

Section 1 – Prologue

The vacancy

1.1 On 10 August 2007, the Clerk to the Legislative Council (“LegCo”) declared, by notice published in the Gazette, the existence of a vacancy in the membership of the LegCo with effect from 8 August 2007 as a result of the passing away of the late Hon MA Lik [s 35(1) of the Legislative Council Ordinance (“LCO”)].

1.2 The late Hon Ma was one of the six LegCo Members returned by the Hong Kong Island Geographical Constituency (“GC”) in the 2004 LegCo general election.

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

Date of the by-election

1.4 In fixing the date for the by-election, there were suggestions that the by-election should be held on the same day as the 2007 District Council (“DC”) Election, which was already scheduled for 18 November 2007 (Sunday) at the time the above vacancy was announced. It was suggested that this arrangement would facilitate the electors of the Hong Kong Island, as they could cast votes for the two elections in one go.

Some manpower and financial resources could also be saved by conducting the two elections on the same day. Some believed that there should be sufficient time for such arrangements, as the 2000 LegCo By-election was held in two months' time after the announcement of the vacancy. Some also opined that electors had got used to casting two votes in a single election, as in the case of past LegCo elections, where polling for functional constituencies ("FC") and GCs were held together. Another example was also cited that in 1995, the ordinary elections of the two former Municipal Councils (i.e. Urban Council and Regional Council) as well as the by-elections of two District Board Constituencies, namely, Yau Ma Tei and Lower Ngau Tau Kok, were also held on the same day.

1.5 The EAC noted the above views. On the date of polling for the by-election, the EAC considered it vital that the arrangements should not cause confusion to electors, and that the by-election would be conducted fairly in accordance with the relevant legislation and guidelines.

1.6 After thorough consideration of all relevant factors, the EAC considered it not desirable to hold the by-election on the same day as the 2007 District Council Election on 18 November 2007. Factors which had been taken into account included:

(a) The 2007 DC Election was a territory-wide major election concerning 18 Districts in Hong Kong, involving over 3,290,000 registered electors and some 500 polling stations. The 2007 LegCo by-election concerned 4 Districts on the Hong Kong Island involving about

620,000 registered electors and some 100 polling stations. There was no precedent case at which DC Election and LegCo by-election, both of a large scale, were held on the same day at the same venues. There might be confusion to electors on the polling and counting procedures.

(b) If the DC Election and the by-election were to be held on the same day, their nomination and canvassing periods would unavoidably fall within the same period of time. The 620,000 registered electors of the Hong Kong Island might receive a number of election advertisements (“EAs”) from candidates of different elections, apart from seeing such EAs being displayed in the constituencies at regional and local levels. It would be difficult for electors to distinguish between the publicity messages of each election. There would be greater confusion if a candidate who contested in both elections conducted electioneering activities on the Hong Kong Island as well as his contesting DC constituency (which might be inside or outside the Hong Kong Island). This was different from a LegCo general election, in which the election campaigns conducted by FC candidates were normally targeted at their respective FC electorate, whereas the GC candidates would conduct intensive large-scale publicity in the community.

(c) To ensure the smooth conduct of the 2007 DC Election, the Registration and Electoral Office (“REO”) was heavily committed in terms of both manpower and financial resources in its preparatory

work. The need for the by-election had arisen unexpectedly. The preparatory period of these two elections almost overlapped. Without adequate time for careful planning and preparation, to stage another large scale election on the same day and at the same venues on top of the DC Election would complicate the work on the polling day, and would easily give rise to confusion. There was also limited time to publicize the voting arrangements for the “combined” elections to a sizeable electorate. It should be noted that in preparing for the 2000 LegCo (Hong Kong Island Geographical Constituency) By-election, there was no other election in the pipeline, and the REO could thus dedicate all resources in conducting the 2000 By-election. The situation at that time was not comparable to the present by-election.

- (d) It was estimated that if the two elections were to be held on the same day, there would be savings on the honorarium of polling and counting staff as well as on transportation and hire of venues, which would roughly amount to \$7 million. However, no savings could be identified from the printing of electoral documents, provision of free postage for candidates and the financial assistance to candidates.
- (e) Although in the past LegCo elections, some electors would cast votes for both GCs and FCs, the candidates to be elected were of the same tier of election and they shared similar roles and functions. In the present case, a DC election and a LegCo by-election involved two different tiers of councils. The elected candidates would shoulder

distinct functions in DCs and the LegCo respectively. The election of representatives with different functions on the same day might cause confusion to electors.

- (f) In 1995, the ordinary election of the two former Municipal Councils and two District Board by-elections were held on the same day, but they were planned well ahead as a trial. Moreover, the District Board by-elections in 1995 were of a small scale which only involved three polling stations and about 15,000 electors. The scale was substantially smaller than this by-election which would involve about 100 polling stations and 620,000 electors. The two occasions were therefore not directly comparable in terms of magnitude.

1.7 There was speculation that the EAC's decision to hold the two elections separately was made under political pressure. The EAC would like to stress and reiterate that it is an independent and apolitical body which would not take into consideration any political factors in making decisions. On the worry that holding the elections on two different dates might affect electors' willingness to vote, the EAC spared no efforts in appealing to electors to exercise their voting rights in both elections. The high voter turnout rate proved that this worry was unsubstantiated.

