	9:30 am to 10:00 am
Third Sector: Grassroots, labour, religious and other sectors	10:00 am to 10:30 am
Fourth Sector: Members of the Legislative Council, representatives of district organisations and other organisations	10:30 am to 11:00 am
Fifth Sector: HKSAR deputies to the National People's Congress, HKSAR members of the National Committee of the Chinese People's Political Consultative Conference, and representatives of Hong Kong members of relevant national organisations	11:00 am to 11:30 am

### *Additional ballot paper issuing desks*

6.7 Considering that the poll of this by-election was 2.5 hours, to reduce the waiting time for collecting ballot papers and to complete the voting process highly efficiently, the number of ballot paper issuing desks set up by the REO at the ECC polling station was increased from 30 to 72, an increase of 140%, as compared with the 2021 LegCo General Election.

### *The EPR System*

6.8 The EPR System continued to be used for issuing ballot papers in this by-election<sup>5</sup>. An EC member could present his/her identity document at any one of the ballot paper issuing desks in the polling station as directed by the polling staff and a ballot paper would be issued after the identity of the EC member was verified by the EPR System. This evened out the utilisation of the ballot paper issuing desk, thereby making the process of ballot paper issuance smoother and more flexible in addition to enhancing the accuracy of issuing ballot papers.

### *Special Queuing Arrangements*

6.9 The REO makes its best endeavours to help electors with special needs to exercise their right to vote. In accordance with section 49A of the EAC (EP) (LC) Reg, the PRO may make special queuing arrangements for electors with special needs (including persons aged 70 years or above, pregnant women, or persons who are not able to queue for a long time or have difficulty in queuing because of illness, injury, disability or dependence on mobility aids). In this by-election, the PRO set up a special queue outside the ECC polling station for EC members with special needs, while the others used the ordinary queue. Moreover, a seating area was provided outside the polling station for EC members in need to sit and rest, and to join the special queue afterwards for collecting ballot papers. The operation of the special queueing arrangements on the polling day was smooth.

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<sup>5</sup> For public elections held before 2021, printed copies of the FR were used in issuing ballot papers by polling staff at ballot paper issuing desks. The PRO would, taking into account the numbers of electors and ballot paper issuing desks at his/her polling station, separate the printed copies of the FR according to the alphabetical prefixes of the HKID numbers of the electors and allocate the relevant parts to the respective ballot paper issuing desks. An elector must, according to the alphabetical prefix of his/her HKID number, collect his/her ballot paper(s) at a designated ballot paper issuing desk. Under such arrangements, there may be queues lining up at some ballot paper issuing desks while some others could be left idle during the peak hours and thus causing the ballot paper issuing process inflexible and inefficient.

6.10 **Recommendation:** The EAC noted the voter turnout of this by-election as follows:

<b>Time (as at)</b>	<b>Number of EC members in the Designated Timeslot</b>	<b>Voter Turnout<sup>6</sup></b>	<b>Cumulative Voter Turnout</b>	<b>Cumulative Voter Turnout Rate (%)</b>
9:30 am	295	457	457	31.71%
10:00 am	287	329	786	54.55%
10:30 am	296	239	1 025	71.13%
11:00 am	280	199	1 224	84.94%
11:30 am	283	83	1 307	90.70%

6.11 The implementation of the suggested voting timeslots had the effect of staggering the arrival time of EC members at the ECC polling station. This, coupled with other measures which facilitated EC members (including increasing the number of ballot paper issuing desks and using the EPR System), enabled the polling station to operate very smoothly. The EAC considers that, when formulating appropriate polling arrangements in future elections, the REO should continue taking relevant factors into account holistically, such as the number of electors, polling hours and spatial constraints of polling stations, so as to enable the conduct of elections in a highly efficient and user-friendly manner.

### ***Setting up of the PBPS in response to the COVID-19 Epidemic***

6.12 Having regard to the COVID-19 epidemic, the EC members, like any member of the public, must abide by the regulations relating to isolation or quarantine and comply with the isolation or quarantine requirements set out by the law. Having said that, the EAC is committed to ensuring that all EC members

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<sup>6</sup> Including the number of electors who voted at the PBPS. On the polling day, a total of 31 EC members cast their votes at the PBPS, the polling hours of which were from 9:00 am to 10:30 am.

are able to exercise their right to vote in this by-election. Given the prevailing epidemic situation in Hong Kong, the REO considered that EC members might not be able to go to the ECC polling station at the HKCEC to vote due to local quarantine/isolation measures. Making reference to the arrangements for the 2022 CE Election and with the approval and assistance of the health authorities and relevant government departments, the REO set up a polling station at the Penny's Bay Community Isolation Facility for the following EC members to cast their votes:

- (a) Under isolation in community isolation facilities;
- (b) Under quarantine in quarantine centres;
- (c) Under home quarantine/isolation;
- (d) Under quarantine/isolation at hotels/guesthouses; and
- (e) Persons who are subject to the "restriction-testing declaration"<sup>7</sup>.

