

Section 1 – Prologue

The vacancies

1.1 The Clerk to the Legislative Council (“LegCo”) declared, by notices published in the Gazette on 5 February 2010, the existence of five vacancies in the membership of the LegCo with effect from 29 January 2010, arising from the resignation of Ms Chan Tanya, Mr Wong Yuk-man, Mr Leong Kah-kit, Alan, Mr Chan Wai-yip, Albert and Mr Leung Kwok-hung [s35(1) of the Legislative Council Ordinance (“LCO”) (Cap. 542)].

1.2 Ms Chan Tanya, Mr Wong Yuk-man, Mr Leong Kah-kit, Alan, Mr Chan Wai-yip, Albert and Mr Leung Kwok-hung were LegCo Members returned by the Hong Kong Island Geographical Constituency (“GC”), Kowloon West GC, Kowloon East GC, New Territories West GC and New Territories East GC respectively in the 2008 LegCo general election.

Conduct of the By-election

1.3 Some members of the public were of the view that as the aforesaid LegCo Members had deliberately triggered a territory-wide by-election by resigning from each of the five GCs to launch the “five geographical constituencies referendum campaign” on universal suffrage, their act was an abuse of the by-election mechanism and a waste of public resources.

1.4 There were also voices in the community that the existing legislation which allowed the LegCo Members to resign and then stand for the subsequent by-election should be amended to forestall the recurrence of similar incidents.

1.5 The Administration had reiterated that the Basic Law does not provide for any referendum mechanism. Conducting any form of so-called “referendum” in Hong Kong would have no legal basis or effect under the Basic Law and the legislation of Hong Kong, and would not be recognised by the Government. The Electoral Affairs Commission (“EAC”), however, had the responsibility to act in accordance with the

law and hold by-elections following the relevant legislation. The Administration indicated that it would analyse the proposals in paragraph 1.4 carefully when considering amendments to the relevant local legislation.

1.6 The EAC is an independent, impartial and apolitical body established under the Electoral Affairs Commission Ordinance (“EACO”) (Cap. 541) to conduct and supervise public elections in Hong Kong and to ensure that elections are conducted openly, fairly and honestly. Section 36(1)(a) of the LCO stipulates that the EAC must arrange for a by-election to be held when the Clerk to the LegCo makes a declaration as to the existence of a vacancy in the membership of the LegCo. As the Clerk to the LegCo had made such a declaration in the Gazette on 5 February 2010, the EAC had to hold a by-election according to the law to fill the five vacancies in the membership of the LegCo. On 5 March 2010, the Chief Electoral Officer (“CEO”) published a notice in the Gazette, appointing 16 May 2010 as the polling day for the 2010 LegCo By-election.

1.7 Although the scale of work for the By-election involving all the five GCs was comparable to a general election, the lead time for organising the By-election was much shorter than that of a general election. The EAC therefore adopted the general principle that the same electoral arrangements for the 2008 LegCo Election should be followed as far as practicable.

Funding for holding the By-election

1.8 Given that the scale of this By-election for all the five LegCo GCs is similar to that of a general election, it was estimated that about \$159 million would be required for holding the By-election. The amount exceeded the operating expenditure, which the Registration and Electoral Office (“REO”) had set aside for holding by-elections in each financial year. Hence, additional funds were required for conducting the By-election. Some LegCo Members had expressed the view that instead of including the provisions for conducting the By-elections in the REO’s Draft Estimates for 2010-11, a separate funding proposal should be submitted to the Finance Committee for approval so that LegCo Members would have the opportunity to scrutinise the proposal directly and to

indicate their stance by voting for or against the proposal.

1.9 In accordance with section 12 of the EACO, all expenses properly incurred by the EAC, a member of the EAC or the CEO in the performance of any function under that or any other Ordinance shall be payable out of the general revenue. For the purpose of budgetary planning, provisions for conducting elections/by-elections have all along been included in the annual estimates of the Head of Expenditure of the REO, which has provided the EAC with administrative support in the effective discharge of its statutory functions under the EACO and any other relevant Ordinance. As the bulk of the costs of the By-election would be incurred in 2010-11, in line with the established practice, the provisions for conducting the By-election were included mainly in the REO's Draft Estimates for 2010-11. The REO absorbed the costs incurred in 2009-10 within its provisions for the same financial year. The Appropriation Bill 2010 on provision of funds for 2010-11 Estimates was passed by the LegCo on 22 April 2010.

Section 2 – Nominations and Preparations before the Poll

Voting by Imprisoned Persons Ordinance

2.1 The Administration introduced the Voting by Imprisoned Persons Bill (“VIPB”) into the LegCo in May 2009 to remove the disqualification of imprisoned persons and persons convicted of certain election-related or bribery offences from being registered as electors and from voting in the LegCo, District Council, Chief Executive, Election Committee Subsector and Village Representative elections. The VIPB was passed by the LegCo on 24 June 2009.

2.2 The EAC subsequently made eight amendment regulations to provide for the detailed practical arrangements for imprisoned persons to register as electors and for registered electors imprisoned, remanded or detained to vote. These arrangements included the setting up of Dedicated Polling Stations (“DPSs”) for registered electors imprisoned, remanded or detained to vote and Ballot Papers Sorting Stations (“BPSSs”) for sorting ballot papers cast at DPSs according to each GC before they were delivered to the respective main counting stations for

counting. With all the provisions of the Voting by Imprisoned Persons Ordinance (“VIPO”) and the amendment regulations made by the EAC coming into operation on 30 October 2009, the By-election was the first election in which polling arrangements were provided for registered electors who were serving prison sentences.