1.8 After deciding that the by-election should not be held on the same day as the DC Election, consideration was then made on the most appropriate date for holding the by-election. The EAC was of the view that the by-election should be held as soon as practicable. The first

Sunday following the DC Election (i.e. 25 November 2007) was the fall-back date for holding the DC Election in case the poll could not be held as scheduled. It was thus decided to schedule the by-election on the second Sunday after the DC Election, i.e. 2 December 2007, which was the earliest possible date.

1.9 On 21 September 2007, the Chief Electoral Officer (“CEO”) published a by-election notice in the Gazette, appointing 2 December 2007 as the polling day for the by-election.

1.10 After fixing the polling date, consideration was made on the scheduling of the nomination period. According to section 7 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (“EAC(EP)(LC)Reg”) (Cap. 541D), the nomination period must not be less than 14 days or more than 21 days. The nomination period must end not less than 28 days and not more than 42 days before the date on which the by-election was to be held. In the light of such requirements and to avoid overlapping with the nomination period of the DC Election which would end on 15 October 2007, the nomination period of the by-election was scheduled for 17 to 31 October 2007, both days inclusive, and lasted for 15 days in total.

Section 2 – Nominations and Preparations before the Poll

Updating of the Guidelines

2.1 To facilitate candidates and related parties to make reference to the latest electoral requirements, the Guidelines on Election-related Activities in respect of the Legislative Council Elections (“the Guidelines”) published by the EAC in 2004 were updated to reflect the latest technical amendments made to the relevant electoral legislation, and bring them in line with the Guidelines for other public elections. The updated version was published for distribution to candidates and other related bodies before the nomination period.

Appointment of the RO and AROs

2.2 Mr. Herman CHO, the District Officer of the Eastern District Office under the Home Affairs Department (“HAD”), was appointed as the Returning Officer (“RO”), with District Officer (Central & Western), District Officer (Southern), District Officer (Wan Chai), Assistant District Officer (Eastern), Assistant District Officer (Central & Western), Assistant District Officer (Southern) and Assistant District Officer (Wan Chai) appointed as Assistant Returning Officers (“AROs”). Their appointments were published in the Gazette on 21 September 2007.

2.3 Mr James O’NEIL (Principal Government Counsel), Mr Lawrence PENG (Senior Assistant Law Draftsman), together with Ms

Dorothy CHENG, Miss Karen LEE, Ms Angela YOUNG and Ms Florence LING (Senior Government Counsels) of the Department of Justice (“D of J”) were appointed as the AROs (Legal).

Appointment of NAC

2.4 Mr. LUI Kit-ling, Barrister-at-law, was appointed to the Nominations Advisory Committee (“NAC”) to provide legal advice to the RO on the eligibility of the nominated candidates. His appointment, covering the period from 17 October to 3 November 2007 (both dates inclusive), was published in the Gazette on 21 September 2007.

Nominations

2.5 During the nomination period from 17 to 31 October 2007, the RO received nine nominations.

2.6 The nomination submitted by one of the candidates was ruled as invalid by the RO on the ground that there was insufficient number of valid subscribers, and he was disqualified from being nominated as a candidate in accordance with s 39(1)(i) of the LCO.

2.7 A LegCo Member addressed a letter to the EAC expressing his concern on the eligibility of one candidate with regard to the statutory requirement of “ordinary residence” stipulated under s 37(1) of the LCO. Upon receipt of the letter, the EAC immediately referred it to the RO to

facilitate his consideration of the validity of nomination of the candidate concerned. The RO was empowered under s 42(A) of the LCO to decide whether or not a person can be validly nominated as a candidate. After taking into account the legal advice tendered by the NAC, the D of J and the points raised by the LegCo Member, the RO decided that the candidate was validly nominated for the by-election.

2.8 Having thoroughly considered the nominations, eight of them were determined to be valid by the RO. They were Mr LAU Yuk-shing (Liu Tai), Mr LEE Wing-kin, Mr SIU See-kong (Xi Hua Seng), Mrs IP LAU Suk-yee Regina, Mr Tandon Lal CHAING (Stanley), Ms LING Wai-wan (Cecilia), Mrs CHAN FANG Anson and Ms HO Loy. The list of validly nominated candidates was published in the Gazette on 9 November 2007.

Briefing for candidates

2.9 The EAC Chairman briefed the candidates on the electoral arrangements at a briefing session held at 10 am on 3 November 2007 in the Conference Room of the Eastern District Office. Immediately after the briefing, the RO, witnessed by all parties concerned, drew lots to determine the order of the candidates' names that would appear on the ballot papers and the designated spots to be allocated to the candidates for displaying their EAs. Each candidate was allocated different spots for displaying his EAs in each District on the Hong Kong Island.

Publicity

2.10 There was wide media coverage of the briefing given by the EAC Chairman to the candidates. Relevant information about the by-election, including candidates' personal particulars and platforms, was put up on the EAC and REO websites.

2.11 To promote the by-election and encourage interested persons to participate as candidates, Announcement of Public Interests were made in television and radio. Posters, giant wall banners and banners at railings were also mounted. The said publicity measures, together with advertisements put on buses, were also made to encourage electors to vote at the by-election.

Contingency plan

2.12 Four depots were set up in the four administrative Districts on the Hong Kong Island to provide quick replenishment of supplies, where necessary. Each depot was equipped with 4 to 5 vehicles for urgent deployment when the need arose. As part of the contingency plan, spare ballot boxes were deposited in each polling station. Four reserve polling stations were designated to cater for emergencies like fire and power failure which might occur at a polling station and would obstruct the conduct of the poll.