6.13 By the close of poll, a total of 34 EC members<sup>8</sup> registered with the REO for casting votes at the PBPS. The REO arranged point-to-point transportation for the EC members concerned to vote at the PBPS. 31 of them reached the polling station and completed voting before the close of poll<sup>9</sup>, and the remaining three EC members were unable to cast their votes as they did not reach the polling station before the close of poll. After voting, the REO similarly arranged point-to-point transportation for the EC members concerned to return to their isolation/quarantine premises to continue with the isolation/quarantine<sup>10</sup>.

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<sup>7</sup> These persons are subject to compulsory testing as per government instructions and subsequent quarantine/isolation according to the test results.

<sup>8</sup> Including 31 EC members infected with COVID-19 and 3 EC members under quarantine.

<sup>9</sup> Polling hours of the PBPS ran from 9:00 am to 10:30 am.

<sup>10</sup> Two EC members among them opted to complete isolation pursuant to their isolation orders at the Penny's Bay Community Isolation Facility after voting.

6.14       **Recommendation:** The EAC considers that the setting up of the PBPS in this by-election could reduce the risk of spread of COVID-19 in the ECC polling station and put EC members' mind at ease when voting there. It could also enable EC members under isolation/quarantine on the polling day to exercise their right to vote. The operation of the PBPS was generally smooth, including the transportation of EC members to the Penny's Bay Community Isolation Facility by designated taxis, admission arrangements for the facility, polling arrangements, transportation of EC members back to their isolation/quarantine premises, etc. Notwithstanding that the REO had requested the EC members in need to call the REO's dedicated service hotline no later than 8:30 am on the polling day to register for voting at the PBPS, some EC members only called to register after the aforementioned time. As making arrangements and transportation took time, three EC members were unable to vote in the end as they did not arrive at the PBPS before the close of poll. The EAC considers that if it is necessary to set up the PBPS in future elections, consideration should be given to setting a registration cut-off time so that the REO would have sufficient time to arrange transportation and update the register at the polling station, and could avoid as far as practicable electors from being unable to vote due to failing to arrive at the polling station in time.

6.15       The EAC expresses its gratitude to the Health Bureau, the Centre for Health Protection, the Security Bureau and the Civil Aid Service ("CAS") for their assistance in setting up the polling station at the Penny's Bay Community Isolation Facility. The EAC considers that if future elections are affected by an epidemic, the need and feasibility of setting up polling stations similar to the PBPS should be examined having regard to various factors such as the prevailing epidemic situation, anti-epidemic policies, etc.

## *Electronic Counting of Votes*

6.16 As four LegCo members had to be returned in this by-election for filling four LegCo vacancies in the ECC, each EC member had to vote for no more than and no less than four candidates. Having regard to the very smooth counting process in the ECC in the 2021 LegCo General Election, the counting arrangement for this by-election was largely the same as that adopted for the 2021 LegCo General Election, including deploying OMR machines for vote counting<sup>11</sup> in addition to implementing various measures to improve the counting process, for example:

- (a) Adding a flow test during the system testing stage to simulate the entire electronic counting process by using more than 1 400 marked mock ballot papers, so as to ensure complementarity between the system and the counting process, and to enhance the co-ordination of the relevant working zones and the smooth transition of each counting process;
- (b) Increasing the number of tests on the data integration and verification procedures prior to announcement of counting and election results to rationalise the relevant procedures;
- (c) Replacing the manual input of information with regards to the batching of ballot papers by scanning barcodes, and increasing the number of OMR Machine Allocation Counters from one to two to expedite the batching and allocation of ballot papers to OMR machines for scanning;

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<sup>11</sup> When an OMR machine scans a ballot paper, the BPCVCS makes use of OMR technology to identify the choices of the EC member by emitting beams of light to the ovals next to the names of the candidates on the ballot papers and convert the data into digital information that can be processed by computers. For ballot papers which cannot be read by OMR machines and questionable ballot papers ruled valid by the RO, the valid votes will be inputted manually. Data input by the OMR machines and manual method will be integrated and counted by the BPCVCS.