Amendments to Electoral Guidelines

2.3 In order to reflect the legislative amendments mentioned in paragraphs 2.1 and 2.2 above and to set out the related electoral arrangements, the Guidelines on the Election-related Activities in respect of the Legislative Council Election (“the Guidelines”) were updated in January 2010. The relevant amendment sheets of the Guidelines were sent to the parties who had been issued with a hard copy of the Guidelines¹. The updated Guidelines were also uploaded to the websites of the EAC for public access and issued to the candidates of the By-election during the nomination period running from 22 March to 8 April 2010.

¹ In order to reduce paper consumption for the purpose of environmental protection, all the subsequent proposed and finalised guidelines for public elections will be issued to the parties concerned mainly in the form of CD-ROM.

Appointment of the Returning Officers

2.4 Five District Officers (“DO”) of the Home Affairs Department (“HAD”) were appointed as Returning Officers (“ROs”) on 5 March 2010. They were Mr Alex WONG, District Officer (Southern), Miss May CHAN, District Officer (Sham Shui Po), Mrs Teresa WONG, District Officer (Wong Tai Sin), Mr Allan CHOW, District Officer (Kwai Tsing) and Mrs DO PANG Wai-ye, District Officer (Sha Tin). Subsequently, Mr CHEUNG Doi-ching, District Officer (Tsuen Wan) took the place of Mr Chow with effect from 12 April 2010. Mr. William Shiu succeeded Mrs. Wong as District Officer (Wong Tai Sin) with effect from 10 May 2010.

Appointment of Assistant ROs

2.5 To provide assistance to the ROs, 31 Assistant ROs (“AROs”), who were DOs or Assistant District Officers of the HAD, were appointed. To provide legal advice to the ROs and PROs during the count, 20 AROs (Legal) were also appointed. They were all legally qualified persons coming from the Department of Justice (“DoJ”).

Briefings for the ROs and AROs

2.6 The EAC Chairman held a briefing session for all the ROs and AROs on 12 March 2010 at the Hong Kong Cultural Centre. Also attending the briefing session were the CEO and representatives of the DoJ and the Independent Commission Against Corruption (“ICAC”). The EAC Chairman highlighted the major electoral arrangements for the attention of the ROs and representatives from the ICAC briefed the participants on the major provisions of the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”) respectively.

Appointment of NAC

2.7 Mr LUI Kit-ling, Barrister-at-law, was appointed to the Nominations Advisory Committee (“NAC”) to provide legal advice to the ROs on the eligibility of the nominated candidates. His appointment, covering the period from 22 March to 12 April 2010 (both dates inclusive), was published in the Gazette on 5 March 2010.

Nominations

2.8 During the nomination period from 22 March to 8 April 2010, the ROs received a total of 26 nominations. Twenty-four nominations were confirmed valid by the ROs and two were ruled invalid. The names of the 24 validly nominated candidates for the five GCs were published in the Gazette on 16 April 2010. Since each GC had more than one validly nominated candidates, a poll was required to be conducted for all the five GCs.

Briefing for candidates

2.9 The EAC Chairman held a briefing session on 13 April 2010 at the Hong Kong International Trade and Exhibition Centre in Kowloon Bay to draw the attention of the candidates and their agents to the major provisions of the relevant electoral legislation and the Guidelines. Candidates and their agents were reminded to abide by the requirements laid down in the electoral legislation and the Guidelines and to cooperate with the authorities concerned to ensure that the election would be conducted in an open, fair and honest manner. He stressed that the EAC

and all the government departments concerned would strictly enforce the law and the Guidelines.

2.10 Immediately after the briefing session, the ROs, witnessed by the 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 election advertisements ("EAs").

Contingency measures

2.11 The following arrangements were adopted to cater for inclement weather or emergencies:

- (a) postponement or adjournment of the poll or the count in one or more polling/counting stations;
- (b) extension of polling hours if a substantial portion of the polling hours was lost because of flooding, power failure or other emergencies in one or more polling/counting stations;

- (c) designation of alternative polling/counting stations to serve as replacement or additional polling/counting stations in the event that the original stations, for one reason or another, could no longer function properly or to which electors were denied access;
- (d) setting up an Emergency Depot in each of the 18 districts to provide logistic support to respective polling stations in each district; and
- (e) preparation of public announcement notices in the event that any of the contingency arrangements as set out in paragraphs 2.11 (a), (b) or (c) above had to be implemented.

2.12 Since most of the polling stations were schools and organisations operating at normal business hours such as post offices, the REO had to vacate these premises before they resumed operation in the morning of 17 May 2010. A detailed contingency plan was drawn up and a number of reserve counting stations were identified to cater for the

event that the counting of votes could not be completed by 6:00 am on 17
May 2010 and had to take place in a reserve counting station.

Section 3 – Issues before the Poll

Publicity

3.1 There were some public views that the Administration had scaled down the publicity for this By-election to deter electors from coming out to vote.