2.13 To cater for the scenario that counting in some stations might not finish by 6 am in the following morning, a total of 17 reserve counting stations were designated.

Public concerns

Extra publicity gained by candidates who participated in two elections

2.14 Although the DC Election and the by-election were scheduled for different days, there was concern that as the polling day of the two elections was only two weeks apart, candidates who contested in both elections would gain advantages over others on publicity, thereby causing unfairness to the elections.

2.15 In this connection, the EAC stressed that the electoral legislation and guidelines governed the conduct of the elections in detail, including candidates' electioneering activities and the submission of the return and declaration of election expenses and donations by candidates. In case a candidate promoted his candidature for the two elections in an electioneering activity, the related expenditure would be counted as election expenses for the two elections respectively, and the candidate could not circumvent the law in this regard. He should also follow other requirements stated in the relevant legislation and Guidelines.

Mutual support of candidates

2.16 Apart from the concern of extra publicity by a candidate who contested in both elections, there was also concern on how election expenses would be accounted for if a candidate who contested in the DC Election gave his support in the EA of a candidate of the by-election (and vice-versa).

2.17 The guidelines on publication of joint EAs by two or more candidates are set out in paragraphs 7.29 and 17.9 of the Guidelines on Election-related Activities in respect of the District Council Election published by the EAC, and likewise in paragraphs 8.32 and 18.9 of the Guidelines for LegCo elections, in order to ensure fairness of the elections.

2.18 The said Guidelines explained that through a joint EA, the candidates concerned promote themselves at the elections, and the expenses incurred would therefore had to be borne by the candidates concerned in equal or unequal shares as their respective election expenses, to be calculated by the proportion of space taken up by the advertisement for each. For a joint EA which promoted two candidates, each candidate had to duly appoint the other one as his election expenses agent. Candidates should seek their own legal advice as necessary.

Nomination threshold

2.19 The relatively large number of candidates aroused concerns on

whether the threshold of nomination was too low, as a person who was subscribed by 100 electors and paid an election deposit of \$50,000 could be nominated as a candidate. There were suggestions that the threshold for nomination should be raised.

2.20 The eligibility criteria of candidates was stipulated in the LCO, which was outside the EAC's purview. The Administration had, nevertheless, explained that these criteria, which had been adopted for years, had already taken into account various factors including the need to encourage interested persons to participate while assuring that they were committed to take part in the elections. The Administration considered that the existing requirements could strike a balance between considerations on the two sides.

Section 3 – Issues During the Canvassing Period

Violence, intimidation and disturbance

3.1 During the canvassing period, there were keen competition and negative campaigning amongst candidates. Public concerns were drawn by incidents involving vandalism of EAs, exchanges of verbal abuses and cases of confrontation and violence between different camps.

3.2 The Chairman of the EAC expressed grave concerns on these incidents and stressed that election-related violence would not be tolerated. He reminded the public that the use of violence and intimidation tactics in electioneering activities would only do harm to the image of candidates whom the canvassers supported, which might in turn adversely affect the image of the organisations or political parties concerned. He urged candidates and their supporters to exercise self-control, and stressed that the EAC would continue with its best endeavours to ensure that elections are held in an open, fair and honest manner.

3.3 In this connection, the Secretary for Security also emphasized that adequate police coverage would be provided to ensure a smooth and safe election and that the Police would not tolerate any election-related violence.

3.4 The Secretary for Security and the Deputy Commissioner of

Police had met LegCo Members and representatives of political parties to exchange views on the issue. The Police conducted investigations on reported cases of election-related violence and disturbances.

3.5 The Administration and the EAC are both committed to maintaining the fairness of elections, and would not tolerate any election-related violence. The Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) has stipulated that it is a corrupt conduct to use force or duress to induce a person to stand (or not to stand) as a candidate at the election and affect an elector’s voting preference. The Courts of Hong Kong view election-related offences and contravention of the ECICO as serious crimes. On 27 November 1997, the Court of Appeal laid down sentencing guidelines that a person found guilty of any serious election-related offence should be punished by an immediate custodial sentence.

Telephone canvassing

3.6 The EAC has received a large number of complaints against telephone canvassing calls or vote canvassing messages sent by candidates or their supporters via short message service (“SMS”). The complainants considered such acts a nuisance, and some even expressed concern on the abuse of their personal data.

3.7 Under section 35(1) of the EAC (EP) (LC) Reg, the REO has to provide the candidate a copy of the part of the final register which relates

to the constituency for which the candidate is nominated, but the REO does not provide telephone numbers of electors to candidates.

3.8 The existing electoral legislation does not prohibit candidates from conducting electioneering activities through telephone. However, the EAC has reminded candidates and their supporters vide paragraph 9.17 of the Guidelines that some members of the public do not like or detest being called over the telephone. Their disapproval may be reflected in their choice of candidates on the polling day. It is therefore unwise to telephone electors who find such approaches objectionable or to act in any other way that may antagonize them. The EAC also advises electors who receive objectionable telephone calls to discontinue the calls, or report the matter as soon as possible to the Police who may take action against the caller.