- (d) Arranging adequate manpower to deliver and collect ballot papers and operate OMR machines; and improving the distribution arrangements for ballot papers to the OMR machines with an aim to maximize the utilization of every OMR machine, and prevent the machines from being left idle between scanning intervals of different batches of ballot papers; and
- (e) Refining various counting procedures for easier tracking of the progress of each counting procedure, as well as the timely commencement of determination of questionable ballot papers so as to commence the manual input of accepted questionable ballot papers and the consolidation of counting results as soon as possible.

6.17 In addition, the REO had also strengthened the training for counting staff (see paragraphs 3.8 to 3.10 above), increased manpower for the Counting Tables and the Ballot Paper Scanning Zone, and appointed counting staff with experience in operating OMR machines. With the above-mentioned enhancement measures in place, the counting process was very smooth and there were no paper jams in the OMR machines. The entire process only took about an hour<sup>12</sup>.

6.18 **Recommendation:** The EAC is satisfied with the counting arrangement for this by-election, as well as the quality assurance services for the BPCVCS commissioned by the REO. Notwithstanding the smooth conduct of the count in this by-election, the EAC will continue its endeavours to enhance all aspects of the counting arrangement, including actively pursuing the feasibility study on retaining unique barcodes on ballot papers on the premise that voting

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<sup>12</sup> From the opening of the first ballot box up to the announcement of the election results.

secrecy would be preserved<sup>13</sup>. By doing so, even if paper jams in the OMR machines occur, the unique barcodes on individual ballot papers will allow the BPCVCS identify whether a particular ballot paper has been counted or not. Otherwise, in case of paper jams in the OMR machines, staff have to void the record of the entire batch of ballot papers from the BPCVCS and then adopt double manual input to record the choices on each ballot paper for counting.

6.19 As recommended by the EAC in the Report on the 2021 Legislative Council General Election, the REO should actively pursue the study and follow up on the use of electronic counting for the functional constituencies with more registered electors<sup>14</sup>, with a view to deploying it in the next LegCo general election. After the end of this election, the REO will actively consider the feasibility of adopting electronic counting for other elections. Electronic counting not only accelerates the counting process, but also alleviates the pressure on the staff working long hours at the CCS.

### **(B) Training, Rehearsals and Practice for Electoral Staff**

6.20 In this by-election, about 390 serving civil servants had served as polling staff<sup>15</sup>. In view of the importance of training to electoral work, the REO had, unlike in previous by-elections, held an online general briefing session for all polling staff to provide an in-depth and easy-to-comprehend introduction of the

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<sup>13</sup> As pointed out by the EAC in the Report on the 2022 CE Election, it was opined that if unique barcodes were printed on individual ballot papers as before, the public might be concerned that electors' voting choices could be identified by retrieving and comparing the ballot paper issuing records stored in the EPR System with the serial numbers of the counterfoils of ballot papers issued at the ballot paper issuing desks, as well as the counting records stored in the counting system through the unique barcodes. Despite this, upon further consideration, the EPR System and the electronic counting system are in fact two separate systems with no data sharing between them, and accessing electors' information from the EPR System is an offence unless authorised by the EAC or for investigation by LEAs.

<sup>14</sup> Including identifying suitable counting machines in the market, which could validate accurately choices marked in the form of "✓" chop on ballot papers as required by the law at a satisfactory speed.

<sup>15</sup> Including staff at the ECC polling station, the DPS and the PBPS.



voting system and various major arrangements of this by-election. In addition, the REO also strengthened the training for electoral staff, which included:

- (a) With reference to the arrangements for the 2021 LegCo General Election, a two-hour polling station management training session was organised for supervisory staff of the ECC polling station. They were briefed by the PRO and REO staff on the importance of and the co-ordination among various positions, crisis management and keys to building team spirit. They were also reminded that, as the management staff of the polling station, apart from ensuring that the election would be conducted in an open, honest and fair manner, they had to supervise the staff under their supervision to appropriately implement highly efficient and user-friendly elements while discharging their duties so as to best facilitate EC members during the poll. In addition, to facilitate polling staff in reviewing and familiarising themselves with the details of each workflow, the REO also uploaded the video recordings of the online general briefing session and training videos onto its training platform and the Cyber Learning Centre Plus website. An online quiz was also devised for the polling staff to strengthen their understanding of the electoral duties, which covered polling arrangements, ballot paper issuing process, application of the EPR System, operation of the ballot paper checking machines, other matters requiring attention, etc.;
- (b) A total of eight drill sessions and three on-site drills and rehearsals at the ECC polling station in the HKCEC were organised for the polling staff working in the ECC polling station. Compared with the 2021 LegCo General Election, the hours of drills provided for each polling staff in this by-election doubled

to provide them with a more thorough understanding of their duties, strengthen the co-ordination and collaboration between different positions and nurture their team spirit; and