3.2 The scale of the publicity campaign for a LegCo by-election should not be compared directly with that for a LegCo general election which returns 60 members for both the GCs and functional constituencies. For the 2007 LegCo Hong Kong Island GC By-election, an amount of about \$770,000 was incurred for the publicity work. Given that the publicity materials could apply to all the five GCs and did not require separate arrangements for individual GCs, the budget of \$3 million for the publicity work of the 2010 LegCo By-election involving five GCs is considered proportionate to that for the 2007 LegCo By-election.

3.3 Different publicity work was carried out to inform electors of the arrangements for the By-election. Announcements in the Public Interest (“API”) were made in television and radio. Posters, railing

banners and giant wall banners were mounted.

3.4 Relevant information on the By-election, including boundary maps, relevant legislation, candidates' personal particulars and election platforms was put up on the EAC and REO websites to facilitate public access. Apart from the aforesaid publicity measures, advertisements were also placed on local newspapers to publicise the relevant information and arrangements about the By-election. The publicity work for the 2010 LegCo By-election was comparable to that for the 2007 LegCo By-election.

Accessibility of Polling Stations for Electors with Disabilities

3.5 The REO has all along been making every effort to identify suitable venues which are accessible to disabled persons for use as polling stations. Despite the fact that preparation of the By-election was under a tight schedule, the REO had secured 443 (i.e. over 85%) out of the 516 ordinary polling stations which were accessible to electors with disabilities. This is an improvement over the 2008 LegCo Election, in

which 434 (i.e. 82%) polling stations were accessible to disabled persons. However, in individual districts, the design of some of the venues, which are most suitable for use as polling stations because of their convenient location, may not include facilities to cater for disabled persons. There is a need to strike a balance between convenience to the majority of the electors concerned and the need to facilitate electors with disabilities to cast their votes. Further, even if the REO is able to identify a venue that is both convenient to most electors and accessible to disabled persons, its availability for use as a polling station is still subject to the consent of its owner.

3.6 As widely reported by the press on 10 May 2010, the Chairman of the Equal Opportunities Commission (“EOC”) expressed concern at a press interview over the accessibility problem for some polling stations in the By-election and was of the view that 100% of the polling stations should be accessible to electors with disabilities.

3.7 To facilitate persons with disabilities to exercise their right to vote in the By-election, the REO, as with previous elections, took the

initiative to install as far as practicable temporary ramps for those venues not accessible to disabled persons so as to increase the accessibility of the polling stations. However, not all the venues were suitable for installing temporary ramps. The REO would only install temporary ramps at venues where it would be safe for wheelchair users to use the ramps having regard to their gradient and length and there was clear space at the head and foot of the ramps to enable movement of wheelchairs. As a result, the REO had installed temporary ramps in 55 polling stations in the By-election and was able to make available more polling stations suitable for use by electors who used wheelchairs.

3.8 Pursuant to section 33 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (“EAC(EP)(LC)Reg”), a well-established mechanism was put in place in the By-election to arrange for electors with disabilities who had difficulties in accessing the assigned polling stations to vote in special polling stations. A location map, indicating whether the polling station allocated to the elector was accessible to persons with mobility difficulties, was sent to each elector together with the poll card. An

elector with disabilities finding it difficult to access the assigned polling station might contact the REO at least five days before the polling day. The elector would then be re-allocated to a polling station close to his residence and suitable for use by disabled persons. Such re-allocation arrangement was publicised through the poll card, a press release issued on 5 May 2010 as well as a radio API broadcast from 3 to 11 May 2010. For cases where circumstances permitted, Rehabus service was arranged for the electors concerned upon their request.

3.9 In order to further improve the accessibility of polling stations for electors with mobility difficulties, the REO will continue to make sustained effort and work with the EOC with a view to identifying more barrier-free venues for setting up polling stations in future elections. Noting that the EOC has been urging owners of premises to improve accessibility of their premises where necessary, the EAC hopes that with the effort made by the EOC, more and more premises will become barrier-free and that the pool of venues suitable for setting up barrier-free polling stations will be expanded.

Availability of some venues in villages for use as polling stations

3.10 Same as the arrangements in past elections, the REO had sought to use those venues which were used in the 2008 LegCo Election as polling stations in the By-election as long as the venues were suitable for use again. The REO had however encountered difficulties in securing some of these suitable venues as polling stations. The main reasons given are that many of the venues had already been reserved for other activities on the polling day or the venues were not available due to the short notice given.

3.11 Notwithstanding, the REO was able to set up 516 ordinary polling stations in the By-election in which 464 of them were polling stations in the 2008 LegCo Election. About 50 suitable venues used in the 2008 LegCo Election were not available for use in the By-election. This is comparable to the 2008 LegCo election, in which about 10% of the suitable venues identified or used previously were not available for use as polling stations for various reasons. For those venues not available for use in the By-election, the REO had endeavoured to identify

alternative venues that were equally convenient to the electors concerned as replacement. Where no such alternative venues could be identified or made available for use as polling stations on the polling day, the REO had re-allocated the electors concerned to other polling stations that were as close as possible to their registered address for voting. All these polling stations were accessible by public transport.

3.12 There were media reports several weeks before the polling day that a large number of the venues situated in the villages in the New Territories might not be available for use as polling stations in the By-election. While the REO had encountered difficulties in securing about 50 venues for use as polling stations, only a very small number of them were located in the villages in the New Territories.