3.9 On the abuse of personal data, Appendix H of the Guidelines contained guidance notes on electioneering activities published by the Office of the Privacy Commissioner for Personal Data in Hong Kong. According to the said guidance notes, the act of canvassing for votes is not in contravention of the Personal Data (Privacy) Ordinance, but the personal data has to be obtained by means that are lawful and fair in the circumstances, and that the use of the data is directly related to the purpose for which the data are originally collected. If a person suspects that somebody has violated the above-mentioned guidance notes, he may contact the Office of the Privacy Commissioner for Personal Data on the matter.

Candidates requesting for meetings with Principal Officials during the election period

3.10 The EAC had received letters from a LegCo Member and a political party, asking if the Chief Secretary for Administration (“CS”) had sent an e-mail to the Principal Officials (“POs”) requesting them to be co-operative with a particular candidate. They pointed out that the candidate’s meetings with POs were widely reported by the press with photographs released by the Government. They were concerned that these meetings might be seen as government officials lending support to and giving favourable treatment to a particular candidate.

3.11 The EAC has laid down guidelines to be observed by POs in Chapter 19 of the Guidelines, including not to use public resources for any election-related activities and to avoid actual or potential conflict of interest with the business of the Government or the PO’s official duties when taking part in election-related activities. The EAC has conducted a thorough investigation into the matter by requesting the POs concerned to provide information and explanations on the issues raised.

3.12 The findings of the EAC’s investigation revealed that a candidate requested in early October 2007, in her capacity as the Chairman of the Board of Governors of a think tank, to meet with the POs to discuss various policy issues. The Government took the view that such meetings, if held, would be part of the POs’ engagement with the public. However, as the candidate had declared her intention to run for the

by-election, despite that such meetings would not be election-related, the Government considered it necessary to ensure parity of treatment for all candidates in the by-election. POs who decided to meet the candidate should also accede to similar requests from other candidates. There was no evidence to show that the CS had sent any e-mail requesting the POs to lend their support to the candidate by arranging meetings with the candidate.

3.13 The evidence presented by the POs concerned showed that such meetings were part of their engagement with the public on matters relating to their work and were not election-related. With regard to the taking of pictures with one particular candidate, the PO concerned had provided evidence to show that other delegates who presented their views on constitutional development were accorded similar treatment, and the release of such photos to the press was in line with established practice. It was also noted that the POs had met with the other candidates of the by-election upon their request.

3.14 In view of the above findings, the EAC considered that there was no violation of the Guidelines on unfair treatment and use of public resources. The EAC noted that the Administration had responded to the public concern on the subject through a press release issued on 21 November 2007.

Section 4 – The Poll

Appointment and training of polling and counting staff

4.1 Polling stations that were used in the 2007 DC Election were, as far as possible, used as polling stations again for the by-election. Owing to the tight time frame within which the by-election had to be held, those who had served as polling staff for the 2007 DC Election were recruited again and posted to the same polling station where they had worked before as far as practicable. The same arrangement was also adopted in the 2000 LegCo By-election for the Hong Kong Island GC. This arrangement proved to be effective in facilitating the smooth operation of the stations.

4.2 Notwithstanding the past experience of electoral staff, a series of briefing and hands-on practice sessions were organised on 27 and 28 November 2007 at the Hongkong International Trade & Exhibition Centre for staff to refresh themselves with the polling and counting arrangements for the by-election.

The polling station and the counting station

4.3 As stated in paragraph 4.1 above, polling stations that were used in the 2007 DC Election would be used as polling stations for the by-election, unless there were prior bookings which rendered the venues unavailable. A total of 97 polling stations were opened in the

by-election, 68 of which had been used in the 2007 DC Election. Electors were reminded through the poll cards that the polling stations for casting votes might be different from the ones in the 2007 DC Election.

4.4 All the polling stations were converted into counting stations after the close of poll.

Design of ballot papers and ballot boxes

4.5 The ballot paper of the by-election followed the design used in the 2004 LegCo Election. Candidates were allowed to have certain specified particulars relating to them printed on the ballot papers. To ensure that sufficient ballot boxes were provided to the polling stations, the REO had carefully and thoroughly tested the ballot boxes for use in the by-election. There was an adequate provision of ballot boxes to cater for a 100% turnout of the registered electors.

Poll cards

4.6 A poll card, together with the introductory leaflet of candidates, a location map of the polling station, a voting guide and a pamphlet prepared by the Independent Commission Against Corruption (“ICAC”) on the ECICO, were mailed to the electors from 17 to 21 November 2007, i.e. 14 to 10 days before the polling day¹. To reduce paper consumption,

¹ S 31 of the EAC (EP) (LC) Reg requires that the poll cards be sent to the electors at least 10 days before the polling day.

the information of 4 candidates (instead of only 2 in the past) was printed on each page of the introductory leaflet, which was made of lighter and recyclable papers. Furthermore, environmentally friendly ink was used in the printing.

Polling hours

4.7 The poll started at 7:30 am on the polling day and ended at 10:30 pm on the same day, as in the case of the 2004 LegCo Election and the 2007 DC Election.

Logistics

4.8 A Central Command Centre (“CCC”) was set up at the REO Office at Guardian House on the polling day to oversee the entire polling and counting operation and collate election-related information. It was supervised by the Chief Electoral Officer of the REO. All units of the Centre were accommodated in the same place to facilitate communication and coordination.

4.9 A Statistical Information Centre (“SIC”) was set up inside the CCC to collect voter turnout figures from all the polling stations. The voter turnout figures were made available to the public through press releases and the website of REO, and disseminated at the media centre on an hourly basis.

