

Section 1 – Prologue

The Vacancies

1.1 Mr LEUNG Chung-hang Sixtus, Ms YAU Wai-ching, Mr LAW Kwun-chung and Mr YIU Chung-yim were returned respectively in the New Territories East Geographical Constituency (“GC”), Kowloon West GC, Hong Kong Island GC and the Architectural, Surveying, Planning and Landscape Functional Constituency (“FC”) in the 2016 Legislative Council (“LegCo”) General Election.

1.2 In accordance with section 35(1) of the Legislative Council Ordinance (Cap. 542) (“LCO”), the Clerk to the LegCo declared by a notice published in the Gazette on 5 December 2016 that the LegCo seats previously held by Mr LEUNG Chung-hang Sixtus and Ms YAU Wai-ching had become vacant. On 2 August 2017, the Clerk to the LegCo declared by another notice published in the Gazette that the LegCo seats previously held by Mr LAW Kwun-chung, Mr YIU Chung-yim, Mr LEUNG Kwok-hung and Ms LAU Siu-lai had also become vacant.

1.3 Subsequent to the decision of the Appeal Committee of the Court of Final Appeal on 25 August 2017, the judicial proceedings in relation to the vacancies of Mr LEUNG Chung-hang Sixtus and Ms YAU Wai-ching were concluded. Meanwhile, Mr LAW Kwun-chung and Mr YIU Chung-yim had not lodged any appeal against the judgment of the

Court of First Instance of the High Court made on 14 July 2017 regarding their LegCo seats upon the expiry of the period allowed for lodging appeals (i.e. 11 September 2017). Hence, the relevant judicial proceedings were also concluded. Pursuant to section 36(1)(a) of the LCO, the Electoral Affairs Commission (“EAC”) must arrange a by-election for the above four vacancies in the membership of the LegCo in order to return four LegCo Members to fill them.

1.4 As Mr LEUNG Kwok-hung and Ms LAU Siu-lai have lodged their appeals on 11 September 2017 against the judgment of the Court of First Instance of the High Court delivered on 14 July 2017 regarding their LegCo seats, the relevant judicial proceedings are still on-going. The EAC shall continue to keep in view the relevant situation and arrange a by-election according to the requirements stipulated in the legislation after the conclusion of the relevant judicial proceedings.

Date of the By-election

1.5 In accordance with section 8 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (“EAC (EP) (LC) Reg”), the Chief Electoral Officer (“CEO”) must publish in the Gazette a notice in order to hold a by-election as soon as practicable after a declaration as to the existence of a vacancy in the membership of the LegCo is made. Previous LegCo by-elections were generally held within six months after the LegCo seats had become vacant (for this By-election, after the conclusion of judicial

proceedings of the relevant cases mentioned in paragraph 1.3 above). When deciding on the date of the 2018 LegCo By-election (“By-election”), the EAC had to give due consideration to various objective and practical factors such as the requirement of dovetailing the nomination period with the polling day as stipulated under the law¹, the time required to recruit and train additional electoral staff, reservation of venues for the election (including venues for the Central Counting Station (“CCS”) and Media Centre (“MC”), polling stations and ballot paper sorting stations (“BPSSs”)), arrangements for the printing of ballot papers, procurement and delivery of electoral materials and the principle of proper use of public funds, etc. At the same time, the EAC had to take into consideration the intervening public holidays during the preparatory period for the By-election, such as the Lunar New Year holidays, which further limited the choices of dates for holding the By-election. In addition, the preparatory period for the By-election also partly overlapped with the 2017 Central and Western District Council By-election for the Peak Constituency and Tung Wah Constituency.

1.6 To ensure that the Registration and Electoral Office (“REO”) could have sufficient time and resources for the preparation of this By-election, and taking into account all objective and practical factors mentioned in paragraph 1.5 above, the EAC decided to hold this By-election on 11 March 2018.

¹ In accordance with section 7 of the EAC (EP) (LC) Reg, the nomination period of the LegCo election must end not less than 28 days and not more than 42 days before the date on which the relevant election is to be held.

1.7 After the EAC had preliminarily announced on 14 September 2017 that this By-election would be held on 11 March 2018, there were views in the society that the By-election should not be held during the annual sessions of the People's Republic of China National People's Congress ("NPC") and the National Committee of the Chinese People's Political Consultative Conference ("CPPCC") so as to facilitate the Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the CPPCC attending the meetings in Beijing. Although the EAC considered worthwhile to take into account the views concerned, after having examined all the relevant circumstances and considerations mentioned in paragraph 1.5 above, the EAC recognised that other Sundays during the period were not suitable for holding this By-election. If 11 March 2018 was not chosen as the polling day, there would be the possibility that the By-election would have to be deferred for months until another available date, which is several months later than six months after the conclusion of relevant judicial proceedings. Therefore, the EAC considered 11 March 2018 the soonest practicable date for holding the By-election.