- (c) Having regard to the prevailing epidemic situation, the REO envisaged that many EC members might need to cast their votes at the PBPS on the polling day<sup>16</sup>. Hence, the REO conducted a half-day training-cum-practice session for staff of the PBPS. The session included demonstration and rehearsal of preparations before commencement of the poll and collation of electoral documents after the close of poll, as well as hands-on practices on the process of using a printed copy of the EC FR to issue ballot papers, etc., which aimed to ensure the efficient discharge of duties by PBPS staff on the polling day, as well as prompt delivery of the ballot boxes and electoral documents to the CCS for counting.

6.21 In respect of counting duties, about 160 serving civil servants were engaged to undertake the counting duties in this by-election. To ensure a smooth counting process, the REO had deliberately recruited civil servants from various government bureaux and departments with experience in vote counting to participate in the count. Moreover, the REO had also strengthened the training for counting staff, including:

- (a) Organising 12 training-cum-drill sessions for them, which was twice the number of training sessions for the ECC in the 2021 LegCo General Election (in total six sessions);

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<sup>16</sup> On the polling day, a total of 31 EC members voted at the PBPS.

- (b) More time for hands-on practices and exercises on handling simulated scenarios were provided to them to reinforce their work knowledge and skills;
- (c) As the count involved various working zones and the operational arrangements of each working zone were intertwined, the REO specifically organised two joint training sessions for counting staff of working zones most closely related to each other (i.e. Counting Tables, Administration Tables, Ballot Paper Scanning Zone and Manual Key Entry Zone) to strengthen their understanding on the counting process and foster a team spirit;
- (d) To enhance the rapport, execution and quick response capabilities of supervisory counting staff, REO staff had discussions and experience sharing with them after every training session to listen to their views and suggestions on the counting work; and
- (e) Increasing the number of on-site simulated rehearsals covering the entire counting process from one for the ECC in the 2021 LegCo General Election to three in this by-election, with more than 1 400 marked mock ballot papers provided for each rehearsal to enhance its authenticity.

6.22 Apart from the above arrangements, the REO also continued to provide operational manuals for the counting staff. Training videos were uploaded onto the REO's training platform and the Cyber Learning Centre Plus website to facilitate counting staff in reviewing the workflow of the count and various detailed arrangements. Furthermore, as with past arrangements, a half-day on-site briefing-cum-mock operation session for counting staff was conducted by the REO on the day preceding the polling day.

6.23 In response to the COVID-19 epidemic, the REO adopted a number of anti-epidemic measures when organising in-person trainings for electoral staff, including requiring all electoral staff to undergo a rapid antigen test and obtain a negative result within 24 hours before attending the training, and conducting the training in small groups so as to maintain proper social distancing during practices and reduce the risk of viral transmission.

6.24 **Recommendation:** The EAC considers that the smooth and highly efficient completion of this by-election has again demonstrated the importance of providing electoral staff with sufficient training and rehearsals. In concluding the training arrangements, the EAC is satisfied with the REO's efforts in enhancing the diversity of the types of training, increasing the total in-post training hours for electoral staff, and also offer more opportunities for hands-on practices and rehearsals to enable a better understanding and grasp of their duties.

6.25 The EAC recommends that the REO should continue to provide sufficient trainings and rehearsals for electoral staff in future elections so as to reinforce their work knowledge and skills and ensure their conversancy with the duties assigned. Besides, the EAC expresses its gratitude to all the Heads of government bureaux/departments for their understanding and approval of the temporary release of officers from their original posts to attend training and rehearsals arranged by the REO. The EAC hopes that the government bureaux/departments would, with reference to this by-election, grant temporary release of staff from their original posts to attend training and rehearsals in future elections.