4.10 A Complaints Centre was set up at the REO headquarters to handle complaints. Details on the work of the Complaints Centre and the complaints received on the polling day and during the complaints-handling period were set out in Section 6.

4.11 A Media Centre was set up at the Hong Kong Convention and Exhibition Centre to facilitate the dissemination of voter turnout statistics and election result to the candidates, the media and the public. Media announcements and announcement of election results were also made at the Media Centre.

4.12 Generally speaking, the poll went on smoothly throughout, though there were some individual complaints about EAs, nuisance caused by telephone canvassing and conduct of exit poll.

4.13 The Police and the Civil Aid Service (“CAS”) rendered assistance in maintaining order in the polling stations, the No Canvassing Zones (“NCZs”), the No Staying Zones (“NSZs”) and the counting stations.

Turnout rate

4.14 The by-election recorded a high voter turnout with a total of 321,938 electors casting their votes. The 52.06 % turnout rate (out of an electorate of 618,350) was only slightly below the turnout rate of 57.62% for the Hong Kong Island GC in the 2004 LegCo general election, and

was much higher than that in the 2000 LegCo (Hong Kong Island GC) By-election, which was 33.27%. A breakdown of the turnout rate for this by-election by hour is shown at **Appendix I**.

EAC's visits to polling stations

4.15 The EAC Chairman and the two EAC Members met the media before they embarked on their separate itineraries to visit a number of polling stations in the morning. The EAC was satisfied with the polling arrangements.

Section 5 – The Count

Vote counting arrangements

5.1 Similar to the arrangements for the 2004 LegCo Election for GCs and the 2007 DC Election, the counting of the votes for this by-election was conducted at individual polling stations. Immediately after the close of the poll, a polling station was converted into a counting station. Candidates, their agents and members of the public were allowed to be present in the counting station to observe the count.

5.2 When the count started, the Presiding Officer (“PRO”) for a polling station assumed the role of the counting supervisor. He was assisted by the polling staff, who then took up the role of counting staff. He was also responsible for determining the validity of questionable ballot papers in the polling station. An analysis of the ballot papers not counted (including those which were invalid, and questionable ones which were rejected by the PROs after consideration) is shown in **Appendix II**. An analysis of invalid ballot paper kept by PROs is shown in **Appendix III**.

5.3 Upon completion of the count, the PRO made known the counting results to candidates or their agents present at the polling station. The candidates or their agents were then given the opportunity to request for a recount of votes. After consolidating the counting results of all the counting stations under their charge, the AROs reported the consolidated

results to the RO. The RO then made known the consolidated counting results to the candidates or their agents present in the Media Centre who were given the opportunity to request a recount of votes for all the counting stations. As there was no request for recount, the RO formally announced the election result.

Release of interim counting results and election results

5.4 To enhance transparency of the by-election and facilitate timely dissemination of electoral statistics, interim counting results were released during the count. The two rounds of interim counting results were released at about 1:00 am and 2:30 am. The final election results were announced at around 3:30 am by the RO. Press releases were issued on these occasions for general reference of candidates, the public and the media.

5.5 The election results were published in the Gazette on 6 December 2007 and are now re-produced at **Appendix IV**.

EAC's visit to a counting station

5.6 The EAC visited the counting station at the Quarry Bay Community Hall after the close of poll and emptied the first ballot box together with the Secretary for Constitutional and Mainland Affairs and the RO.

Conclusion of the count

5.7 The Chairman met the media shortly after the conclusion of the count at about 3:30 am on 3 December 2007 at the Media Centre. The EAC was satisfied that the counting process of the by-election was completed in a smooth and efficient manner.

Section 6 – Complaints

A general view

6.1 The complaints-handling mechanism is one of the means adopted by the EAC to safeguard the fairness and integrity of the electoral system. Complaints also provide a monitoring system to candidates to exercise mutual checks among themselves and through these complaints, they understand the electoral law and guidelines better. The EAC has endeavoured to vet the complaints received promptly and fairly.

The complains-handling period

6.2 The complaints-handling period started from 17 October 2007, i.e. the day when the nomination period commenced, and ended on 16 January 2008, i.e. 45 days after the polling day.

The complaints-handling parties

6.3 During the complaints-handling period, five parties were involved in processing complaints: the EAC, the RO, the Police, the ICAC and, on the polling day, the PROs as well.

6.4 As it is anticipated that the number of complaint cases should be manageable for a LegCo by-election, instead of forming a Complaints

Committee to consider the cases as in a general election, the EAC assumed this responsibility itself for the by-election. The RO was responsible for handling complaint cases of a minor nature under the authority delegated to them by the EAC, e.g. those relating to EAs, electioneering activities conducted in private premises, use of sound amplifying devices, etc. The Police handled cases that involved criminal liability, e.g. breaches of the EAC(EP)(LC)Reg and criminal damage of EAs. The ICAC handled cases that involved breaches of the ECICO, Prevention of Bribery Ordinance and ICAC Ordinance. The PROs received complaints on the polling day at the polling stations and took action on the spot regarding cases which required immediate attention, e.g. use of sound amplifying devices in the vicinity of the station, unlawful activities carried out in the NCZs or NSZs.