1.8 In accordance with section 8 of the EAC (EP) (LC) Reg, the CEO published in the Gazette on 1 December 2017 a notice designating 11 March 2018 as the date of this By-election. The nomination period ran from 16 to 29 January 2018 for a total of 14 days.

Judicial Review on the designation of Polling Day

1.9 With respect to the decision on the date of this By-election, on 6 December 2017, Ms LEUNG Kit-hing Doris applied for leave to apply for judicial review to the Court of First Instance of the High Court (Case Number: HCAL 1016/2017), claiming to have also applied to the Court of Final Appeal and the European Court of Human Rights respectively for review of the decision of the Appeal Committee of the Court of Final Appeal in respect of the vacant LegCo GC seats previously occupied by Mr LEUNG Chung-hang Sixtus and Ms YAU Wai-ching. Therefore, according to section 36(1)(e)(ii) of the LCO, the EAC should not arrange for the holding of the By-election on 11 March 2018 to fill the relevant vacancies before the termination of the above proceedings. She also sought a court order to suspend the conduct of this By-election by the EAC. Having considered the relevant legislation and the grounds given by the applicant, the Court of First Instance dismissed her application for leave by its decision on 9 February 2018. Ms LEUNG filed a summons with the court subsequently on 12 February 2018, stating that there had been a change of circumstances since the original order was made and seeking a temporary suspension of the implementation of the order pending clarifications from the Court of Final Appeal and the European Court of Human Rights. By its decision made on 15 February 2018, the Court of First Instance dismissed her request.

Section 2 – Appointments and Nominations

Amendments to Electoral Guidelines

2.1 The Guidelines on Election-related Activities in respect of the Legislative Council Election (“Guidelines”) published in June 2016 is applicable to this By-election. To facilitate candidates and related parties informed of the latest electoral provisions and requirements, the EAC provided supplementary information on the Guidelines in January 2018 setting out the latest legislative amendments and electoral arrangements which were applicable to this By-election, such as an elector must produce the original of his/her Hong Kong permanent identity card or other specified alternative documents before a ballot paper can be issued to him/her. The supplementary information had already been uploaded to the website of the 2018 LegCo By-election (“election website”) for public inspection before the start of the nomination period.

Appointment of the Returning Officers

2.2 Three District Officers of the Home Affairs Department (“HAD”) and a directorate officer of the Development Bureau were appointed as the Returning Officers (“ROs”) for the GCs and the Architectural, Surveying, Planning and Landscape FC respectively. They were Ms Anne TENG, District Officer (Eastern), Mr Franco KWOK, District Officer (Kowloon City), Miss Amy CHAN, District

Officer (Sha Tin), and Ms Jasmine CHOI, the Principal Assistant Secretary (Planning and Lands) 3 of the Development Bureau. Their appointments were published in the Gazette on 1 December 2017.

Appointment of the Assistant Returning Officers

2.3 To provide assistance to the ROs in discharging their duties, the EAC appointed 45 Assistant Returning Officers (“AROs”) who were officers of the HAD or other government bureaux and departments. In addition, the EAC appointed 28 AROs (Legal) for providing legal advice to the ROs and Presiding Officers (“PROs”) during the count. They were all legal officers in the civil service from the Department of Justice (“DoJ”), Companies Registry, Official Receiver’s Office and Legal Aid Department.

Briefing for the Returning Officers

2.4 The EAC Chairman held a briefing session for the ROs on 6 December 2017 at the Function Room on 2/F, Kennedy Town Community Complex. The briefing session was also attended by the CEO and representatives of the DoJ and the Independent Commission Against Corruption (“ICAC”). The EAC Chairman highlighted several major electoral arrangements, relevant legislative provisions and the Guidelines for the ROs’ attention. The representative of the ICAC also briefed the attendees on the major provisions of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

Appointment of Nominations Advisory Committees

2.5 Mr WONG Ching-yue, Senior Counsel and Mr Kevin CHAN, barrister at law were each appointed as a Nominations Advisory Committee (“NAC”) for this By-election to provide legal advice to the ROs when required. Their appointments, covering the period from 16 January to 31 January 2018, were published in the Gazette on 1 December 2017.