Designated spots for display of election advertisements by candidates

Previous arrangements

3.13 Under paragraph 8(d) of the Management Scheme for the Display of Roadside Non-commercial Publicity Materials Implementation

Guidelines issued by the Lands Department, approval for public display spots for persons or organisations to display roadside non-commercial publicity materials was temporarily revoked during the election periods of the past elections (“the removal arrangements”). Such publicity materials were required to be removed to make way for the designated spots to be allocated to candidates to display their EAs.

3.14 In early March 2010, some LegCo Members, DC members and political parties raised concern over the removal arrangements during the By-election because they considered that such arrangements adversely affected the normal work of the incumbent LegCo and DC members. Also, the removal and subsequent reinstatement of the publicity materials would lead to a waste of resources. In view of the concerns raised, the Administration conducted a review on the removal arrangements.

Updated arrangements

3.15 Following consultation with the LegCo Panel on Constitutional Affairs, the Administration announced on 26 March 2010 that incumbent

LegCo and DC members, who intended to keep the public display spots already allocated to them, were allowed to continue to use the spots to communicate with the public during the By-election period.

3.16 The EAC noted that in reviewing the removal arrangements, the Administration had ensured that the following policy objectives were upheld:

- (a) no candidate should have any unfair advantage in publicity through the display spots;
- (b) there should be a clear message of the election during the By-election period; and
- (c) there should be adequate number of designated spots for publicity by the candidates.

3.17 It was noted that to ensure the fairness of the election, the public display spots kept by the incumbent LegCo and DC members were not allowed to display EAs (i.e. materials used for the purpose of promoting or prejudicing the election of any candidate in the By-election).

Otherwise, approval of that public display spot would be revoked immediately. The relevant display materials would be removed without prior notice with the costs of removal to be recovered from the member concerned. Besides, if an incumbent DC member stood for the By-election in the LegCo GC in which the DC was situated, the approval in respect of all the public display spots allocated in his/her capacity as an incumbent DC member would be revoked immediately upon submission of the nomination form to the RO. The aforesaid arrangements also helped to give electors a clear message of the election because EAs were displayed at the spots allocated to candidates while no such materials were allowed to display at the public display spots kept by the incumbent LegCo and DC members.

3.18 For the 2007 LegCo By-election, each of the eight candidates was allocated on average about 210 designated spots. For the 2008 LegCo Election, each of the 53 GC candidate lists was allocated on average about 320 designated spots. On average, about 410 designated spots were allocated to each of the 24 candidates in the 2010 LegCo By-election.

3.19 The EAC noted that the updated arrangements would apply to all subsequent by-elections.

Decisions of the Chief Executive and Principal Officials not to vote

3.20 The Chief Executive (“CE”) issued a statement on 14 May 2010 that in view of the unique nature of the By-election and after careful consideration, he had decided not to vote in the By-election and that the Principal Officials shared his view and, of their own accord, had decided not to vote. The CE also stressed that these were purely personal decisions on his part and the part of the Principal Officials and that civil servants would not and should not be affected by their decisions.

3.21 There was extensive media coverage about the decisions of the CE and the Principal Officials not to vote in the By-election. There were also allegations that their decisions, which had been widely reported by the media, might discourage some registered electors from voting in the By-election particularly the civil servants.

3.22 Same as previous by-elections, various publicity channels had been used to inform electors of the nomination period and the polling day of the By-election. The EAC had also through the REO reminded electors in the poll cards to exercise their civic rights and fulfill their civic responsibilities by casting their votes in the By-election. It is however noteworthy that all registered electors, including civil servants, would decide on their own whether or not to vote in the By-election. The personal decision of each registered elector should be respected.

Section 4 – The Poll

Recruitment of polling and counting staff

4.1 A service-wide recruitment exercise was launched to invite suitable serving civil servants from various government departments to serve as electoral staff for the By-election. Some 17,500 applications were received. About 14,600 civil servants from various government bureaux / departments were appointed as PROs, Deputy PROs (“DPROs”), Assistant PROs (“APROs”), Polling Officers and Polling Assistants to carry out polling and counting duties on the polling day.

4.2 Those who were appointed PROs, DPROs and APROs were selected from senior government officers. Other junior polling staff were appointed from the ranks of relatively junior government officer. Each appointee was required to disclose if they had any close relationship with any candidate, and if so, he or she would not be assigned to work in any polling station in the GC concerned. This arrangement would help maintain the neutrality and independence of the electoral arrangements and avoid the perception of collusion which might compromise the

integrity of the election.

Training for PROs and other polling and counting staff

4.3 Three management training sessions were organised on 12 and 14 April 2010 at the Queen Elizabeth Stadium for PROs and DPROs to strengthen the quality of polling management. For other general polling staff, ten training sessions on General Briefing and Training on Compilation of Statistical Returns were organised from mid April to early May 2010 at Queen Elizabeth Stadium and Hongkong International Trade & Exhibition Centre (“HITEC”) to equip them with the necessary knowledge for discharging their duties.

4.4 There were also general briefing for all staff of the DPSs and the BPSSs (please refer to paras. 4.11 and 4.14 below), and special briefing session on the operation of DPSs and BPSSs for PROs, DPROs, APROs and Polling Officers (Statistics) (“PO(S)”) respectively. They were both conducted at HITEC on 27 April 2010.