The complaints: number and nature

6.5 By the end of the complaints-handling period, a total of 852 cases were received and processed by the five relevant parties: The EAC (235 cases), the RO (290 cases), the Police (232 cases), the ICAC (6 cases) and the PROs (89 cases). A substantial number of the cases concerned noise nuisance (165 cases), election advertisements (153 cases) and disturbance to electors caused by loudspeakers, telephone canvassing, shouting electors' names and vehicles (115 cases). A detailed breakdown of these cases by the receiving party and nature is shown at **Appendices V(A) to V(F)**.

Handling of complaints on the polling day

6.6 On the polling day, a Complaints Centre was set up in the REO office at Harbour Centre to handle complaints received.

6.7 The Complaints Centre, RO and PROs received 498 complaint cases on the polling day. The majority of these cases concerned on-the-spot incidents (e.g. electioneering activities in NCZs, noise nuisance caused by the use of sound amplifying devices, etc.) which were expeditiously dealt with and resolved where possible. For cases which could not possibly be resolved on the spot, e.g. cases which involved breaches of the ECICO and required ICAC investigation, follow-up action required a longer time. In any case, all the complaints were given prompt attention and referred immediately to the appropriate authority for action.

6.8 Of the 498 cases handled by the Complaints Centre, RO and PROs on the polling day (including those they received themselves and those referred to them from other parties), 402, or 80.7%, were resolved before the close of poll.

6.9 The EAC received a total of 135 cases on the polling day. All the cases were submitted to the EAC for vetting in the same manner as those received during the rest of the complaints-handling period.

6.10 A breakdown of the complaint cases received on the polling day is shown at **Appendices VI (A) to VI (F)**.

The outcome of investigations

6.11 As at 16 January 2008 (i.e. the end of the complaints-handling period), of the 268 cases handled by the EAC, 7 were ruled as substantiated or partially substantiated. Warning letters or advisory letters were issued to the offenders.

6.12 Of the 331 cases handled by the RO (including those received by them and those referred to them by the other parties), 171 were found substantiated or partially substantiated as at 16 January 2008. Under the authority delegated by the EAC, the RO issued warning letters or advisory letters to the offenders.

6.13 Of the 239 cases investigated by the Police, as at 16 January 2008, 16 were found substantiated. As at the same date, none of the 12 cases investigated by the ICAC was found substantiated. There were still 25 cases under investigation by these two parties.

6.14 A breakdown of the outcome of investigation as at 16 January 2008 is detailed in **Appendices VII (A) to VII (D)**.

Complaints about Exit Polls and the Media

Complaints about exit polls

6.15 In the by-election, 4 organisations were allowed to conduct exit polls upon application. The list of these organisations was uploaded to the EAC's website on 28 November 2007 for general reference of the public. It was also displayed outside the relevant polling stations.

6.16 On the polling day, a number of complaints about exit polls were received. Some electors were dissatisfied that they were asked to disclose whom they had voted for, some considered this a nuisance, and some were concerned that the information collected might be used to influence other electors' voting preferences. One of the complaints concerned interviewers claiming to be commissioned by the Government.

6.17 After thorough investigation of the complaints, for substantiated cases, warning or advisory letters were issued to the complainees to remind them of the importance of respecting electors' wish of not disclosing their votes cast, and also to warn them for wrongly claiming that they were commissioned by the EAC or the Government to conduct exit poll.

6.18 Chapter 15 of the Guidelines provides detailed guidelines on exit polls. It is specified in the Guidelines that apart from making a prior application, the organisations have to ensure that their interviewers would stay outside the polling station to avoid any suspicion of canvassing activities. Interviewers should also wear identification

badges. Besides, as the ballot is secret, an elector does not have to disclose his choice of candidate if he does not want to. Exit poll interviewers must therefore respect the electors' right and wish not to be disturbed.

6.19 In addition, as the announcement of the results of exit polls or predictions during the polling hours may affect electors' behaviour and may have an impact on election results, the EAC has appealed to the media and concerned organisations in the Guidelines to refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of individual candidates until after the close of poll.

6.20 The EAC wishes to reiterate that it is a criminal offence for a person, without lawful authority, to require an elector to disclose the name of the candidate for whom the elector voted. Apart from the criminal offence, should any organisation or person fail to comply with the Guidelines, the EAC may issue a warning letter to the party concerned on the breach of the Guidelines. The EAC may also make a reprimand or censure in a public statement which may include the name of the organisation concerned.

Complaints about the media

6.21 The by-election was a prominent event that drew the attention of people from all walks of life and was widely covered by the media. The EAC has received a number of complaints about unfair treatment of candidates by the media (including radio, magazines and newspapers),

which involved the canvassing of votes for particular candidates, and the mentioning of names of specific (rather than all) candidates. Questions were raised as to whether some of the media reports, special edition or interviews should be regarded as EAs promoting or prejudicing the candidature of individual candidates in the by-election.

6.22 The EAC conducted detailed investigation into complaints concerning these issues. Substantiated cases were referred to relevant enforcement authority for follow-up action. Investigation regarding some cases is still undergoing. Advisory or caution letters would be issued to the candidates and the media organisations concerned reminding them to observe the fair and equal treatment principle set out in the Guidelines, as appropriate.

6.23 The EAC is committed to ensuring that the fair and equal treatment principle stipulated in the Guidelines is observed by all. Apart from the issue of advisory or caution letters, the EAC may also make a reprimand or censure in a public statement which may include the name of the media concerned. As always, the EAC is committed to upholding the integrity and fairness of the by-election.