Nominations

2.6 The nomination period commenced on 16 January 2018 and closed on 29 January 2018. As stated in paragraph 1.8 above, this two-week nomination period was gazetted on 1 December 2017 by the CEO. Persons seeking candidature were required to submit their nomination forms in person to the respective ROs during the nomination period.

2.7 By the close of nomination, the ROs of the three GCs received a total of 18 nomination forms among which one candidate withdrew his candidature afterwards. Nominations of 13 candidates were ruled valid, while nominations of the other four candidates were ruled invalid by the ROs. For nominations ruled invalid, the relevant ROs had endorsed on and attached to the nomination forms their decisions and the reasons for such for public inspection in accordance with section 19 of the EAC (EP) (LC) Reg. The 13 lists of candidates who were validly nominated for

the three GCs were published in the Gazette on 9 February 2018.

2.8 The RO for the Architectural, Surveying, Planning and Landscape FC received a total of two nominations by the close of nomination. The two candidates were ruled valid by the RO. The two validly nominated candidates were also published in the Gazette on 9 February 2018.

2.9 As the number of validly nominated candidates was more than the number of Member to be returned for the three GCs and the Architectural, Surveying, Planning and Landscape FC, a poll had to be held for these constituencies.

2.10 Whereas the nominations of some persons seeking candidature were ruled invalid by the relevant ROs, some members of the community expressed concerns about whether the advice of the NACs had been taken into account in the decision made by the relevant ROs. In this connection, the EAC issued a press release on 27 January 2018 explaining the relevant legal provisions on the nomination procedures. According to section 42A of the LCO and section 16 of the EAC (EP) (LC) Reg, whether a candidate's nomination is valid or not is solely determined by the ROs according to the legal requirements and relevant procedures. For LegCo elections, details on the eligibility to be nominated as a candidate, disqualification from being nominated as a candidate and from being elected as a Member, and the requirements to be complied with by persons nominated as candidates are set out in

sections 37, 39 and 40 of the LCO respectively. The ROs shall exercise their statutory power to process all nominations in accordance with the legal requirements and relevant procedures. Depending on the actual circumstances of each case, the ROs may seek legal advice and request the candidate to provide additional information that he/she considers necessary according to the law. The ROs shall, in accordance with the law and all relevant information, determine and announce whether the nomination is valid. According to section 3(1)(b) of the Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap. 541C) (“EAC (NAC) (LC) Reg”), the ROs may seek the advice of the NAC as to whether a particular candidate for a general election or by-election is eligible to be, or disqualified from being, nominated as a candidate. However, section 1(2)(a) of the EAC (NAC) (LC) Reg stipulates that the Regulation does not empower or require the NAC to advise on any matter relating to the requirements under section 40 of the LCO (including the requirement for the nomination form of a person seeking candidature to include or is accompanied by a declaration to the effect that he/she will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region). The ROs shall solely make the independent decisions on whether a candidate meets the requirements as stipulated in the LCO, and whether legal advice shall be sought. The EAC is neither empowered nor involved in giving any opinion with regard to decisions made by the ROs all along. Also, in accordance with section 19 of the EAC (EP) (LC) Reg, if the RO decides that a nomination is invalid, the RO must endorse on the nomination form his/her decision and the reason(s) for it, which will be made available for public inspection in accordance with section 14 of the EAC (EP) (LC)

Reg. Anyone may make an election petition to question the result of an election if he/she is disqualified from being a candidate at an election in accordance with section 61 of the LCO.

2.11 Regarding the nomination of candidates, the Court received two applications for leave to apply for judicial review and two election petitions respectively, the details of which are as follows:

(a) Judicial review

- (i) On 29 January 2018, Mr KWOK Cheuk-kin applied for leave to apply for judicial review (Case Number: HCAL 130/2018), claiming that the decision of the RO for the Hong Kong Island GC that Ms CHOW Ting was not validly nominated as a candidate was unconstitutional and involved maladministration. By its decision on 28 February 2018, the Court of First Instance of the High Court dismissed his application for leave.
- (ii) On 13 March 2018, Mr WONG Tai-hoi applied for leave to apply for judicial review (Case Number: HCAL 409/2018), claiming that Mr AU Nok-hin should not be eligible to be nominated as a candidate for the election and seeking, inter alia, a court order to reverse the decision of the RO for the Hong Kong Island GC dated 9 February 2018 that Mr AU was confirmed as a validly nominated

candidate. By its decision on 29 March 2018, the Court of First Instance of the High Court dismissed his application for leave.