Registered electors

4.5 A total of around 3.37 million registered electors whose names were included in the 2009 final register of Electors for GC were eligible to vote in the By-election.

Poll cards

4.6 A poll card, together with the “Introduction to Candidates”, a location map of the polling station, a voting guide and an ICAC leaflet reminding electors of the importance of clean election, were mailed to the electors at least ten days before the polling day in accordance with section 31 of the EAC (EP) (LC) Reg. For the sake of environmental protection, these documents were printed on recycled papers or paper made from wood-pulp derived from sustainable forest. Furthermore, environmentally friendly ink was used in the printing.

The polling arrangements

4.7 Polling stations for the 2008 LegCo Election were used as polling stations for the By-election as far as possible, unless the venues

were unavailable on the polling day mainly due to the short notice given or activities already scheduled on the polling day. A total of 516 ordinary polling stations were opened in the By-election, 464 of which had been used in the 2008 LegCo Election. Electors were reminded through the poll cards that the polling stations allocated to them might be different from those allocated in the 2008 LegCo Election.

4.8 Except for the 12 small polling stations with less than 500 registered electors and 27 DPSs, all polling stations were converted into counting stations immediately after the close of poll. On the day preceding the polling day, the polling staff set up these designated venues as stations, in such a way that the stations would suit the functions of a polling-cum-counting station. Voting compartments, ballot boxes and ballot paper issuing desks were provided in all the polling stations.

Polling hours

4.9 Same as the past general elections / by-elections, the poll started at 7:30 am on the polling day and ended at 10:30 pm on the same day, except for the DPSs situated in prisons which had shorter polling hours as

detailed in paragraph 4.11 below.

Design of ballot papers and ballot boxes

4.10 The design of the ballot paper of the By-election followed that used in the 2007 LegCo Hong Kong Island GC By-Election and 2008 LegCo Election. Candidates were allowed to have their photographs and 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.

Special polling arrangements for imprisoned, remanded and detained electors

Dedicated Polling Stations

4.11 To enable registered electors who were imprisoned or remanded by the Correctional Services Department (“CSD”) on the polling day to vote, 23 DPSs were set up in prisons. Owing to security reasons, the poll at these DPSs was conducted from 9:00 am to 4:00 pm. Four DPSs

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

4.12 The venue set-up at all the DPSs was basically the same as that of the ordinary polling stations, except that the polling materials were specially designed for security reasons.

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

Ballot Paper Sorting Stations

4.14 Five BPSSs were set up at Kowloon Park Sports Centre, REO Office at Caroline Hill Road, Lai Chi Kok Community Hall, Sha Kok Community Hall and Tsing Yi Estate Community Hall for the sorting of ballot papers cast at DPSs according to each GC before they were delivered to the respective main counting stations. The ballot papers were then mixed with those cast at the main counting stations before they were counted to preserve the secrecy of votes. The whole process was open for observation by the public.

Logistics

4.15 A Central Command Centre (“CCC”), supervised by the CEO, was set up at the REO Office at Caroline Hill Road on the polling day to oversee the conduct of the poll and provide central command and helpdesk/support services. Except for the Hotline service which continued to operate at the REO Office at Guardian House, all other relevant sections of the REO and bureau/departments concerned were accommodated in the CCC to facilitate communication and coordination.

4.16 A Statistical Information Centre (“SIC”) was set up inside the CCC to collect and consolidate voter turnout figures and counting results from all the polling and counting stations. The voter turnout figures were made available to the public through press releases and the dedicated website for the By-election, and disseminated at the Media Centre on an hourly basis.

4.17 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.

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

4.19 Generally speaking, the poll went on smoothly throughout, despite the fact that there were some individual complaints (please refer to Section 6 below).

4.20 The Police rendered assistance in maintaining law and order in the polling stations, the No Canvassing Zones (“NCZs”), the No Staying Zones (“NSZs”), the BPSSs and the counting stations. The Civil Aid Service (“CAS”) also assisted in providing crowd management services at the polling stations.

Turnout of electors

4.21 Out of an electorate of 3.37 million, 579,795 electors cast their votes, including around 1,000 imprisoned, remanded and detained electors who cast their votes at the DPSs. The overall turnout rate was 17.19 %, which was lower than the turnout rate of 45.20 % for the 2008 LegCo general election for the GCs, and that in the 2007 LegCo (Hong Kong Island GC) By-election, which was 52.06 %. A breakdown of the hourly turnout rate of electors for this By-election is shown at

Appendix I.

EAC's visits to polling stations

4.22 The EAC Chairman and the two Members visited a total of 18 polling stations covering all five GCs, four DPSs at Stanley Prison, Pik Uk Correctional Institution, Lai Chi Kok Correctional Institution and Cheung Sha Wan Police Station and the BPSS at Kowloon Park Sports Centre. Two media briefing sessions were held, one in the morning at the Leighton Hill Community Hall and one in the afternoon in the Kowloon Park Sports Centre, to provide election statistics and answer questions from the media. The EAC closely monitored the events on the polling day and was satisfied with the polling arrangements.