Section 7 – Review and Recommendations

7.1 After the completion of the by-election, the EAC conducted a review on various aspects of the electoral arrangements, taking into consideration suggestions from the public and issues raised in the complaints received. The EAC put forth its recommendations of improvements in areas where deficiencies and drawbacks were identified, and areas where good practices should be continued. This section details the EAC's observations and recommendations.

(A) Sending Candidates' election advertisements / information to electors

7.2 Some electors suggested that for environmental protection purpose, candidates should just send one copy of EAs to each household, instead of sending a number of copies of EAs to a number of electors who lived together in the same household, as family members could share the information among themselves.

Recommendation:

7.3 To support the cause of environmental protection, the EAC considers that in providing address labels of electors to candidates for free posting of EAs, the feasibility of printing such labels on a household, rather than individual, basis should be explored, subject to the views of candidates and electors.

(B) Appeal to use less printed election advertisements

7.4 Some electors opined that the number of printed EAs received from candidates was excessive, and considered it a nuisance.

Recommendation:

7.5 Candidates were allowed to post one round of EAs to electors by free postage in the by-election. However, candidates could print and post or distribute other EAs at their own expenses, subject to the maximum limit of election expenses not being exceeded. To save the use of papers, effort should be made to encourage candidates to reduce the amount of printed EAs, as far as possible. Besides, continuous effort should be made to solicit email addresses from electors, so that candidates can choose to send their EAs to electors by electronic means.

(C) Telephone canvassing

7.6 There were a substantial number of complaints on canvassing messages sent through telephone calls or SMS in the by-election. Complainants mostly considered such calls a nuisance, some were concerned that their personal data (including name and telephone number) was obtained and used by unknown canvassing parties without their agreement. They worried that their personal data might be abused.

7.7 As the REO would not provide telephone numbers of electors to candidates, candidates might have obtained the information from other sources. Paragraph 9.17 of the Guidelines has already requested candidates and their supporters to respect the privacy of electors and observe the guidance note on personal data privacy in respect of electioneering activities prepared by the Office of the Privacy Commissioner for Personal Data at Appendix H to the Guidelines.

Recommendation:

7.8 It is considered that in future elections, enhanced publicity should be launched to remind candidates and their supporters in the Briefing for Candidates and other publicity functions that some members of the public do not like to be contacted by telephone, and rules of the Office of the Privacy Commissioner for Personal Data concerning privacy in collecting and using electors' information should be respected. On the other hand, electors should be openly and repeatedly reminded that they could simply discontinue such calls if they do not wish to receive such canvassing messages.

7.9 Apart from the above publicity measures, the EAC considers it necessary to highlight in the Guidelines that some members of the public do not like to be contacted by telephone. A similar paragraph on SMS should also be included.

(D) Complaints about noise nuisance

7.10 A lot of complaints on noise nuisance caused by candidates and their supporters in the conduct of canvassing activities were received in the by-election. This category of complaints accounted for a substantial portion of complaints received in the by-election. Although the use of sound amplifying devices was not made in the hours of 9 pm to 9 am as restricted by the EAC in paragraph 12.4 of the Guidelines, it was noted that some supporters only lowered the volume when there was police intervention, and then turned on a loud volume again shortly afterwards, causing much disturbance to the residents nearby.

Recommendation:

7.11 Candidates and their supporters should be reminded to give due consideration to people in the neighbourhood and observe the Noise Control Ordinance (Cap 400) in conducting electioneering activities. It is considered that publicity measures should be stepped up in future elections to appeal to candidates on the need to use a reasonable level of volume when using sound amplifying devices to conduct electioneering activities.

(E) Children accompanying electors in polling stations

7.12 Some complaints were received from electors who expressed dissatisfaction that polling staff did not allow their children to enter the

voting compartments with them. They considered that it was a good opportunity to demonstrate voting procedures to their children as part of civic education, and were unwilling to let their children stay outside the voting compartments.

7.13 Section 44 of the EAC (EP) (LC) Reg stipulates that a child who accompanies an elector to the polling station for the purpose of voting is allowed to enter the polling station, if the PRO considers that the child should not be left unattended while that elector is in the polling station and the child will not disturb or cause inconvenience to any person in the polling station. As for the voting compartments, to protect the secrecy of the votes and let electors cast their votes without being disturbed, each compartment is to accommodate only one elector, and a child who accompanies an elector may wait outside the restricted area delineated along the voting compartments. As the voting compartments and boundaries of the restricted area are usually just one or two meters apart, children can join their parents again right after their parents walk out from the restricted area of voting compartments. Alternatively, electors may seek help from polling staff to look after their children in the polling stations when they cast their votes.

Recommendation:

7.14 It is considered that the complaints may be caused by misunderstanding between electors and polling staff. Polling staff should be reminded in briefing sessions to explain the relevant

arrangements to electors with courtesy and patience.

(F) Exit polls

7.15 Members of the public had expressed concerns on the conduct of exit polls. Some electors considered it a nuisance, while some worried that premature disclosure of information collected from exit polls might influence electors' voting preference. There was also complaint that the interviewer claimed that the exit polls were commissioned by the EAC or the Government.

Recommendation:

7.16 Although the Guidelines are already in place to provide for the procedures for application and conducting of exit polls, it is considered that the REO should step up the measures on the governance of exit polls through the following:

- (a) The exit poll interviewers should be reminded that they must wear their identification badges issued by the REO, and interviewers must make it clear to the interviewee that he has full discretion to decide whether or not to answer the interviewers' questions. They should also be reminded to respect an elector's right to keep his vote secret, and not to announce the result of the exit poll before the close of poll to avoid affecting electors' voting preference as stipulated in paragraph 15.6 of the Guidelines.