(b) Election petition

- (i) On 8 May 2018, Ms CHOW Ting, one of the candidates for the Hong Kong Island GC, lodged an election petition (Case Number: HCAL 804/2018) against the RO for the Hong Kong Island GC and the candidate returned at the election for that constituency on the grounds that material irregularities occurred in relation to the election as a result of the decision of the RO that her nomination was invalid.
- (ii) On 15 May 2018, Mr LAU Wing-hong, one of the candidates for the New Territories East GC, lodged an election petition (Case Number: HCAL 844/2018) against the RO for the New Territories East GC and the candidate returned at the election for that constituency on the grounds that material irregularities occurred in relation to the election as a result of the decision of the RO that his nomination was invalid.

2.12 As at the production of this Report, the cases mentioned in paragraph 2.11(b) above are yet to be dealt with by the court.

Section 3 – Preparatory Work before the Poll

Major Publicity Activities

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

3.2 Detailed information about this By-election, including the electoral legislation and the Guidelines, press releases, Introduction to Candidates, designated polling and counting stations were uploaded to the election website to facilitate public access. The ICAC assisted in promoting clean and fair election by ways including placing advertisements on local newspapers.

Briefing for Candidates

3.3 The EAC Chairman briefed the candidates and their agents on

the major provisions of the relevant electoral legislation and the Guidelines at a briefing session held on 1 February 2018 at the Lai Chi Kok Community Hall. Candidates and their agents were reminded to co-operate with the relevant departments to ensure that the election would be conducted in an open, fair and honest manner. He stressed that the EAC and the government departments concerned would strictly enforce the requirements of the legislation and the Guidelines.

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

Identifying Venues as Polling Stations

3.5 To allow electors to cast their votes in a more familiar location, the REO had endeavoured to use those venues which were used in the 2016 LegCo General Election as polling stations in this By-election as long as the venues were suitable for use again. However, the REO encountered difficulties in securing some of these venues as polling stations. The main reason was that some of the venues had already been reserved for other purposes on the polling day.

3.6 Notwithstanding, the REO was able to set up 334 ordinary polling stations in this By-election, 319 of them were set up for the Hong

Kong Island, Kowloon West and New Territories East GCs; whereas the other 15 were set up to serve electors of the Architectural, Surveying, Planning and Landscape FC who live in the Kowloon East and New Territories West GCs (the electors concerned did not have to cast the GC vote). Among the 334 ordinary polling stations, 293 (i.e. about 88%) were polling stations used in the 2016 LegCo General Election.

3.7 In addition, the REO has all along been making every effort to identify venues which are accessible to persons with mobility difficulties for use as polling stations. Although preparation for this By-election was under a tight schedule, 313 of the 334 ordinary polling stations (i.e. about 94%) were accessible to electors with mobility difficulties. In individual districts, while some of the venues were considered the most suitable for use as polling stations because of their convenient location, there may not be facilities for persons with mobility difficulties. As such, there was often a need to strike a balance between the convenience to the majority of the electors concerned and the need to facilitate the casting of votes by electors with mobility difficulties. Furthermore, even if the REO were able to identify a venue that was both convenient to electors and accessible to persons with mobility difficulties, its availability for use as a polling station would still be subject to the consent of its management body.

3.8 To facilitate the exercise of the right to vote by persons with mobility difficulties in this By-election, the REO would, as far as

practicable, install temporary ramps at the entrances/exits of certain polling stations and post the contact number of the polling staff beside the ramp so that the persons in need could call for assistance. The REO installed temporary ramps at 47 polling stations in this By-election.

Contingency Measures

3.9 The following arrangements were adopted to cater for inclement weather or other emergencies. Major measures are as follows:

- (a) postponement or adjournment of the poll or the count at one or more polling/counting stations;
- (b) extension of polling hours if a substantial portion of the polling hours was lost because of flooding, power failure or other emergencies at one or more polling stations;
- (c) designation of reserve polling/counting stations to serve as replacement or additional polling/counting stations in the event that the original polling stations, for one reason or another, could no longer function properly or to which electors were denied access; and
- (d) setting up 15 emergency depots to provide logistic support to respective polling stations. Each depot was equipped with vehicles for urgent deployment when the need arose.

Section 4 – The Poll

Recruitment of Polling and Counting staff

4.1 A service-wide recruitment exercise was launched to invite suitable serving civil servants from various government bureaux and departments to serve as electoral staff for this By-election. About 11 500 civil servants from various government bureaux/departments were appointed as PROs, Deputy PROs (“DPROs”), Assistant PROs (“APROs”), Polling Officers and Polling Assistants to carry out polling and counting duties.