### **(C) Requirements of Publishing EAs**

6.26 According to section 27 of the ECICO, if a candidate publishes, or authorises the publication of, an EA that includes the name or logo of or associated with a person or an organisation; or a pictorial representation of a person, he/she must obtain prior written consent from such person or organisation. According to section 105 of the EAC (EP) (LC) Reg and Chapter 9 of the Guidelines on Election-related Activities in respect of the Legislative Council Election, candidates are required to deposit with the RO copies of their EAs, the relevant permission and consent of support or upload the electronic copies onto an open platform maintained by the CEO (“Central Platform”) or an open platform maintained by the candidates (“Candidate’s Platform”) for public inspection within one working day after the publication of the EAs. All corrected particulars must be posted on the Central Platform or the Candidate’s Platform, or submitted to the RO concerned, within three working days after the polling day. If it is technically impracticable to comply with the requirements above for EAs published through an open platform on the Internet<sup>17</sup>, candidates may upload the hyperlink of the said open platform and the information/documents relevant to the EA onto the Central Platform or the Candidate’s Platform.

6.27 As set out in section 105(9) of the EAC (EP) (LC) Reg, a person commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months if he/she fails to comply with subsection (1), which requires submission of information related to EAs in the manner and within the time specified by the EAC for public inspection. In accordance with section 106 of the EAC (EP) (LC) Reg, a person who publishes an EA without complying with section 105(1)(a) may apply to the Court for an order exempting the act so that the published EA would be exempt from the relevant requirement and penalty. The Court may make

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<sup>17</sup> For example, messages that are sent through social networking or communication websites on the Internet, such as Instagram, Twitter, Facebook, blogs, etc., and the exchanges are of an interactive and spontaneous nature.

such an order only if it is satisfied that the non-compliance by the candidate was due to inadvertence, an accidental miscalculation or any reasonable cause and was not due to bad faith, and believes it to be just that the act be so excepted.

6.28 To ensure candidates' understanding of and compliance with the requirements relating to the publication of EAs in the electoral law, the EAC and the REO had prepared forms and guidance notes relating to EAs for use and reference by candidates. The following arrangements were also implemented to remind candidates of the relevant regulations:

- (a) The EAC issued the supplementary information to the Guidelines on Election-related Activities in respect of the Legislative Council Election in October 2022, highlighting the requirements relating to the publication of EAs for public inspection under the subsisting law, as well as the criminal liability of candidates for non-compliance with such requirements. The supplementary information was uploaded onto the election website for candidates' reference at the start of the nomination period. The REO also distributed the supplementary information to the candidates when the latter submitted the nomination forms;
- (b) When the candidates submitted their nomination forms, the staff of the RO's office would highlight and explain to each candidate the relevant statutory requirements;
- (c) At the online briefing session for candidates on 28 November 2022, the EAC Chairman reminded candidates of the need to comply with the relevant requirements relating to the publication of EAs;

- (d) When a candidate submitted each EA to the Central Platform, a notification message automatically generated by the system would pop up to remind the candidate to upload the permission or consent of support within one working day after the publication of the EA; upon successful upload of the EA, a confirmation email and a SMS would also be sent by the system to the candidate to remind him/her, inter alia, to submit the permission or consent of support on time; and
- (e) Candidates were reminded in the “Action Checklist for Candidates” distributed to them of the relevant requirements relating to the publication of EAs. These requirements were also set out specifically in the notes of the specified form for application for the creation of an account on the Central Platform and the sample form for the “consent of support”.

6.29 **Recommendation:** The requirements relating to the publication of EAs is in principle to ensure that elections are conducted in an open, honest and fair manner. The current requirements allow all parties to keep track of the publication of EAs by candidates, which not only facilitates public inspection of the EAs submitted by candidates, but also the ROs’ handling of complaints related to EAs, as well as aids the REO in verifying the accuracy of the declared EA expenses by candidates in their election returns. Meanwhile, these requirements also provide the candidates with a certain degree of flexibility in conducting electioneering activities by allowing them to submit the EAs and relevant documents in a practicable manner and within reasonable time to ensure that the relevant statutory requirements are complied with for the election campaign.