Section 5 – The Count

Counting arrangements

5.1 In the By-election, as there was one vacancy in each GC, the candidate who obtained the most valid votes in the respective GC was elected. In light of the past experience, the polling-cum-counting arrangement was adopted for the By-election. Under this arrangement, a polling station, except for a small polling station with less than 500 registered electors and a DPS, was converted into a counting station immediately after the close of poll. While the ballot papers cast at the small polling stations were directly transferred to and counted at the main counting stations in the same GC, the ballot papers cast at a DPS were sent to the relevant BPSS for sorting according to each GC before they were delivered to the respective main counting stations for counting. The sorting process was open to the public for observation.

5.2 To ensure openness and transparency of the counting process, candidates, their election agents, polling agents and counting agents were allowed to stay to witness the conversion of the polling stations into counting stations. Candidates, their agents, members of the public and the media were then permitted to observe the counting process at a close distance from the counting table.

5.3 At the commencement of the count, 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 papers is shown in **Appendix III**.

5.4 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 in a GC, the ARO 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 of that GC. As there was no request for recount, the ROs formally announced the election results.

EAC's visit to a counting station

5.5 The EAC visited the counting station at the Wong Nai Chung Sports Centre after the close of poll. The EAC emptied the ballot boxes together with the Secretary for Constitutional and Mainland Affairs.

Release of interim counting results and election results

5.6 To enhance transparency of the by-election and facilitate timely dissemination of electoral statistics, interim counting results were released during the count at about 1:00 am on 17 May 2010. The final election results were announced at around 2:10 am by the RO. Press releases were issued on these occasions for general reference of the candidates, the public and the media.

5.7 The election results were published in the Gazette on 20 May 2010 and are now re-produced at **Appendix IV**.

Conclusion of the count

5.8 The EAC Chairman met the media shortly after the conclusion of the count at about 3:00 am on 17 May 2010 at the Media Centre. The EAC was satisfied that the counting process of the By-election was conducted 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 ensure the fairness and safeguard the integrity of the electoral system. It also provides 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 handle the complaints received promptly and fairly.

The complaints-handling period

6.2 The complaints-handling period started on the date when the nomination period commenced on 22 March 2010 and ended 45 days after the polling day on 30 June 2010.

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, 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 EAC dealt with cases that were within its jurisdiction and not covered by any statutory provisions involving criminal liability. The RO was responsible for handling complaint cases of a minor nature under the authority delegated to 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 possible criminal liability, e.g. breaches of the EAC(EP)(LC)Reg and criminal damage of EAs. The ICAC handled cases that involved possible 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, etc.

The complaints: number and nature

6.5 By the end of the complaints-handling period, a total of 687 cases were received and processed by the five relevant parties: the EAC (194 cases), the RO (113 cases), the Police (157 cases), the ICAC (7 cases) and the PROs (216 cases). Most of the cases concerned disturbances to electors caused by loudspeakers, etc., (133 cases), EAs (86 cases) and allocation/designation of polling stations (83 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.

6.7 The Complaints Centre, RO and PROs received 426 complaint cases on the polling day. Cases concerned on-the-spot incidents (e.g. illegal canvassing in NCZs, noise nuisance to electors caused by loudspeakers, etc.) were expeditiously dealt with and resolved where possible. For cases which could not possibly be resolved on the spot, 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 total of 426 complaints received by the Complaints Centre, RO and PROs on the polling day, 348 complaints, or 81.7%, were resolved on the polling day.

6.9 The Complaints Centre handled a total of 117 complaints on the polling day. 72 of these cases were resolved on the polling day. The remaining 45 complaints required further investigation.

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

The outcome of investigations

6.11 As at 30 June 2010 (i.e. the end of the complaints-handling period), of the 336 cases handled by the EAC, 7 were ruled as substantiated or partially substantiated. Of the 136 cases handled by the RO (including those received by them and those referred to them by the other parties), 27 were found substantiated or partially substantiated as at 30 June 2010. Warning letters were issued to the offenders where appropriate.

6.12 Of the 171 cases investigated by the Police, as at 30 June 2010, 53 were found substantiated. As at the same date, none of the 12 cases investigated by the ICAC was found substantiated. There were still 29 cases under investigation by these two parties.

6.13 A breakdown of the outcome of investigation as at 30 June 2010 is detailed in **Appendices VII(A) to VII(D)**.

Complaints attracting media and public attention

6.14 Some complaints which are set out in the ensuing paragraphs had attracted media and public attention.

Complaints about allocation of polling stations

6.15 There were complaints from electors that they were allocated polling stations which were different from those allocated to them in the 2008 LegCo Election and which were quite far away from their home.

6.16 As mentioned in paragraph 3.11 above, the REO had encountered difficulties in securing some of the suitable venues as polling stations mainly because many of the venues had already been reserved for other activities on the polling day or the venues were not available due to short notice given. The EAC appreciates that despite such difficulties, the REO was able to set up 516 ordinary polling stations in the By-election and 464 of them were polling stations in the 2008 LegCo Election. Since some of the suitable venues were unavailable, the REO had set up

polling stations in alternative venues nearby, or if no alternative venues could be identified or made available, re-allocated the electors concerned to other polling stations that were as close as possible to their registered address for voting. All these polling stations were accessible by public transport. As a result, some electors were allocated polling stations not the same as the one that they had cast their votes in the 2008 LegCo Election. The REO should continue to make its best endeavours to secure suitable venues for use as polling stations in future elections.