- (b) The REO should make use of appropriate publicity channels to remind electors of their rights of not answering the interviewers' questions, and the fact that exit polls are neither conducted by the EAC nor by any departments of the Hong Kong Special Administrative Region Government.
- (c) The EAC Guidelines on the conduct of exit poll should be reviewed to consider the possibility of providing greater transparency on the details and particulars of the organisations which had obtained approval to conduct exit polls. The name, telephone number of the organisations will be placed on the REO's website for public information.

(G) Deployment of polling staff

7.17 As the by-election was held only two weeks after the 2007 DC Election, polling staff recruited for polling stations on the Hong Kong Island in the 2007 DC Election were deployed to undertake the same duties at the same polling stations in the by-election as far as possible. This arrangement not only facilitated the recruitment, but also contributed to the smooth operation of both the poll and the count in the by-election.

Recommendation:

7.18 In future, should a large scale by-election be scheduled soon after a major election, efforts should be made to deploy the same group of

polling staff to perform polling (and counting) duties in the same polling stations as far as possible, in order to facilitate smooth running of the by-election.

(H) Setting up of reserve counting stations

7.19 In the by-election, the counting of votes was done in the polling stations after the close of poll, and the counting results of all polling stations had to be consolidated to work out the finalized result. To cater for the situation that some counting stations could not finish the count by 6:00 am in the morning following the polling day, 17 reserve counting stations were set up as a contingency arrangement. None of the reserve counting station had to be used as the count was finished by around 3:00 am.

Recommendation:

7.20 Although no reserve counting station was used in the by-election, it is prudent to have a reasonable number of reserve counting stations for future LegCo GC elections or by-elections if the poll-cum-count arrangement is to be adopted, in view of the large number of polling stations involved, and the fact that polling stations are mostly schools or community centres which may have scheduled activities in the morning following the polling day.

(I) Decentralization in the reporting of statistics by polling stations

7.21 To speed up the process of hourly reporting of voter turnouts, complaint statistics and counting results to the SIC by individual polling stations in the by-election, a designated subject officer (with designated telephone number) was assigned to oversee 4 to 5 polling stations in this regard. This practice was different from that in the 2007 DC Election, during which all polling stations reported statistics through the Interactive Voice Recording System. The arrangement in the by-election was considered efficient and could facilitate communication between the SIC and individual polling stations.

Recommendation:

7.22 In view of the importance of good and fast communication between individual polling stations and the SIC, it is considered that similar arrangement should again be adopted in future elections, subject to the availability of resources.

(J) Announcement of interim counting results by phases

7.23 The by-election was a major event which drew attention of people from different walks of life in the territory. It was thus anticipated that the media would be keen to report news about the by-election, including the counting result, to the public as soon as possible.

7.24 During the by-election, counting result was released in phases. The arrangement was generally well-received.

Recommendation:

7.25 To maintain the openness of the election, it is important that the general public could be informed about the progress of the count at suitable intervals where possible. The successful experience of the by-election could serve as reference for similar elections in future.

Section 8 – Acknowledgement

8.1 The by-election has been smoothly conducted, with a record-high turnout rate for a GC by-election. The EAC attributes this success to the dedicated and concerted efforts of all parties involved in the preparation for and conduct of the election.

8.2 The EAC would like to express its gratitude to the following government bureau and departments for their dedicated support and unfailing assistance: Constitutional and Mainland Affairs Bureau, CAS, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, HAD, Hong Kong Observatory, Hong Kong Police Force, Hongkong Post, Housing Department, ICAC, Information Services Department, Lands Department, Leisure and Cultural Services Department, Office of the Government Chief Information Officers, Official Languages Division (of the Civil Service Bureau) and Government Logistics Department.

8.3 The EAC is also grateful for the assistance of the staff of the REO in the preparation and implementation of the electoral arrangements and in the investigation of election-related complaints.

8.4 The EAC is also thankful to the officers serving as the RO, AROs, the legal practitioner serving on the NAC, the PROs and those polling and counting staff who conscientiously performed their duties and dutifully followed the relevant operational procedures.

8.5 The EAC would like to thank members of the media who have helped substantially to enhance the transparency of the by-election by giving the key events a wide and in-depth coverage.

8.6 The EAC shows appreciation towards those candidates, their helpers, building management bodies and members of the general public who complied with the electoral legislation and guidelines.

8.7 The last but not the least, the enthusiasm of the electors who participated in the poll is the prime element in making the by-election a success as well as a meaningful event in the community.

Section 9 – A Concluding Note

9.1 After completion of the by-election, the EAC is focusing its effort on the impending 2008 LegCo Election, apart from the Village Representative By-election tentatively scheduled for May 2008. The EAC remains fully committed to fulfilling its mission of supervising the conduct of public elections in Hong Kong in accordance with the law. It will continue to ensure that all public elections are conducted in an open, fair and honest manner. It will remain, as always, open to the views from the public on what measures should be taken to improve future electoral arrangements.

9.2 The EAC would like to recommend this report be made public, at a time the Chief Executive thinks fit, to enhance the transparency of the EAC's work in the conduct and supervision of the by-election under the EAC Ordinance (Cap 541).