6.30 Notwithstanding the series of arrangements made by the EAC and the REO as described in paragraph 6.28 above, the REO still received enquiries on

whether the candidates concerned had published the EAs and submitted relevant consent of support for public inspection in accordance with the relevant requirements. This reflects the public's concern about the publication of EAs by candidates. The RO had taken appropriate follow-up actions on the above-mentioned matter, including reminding all candidates again of the relevant requirements. The EAC also notes the view that the advancement in technology has made it increasingly common to use the Internet for electioneering activities and it has become more convenient to use mobile phones or social networking platforms to publish EAs than in the past. However, given the interactive nature of the information posted on social networking websites, which changes rapidly and frequently, the difficulty in complying with the prevailing requirements on EAs has increased, and the candidates may easily omit uploading EAs or consent of support. Therefore, there are suggestions to simplify the arrangements for submission of EAs and consent of support. Besides, there are also views that the electoral work is onerous and a relaxation of the deadline for submission of EAs and consent of support is recommended to ease the candidates' burden.

6.31 Regarding the above suggestions on the publication of EAs, the EAC will, after taking into account relevant factors in a holistic manner, keep abreast with the times and continue to improve various arrangements, including the arrangements for uploading relevant information onto the Central Platform/ the Candidate's Platform, to meet the needs of various parties.



## **CHAPTER 7 - ACKNOWLEDGEMENT**

7.1 The smooth conduct of the 2022 LegCo ECC By-election was attributed to the dedication and concerted efforts of all parties involved.

7.2 The EAC would like to express its gratitude to the following government bureaux/departments and public organisations for their assistance:

Administration Wing of the Chief Secretary for Administration's Office

Agriculture, Fisheries and Conservation Department

Auxiliary Medical Service

Civil Aid Service

Civil Engineering and Development Department

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Department of Health

Department of Justice

Electrical and Mechanical Services Department

Fire Services Department

Food and Environmental Hygiene Department

Government Flying Service

Government Logistics Department

Health Bureau

Highways Department  
Home Affairs Department  
Hong Kong Customs and Excise Department  
Hong Kong Observatory  
Hong Kong Police Force  
Hongkong Post  
Housing Department  
Immigration Department  
Independent Commission Against Corruption  
Information Services Department  
Lands Department  
Leisure and Cultural Services Department  
Marine Department  
Office of the Government Chief Information Officer  
Office of the Privacy Commissioner for Personal Data  
Official Languages Division of the Civil Service Bureau  
Official Receiver's Office  
Radio Television Hong Kong  
Security Bureau  
Transport and Logistics Bureau  
Transport Department

7.3 The EAC is grateful to the REO, the staff who took up the duties of RO and ARO, all staff of the polling and counting stations, as

well as other supporting staff, for their dedicated efforts and contribution at various stages of this by-election.

7.4 The EAC would also like to express its appreciation to the Police, the ICAC, the Auxiliary Medical Service and the CAS for their assistance and support in this by-election, including deploying staff to polling stations and the CCS to ensure good order at these venues, so that the by-election could be conducted smoothly in an open, transparent, highly efficient and orderly manner.

7.5 Besides, with regard to the anti-epidemic measures in this by-election, the EAC is thankful to the Health Bureau and the Centre for Health Protection for their valuable advice. The EAC is also grateful to the Security Bureau, the Department of Health and the CAS for their assistance in setting up a polling station at the Penny's Bay Community Isolation Facility for the EC members who were under isolation or quarantine to vote on the polling day.

7.6 The EPR System was adopted at the ECC polling station in this by-election, which was conducive to the extremely efficient and smooth issuance of ballot papers. The EAC is grateful to the EPR System Technical Advisory Committee for its professional advice and the OGCIO for its staunch support.

7.7 The EAC is grateful that the media had provided a wide and in-depth coverage of this by-election, which had substantially enhanced the transparency of the election.

7.8           The EAC would like to thank each EC member who turned out to cast their votes, as well as persons who provided support or assistance during this by-election and complied with the electoral law and the Guidelines on Election-related Activities.

## **CHAPTER 8 - CONCLUDING NOTE**

8.1 Before and after this by-election, many individuals and political parties put forth suggestions on the electoral arrangements. The EAC welcomes practicable suggestions. Together with the CMAB and the REO, the EAC would consolidate the experience from the three important elections and this by-election, which were all conducted after the improvement of the electoral system, and consider improvements to various electoral arrangements, including reviewing the electoral law and guidelines, exploring the feasibility of further introducing information technology and enhancing the electoral procedures. It is to ensure that all public elections are conducted in an open, honest and fair manner, while further enhancing the efficiency and promoting more user-friendly electoral arrangements, with a view to providing electors with the greatest possible convenience.

8.2 The EAC recommends this report to be made public, at a time the CE deems appropriate, to give the public a clearer picture of how the EAC conducted and supervised the work under this by-election.