Complaints about change of addresses

6.17 Some electors complained that they were not allowed to cast their votes in the GCs corresponding to their new address and that they were allocated polling stations according to their old address, although they had informed the REO of their new address before the polling day. Some of them had even received the poll cards (which informed them to vote at polling stations allocated in accordance with their old address) and other election-related documents at their new address.

6.18 Pursuant to section 17 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) (“EAC(ROE)(GC)Reg”) in relation to compiling a final register for a year which is not a DC election year, the Electoral Registration Officer (“ERO”) may correct the name or other personal particulars of a registered elector recorded in the existing Final Register of Electors (“FR”), upon receipt of such a written request from the elector, before 29 June in that year. Hence, the statutory deadline for updating entries of a registered elector in the 2009 FR was 29 June 2009. Following a detailed check on the REO’s records on the electors concerned, it was revealed that the electors mentioned in paragraph 6.17 above notified the REO of their change of addresses only after the statutory deadline for updating the 2009 FR.

6.19 Section 33 of the LCO stipulates that a FR takes effect on the date of its publication and continues to have effect until the publication of the next FR. As the 2009 FR would continue to take effect until July

2010, the REO had to allocate a polling station to an elector for the By-election according to his address shown on the 2009 FR.

6.20 If the REO receives a request from an elector for updating his address after the statutory deadline but before the printing of poll cards, the poll card and other election-related documents will be sent to the new address to enable him to receive the latest information on the By-election. However, the aforesaid documents can only be sent to an elector according to his old address if the REO receives his request for change of address after the printing of poll cards.

6.21 As there is a time-gap between the statutory deadline for updating the FR and the polling day, allocation of a polling station according to an elector's old address may be inevitable if he informs the REO of his change of address only after the aforesaid deadline. To reduce the number of complaints of this kind, the REO should consider stepping up its publicity measures to remind electors of the need to promptly report their new addresses within the statutory deadline.

Complaints about voter registration

6.22 On the polling day, a number of complaints were received from persons stating that their names were not included in the 2009 FR and they were therefore not entitled to vote at the By-election.

6.23 After investigation into the complaints, it was found that some of these complaints involved members of the public who had made their applications for voter registration only after the statutory deadline for compilation of the 2009 FR on 16 May 2009 and therefore their names could not be included in the 2009 FR which was published on 24 July 2009 and still in force at the time of the By-election.

6.24 It was found that the remaining complaints related to electors whose voter registration records were deleted from the FR. For the purpose of preparing an updated FR for the following year, the ERO may make an inquiry to ascertain whether a person registered in the existing FR is no longer eligible to be registered as an elector in accordance with section 7 of the EAC(ROE)(GC)Reg. Therefore, based on the undelivered poll cards received after a general or ordinary election or

by-election, or information provided by the Housing Department, Home Affairs Department and the Hong Kong Housing Society, the ERO will, in accordance with section 7 of the EAC(ROE)(GC)Reg, issue inquiry letters by registered mail to electors who may have moved out of the address recorded in the existing FR, asking them to ascertain whether they have moved. In the absence of a response within the specified period, the electors' name and principal residential address will be included in the omissions list which will be published for public inspection at the same time as the Provisional Register of Electors ("PR") according to section 9 of the EAC(ROE)(GC)Reg.

6.25 After the publication of the omissions list, if there is no claim received from these electors before the statutory deadline for lodging such claims, their records will not be included in the next FR pursuant to section 19 of the EAC(ROE)(GC)Reg.

6.26 It was revealed from the investigation that the voter registration records of the electors concerned were deleted from the FR because they had failed to notify the ERO of their change of principal residential

addresses and respond to the ERO's inquiry letters as mentioned in paragraph 6.24 above.

6.27 As the names of the persons who lodged the complaints as mentioned in paragraph 6.22 above were not included in the 2009 FR, they were not eligible to vote at the By-election. Since the aforesaid complaints were lodged because the complainants were not familiar with the procedures for voter registration and updating of residential addresses, the REO should consider launching enhanced publicity measures to remind the public and electors of the need to apply for voter registration and to update their personal particulars respectively before the deadlines specified in the relevant legislation.

Election Petition

6.28 After the conduct of the election, Mr Lee Chun-hung, David, a candidate of the Hong Kong Island GC, lodged an election petition on the grounds of material irregularity concerning the By-election. The hearing date of this case has been fixed on 20 October 2010.

Section 7 – Review and Recommendations

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

(A) Setting up of dedicated polling stations in prisons and ballot paper sorting stations

7.2 With all the provisions of the VIPO and the related amendment regulations made by the EAC coming into operation on 30 October 2009, this was the first election in which polling arrangements were provided for registered electors who were serving prison sentences. A total of 23 DPSs were set up for the first time in prisons on a territory-wide basis for registered electors imprisoned on the polling day. The poll at these

DPSs was conducted smoothly. This was also the first time that ballot papers cast at the DPSs were sorted at the BPSSs before they were delivered to the respective main counting stations for counting. The operation of the BPSSs was smooth.

Recommendation:

7.3 The EAC appreciates the efforts made by the REO for putting in place arrangements in accordance with the relevant electoral legislation to enable imprisoned electors to cast their votes for the first time in a public election in Hong Kong and to set up five BPSSs for the sorting of ballot papers cast at the DPSs. The voting arrangements for imprisoned electors are considered appropriate and should continue to be adopted. Given the suitability of the venues used for setting up as BPSSs in the By-election, they should continue to be used as far as practicable.

(B) Providing Address Labels of Electors to Candidates

7.4 For environmental protection, the REO had continued with the established practice of providing address labels of electors to candidates for free postage of EAs upon their request. Address labels were not

supplied on those electors who had provided their email address. Candidates were allowed to request for a whole set of or only part of the address labels of electors in their respective GCs, depending on the number of EAs they intended to send to their electors through free postage. The number of a full set of address labels corresponds to the number of electors of the respective GC excluding those electors who have provided their email address.

7.5 The EAC noted that one candidate made a request for the whole set of address labels of electors in his GC, but eventually did not collect the printed address labels. In addition, a number of candidates used only a small number or even none of the address labels received from the REO for free postage. Although candidates were required to sign an undertaking that the address labels should be used solely for the purpose related to the By-election, the REO had taken prompt action after the By-election to request the candidates concerned to properly dispose of the unused address labels as soon as possible or to return them to the REO for proper disposal so as to prevent any leakage of personal data of the registered electors.

Recommendation:

7.6 In future elections, candidates should be reminded to plan ahead carefully whether they would use free postage for sending out EAs before requesting for the printed address labels and to make full use of them.

(C) Free postage for EAs

7.7 The identical version of the EA specimen submitted by five candidates in five different GCs for free postage was not approved by the Hong Kong Post on the ground that the EA specimen contains clear message in promoting more than one candidature, thus contravening the requirement under section 101A of the EAC(EP)(LC)Reg. Having considered the contents of the EA specimen and the arguments put forward by the legal representatives of the aforesaid candidates, the EAC shared the view that the EA specimen should not be approved for free postage. The reasons are as follows:

- (a) Section 43(4) of the LCO stipulates that the letter (i.e. the EA) must relate to the election concerned and must comply

with all requirements and limitations (if any) prescribed by the regulations and by regulations in force under the EACO;

- (b) Section 101A of the EAC(EP)(LC)Reg also prescribes, inter alia, that the letter must contain materials relating only to the candidature of the candidate at the election concerned; and
- (c) The EA specimen contains clearly message in promoting more than one candidature.

7.8 The EAC was given to understand that before the Hong Kong Post advised the five candidates of its decision, they had already arranged for mass production of their EAs. In the end, the five candidates chose not to revise the contents of their EA specimen. As they did not comply with the specified statutory requirements, they were unable to use the free postage service.

Recommendation:

7.9 All candidates of the By-election were advised to apply to the Hong Kong Post for approval of their EA specimens for free postage

upon their submission of the nomination forms. At the briefing session for candidates on 13 April 2010, they were further reminded to do so and observe the requirements of free postage for EAs as set out in the relevant electoral legislation and guidelines. The EAC is of the view that candidates should carefully study the aforesaid requirements governing free postage for EAs before deciding on the contents of their EAs and seek advice from the Hong Kong Post and the REO as appropriate if in doubt. In any case, candidates should make every effort to submit their EA specimens to the Hong Kong Post for approval as early as possible before mass production of their EAs so as to allow sufficient time for revising the contents of their EA specimens, if necessary.

Section 8 - Acknowledgement

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

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

Agriculture, Fisheries and Conservation Department

Auxiliary Medical Service

Civil Aid Service

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Justice

Drainage Services Department

Efficiency Unit (of Chief Secretary for Administration's Office)

Electrical and Mechanical Services Department

Food and Environmental Hygiene Department

Government Flying Service

Government Logistics Department

Highways Department

Home Affairs Bureau

Home Affairs Department

Hong Kong Observatory

Hong Kong Police Force

Hongkong Post

Housing Authority

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Land Registry

Lands Department

Legal Aid Department

Leisure and Cultural Services Department

Marine Department

Office of the Government Chief Information Officer

Official Languages Division (of the Civil Service Bureau)

Planning Department

Radio Television Hong Kong

Social Welfare Department

Transport Department

8.3 The EAC is grateful for the staff of the REO for their contribution at all stages of the By-election.

8.4 The EAC is also grateful to the officers serving as ROs, the legal practitioners serving on the NACs and those polling and counting staff who conscientiously performed their duties and dutifully followed the relevant operational procedures.

8.5 The EAC is thankful to the CSD and other LEAs for their assistance provided to the REO in making arrangements for registered electors who were imprisoned, remanded and detained on the polling day to vote.

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

8.7 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 the Guidelines.

8.8 The EAC is also grateful to the PROs, polling and counting staff who had worked long hours, but who had persevered and fulfilled their duties.

8.9 The EAC also recognises the support of the electors who exercised their civic duties and participated in the poll.

Section 9 – Concluding Note

9.1 At the time of finalising the report, the EAC is engaged in drawing up the provisional recommendations for the district council constituency area boundaries for the 2011 District Council Election. The EAC remains committed to fulfilling its mission of safeguarding the integrity of public elections in Hong Kong in accordance with the law. It will continue with its efforts to ensure that all public elections are conducted in an open, fair and honest manner. The EAC welcomes positive and constructive comments to bring about improvements to the arrangements for future elections.

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