4.2 Each appointee was required to disclose if he/she had any close relationship with any candidate, and if so, he/she would not be assigned to work at any of the polling stations concerned. 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 Given the important role played by PROs and DPROs in the election, the REO organised two management training sessions on 9 February 2018 at the Lady Trench Training Centre in Wan Chai to enhance the quality of polling management. Programme topics included important provisions of the EAC (EP) (LC) Reg, quality polling service,

complaints handling, crisis management and keys to building a team. There was also a session in which experienced PROs were invited to share their experience.

4.4 The REO organised seven training sessions from 27 February to 6 March 2018 at the Southorn Stadium and the Queen Elizabeth Stadium to equip the polling staff of ordinary polling stations with the necessary knowledge for discharging their duties. Programme topics included polling and counting procedures, contingency arrangements as well as mock counting demonstration and exercise. Also, polling staff who were tasked to perform statistical compilation duties were required to attend one additional workshop to provide them with hands-on practice in discharging the related duties. A total of seven workshops were organised by the REO at the Southorn Stadium, Lady Trench Training Centre and the Queen Elizabeth Stadium.

4.5 The REO also organised general briefings for all the staff of the Dedicated Polling Stations (“DPSs”) and the BPSSs on the operation of these stations. The briefing for the DPSs was conducted at the Lady Trench Training Centre on 20 February 2018, while that for the BPSSs was conducted at the Kai Tak Community Hall on 23 February 2018.

Registered Electors

4.6 A total of around 2.1 million registered electors whose names were included in the 2017 Final Register of Electors published in July

2017 for the Hong Kong Island, Kowloon West and New Territories East GCs and the Architectural, Surveying, Planning and Landscape FC were eligible to vote in this By-election.

Poll Cards

4.7 A poll card, together with the Introduction to Candidates, a location map of the polling station, a voting procedure guide with an attachment showing documents required for collecting ballot paper(s) and an ICAC leaflet reminding electors of the importance of clean election, were mailed to the electors at least 10 days before the polling day in accordance with section 31 of the EAC (EP) (LC) Reg. For the sake of environmental protection, these documents were printed on recycled papers or paper made from wood-pulp derived from sustainable forest. Furthermore, environmentally friendly ink was used in the printing.

The Arrangements for Polling Stations

4.8 As mentioned in paragraph 3.5 above, polling stations used in the 2016 LegCo General Election were chosen as polling stations for this By-election as far as practicable to facilitate the casting of votes by electors, unless the venues were unavailable on the polling day due to activities already scheduled. A total of 334 ordinary polling stations were set up in this By-election.

4.9 Except for the three Small Polling Stations (“SPSs”) for GCs with fewer than 500 registered electors and 23 DPSs, all GC polling stations were converted into counting stations immediately after the close of poll. On the day preceding the polling day, the polling staff set up these designated venues to suit the functions of polling-cum-counting stations. Ballot paper issuing desks, voting compartments and ballot boxes, etc. were provided at all the polling stations to facilitate the voting by electors.

Polling Hours

4.10 Same as the past general elections or by-elections, the poll started at 7:30 am on the polling day and ended at 10:30 pm on the same day, except for the DPSs set up in penal institutions which had shorter polling hours (9:00 am to 4:00 pm).

Design of Ballot Paper and Ballot Box

4.11 The design of the ballot paper followed that used in the 2016 LegCo General Election. Candidates were allowed to have certain specified particulars relating to them printed on the ballot papers. To ensure that sufficient ballot boxes were provided to the polling stations, the REO carefully tested the capacity of ballot boxes for use in this By-election. Also, there was an adequate provision of ballot boxes to cater for a 100% turnout of registered electors.

Special Polling Arrangements for Imprisoned, Remanded or Detained Electors

4.12 To enable registered electors who were imprisoned or remanded by the Correctional Services Department (“CSD”) to vote on the polling day, 20 DPSs were set up in penal institutions. Owing to security reasons, the poll at these DPSs was conducted from 9:00 am to 4:00 pm. Besides, DPSs were set up at the Happy Valley Police Station, Cheung Sha Wan Police Station and Tin Sum Police Station for the registered electors who were remanded or detained by the law enforcement agencies (“LEAs”) (other than the CSD) on the polling day. Since the LEAs might arrest persons who happened to be registered electors any time on the polling day, these DPSs were opened from 7:30 am to 10:30 pm as with other ordinary polling stations.

4.13 The venue set-up at the DPS was basically the same as that of the ordinary polling station, except that some of the polling materials were specially designed for security reasons.

4.14 The REO issued poll cards and other related electoral documents such as the Introduction to Candidates to the imprisoned registered electors at the addresses of their penal institutions. In addition, address labels were provided to candidates upon request for mailing election mail to this group of electors at penal institutions if the electors concerned had provided the addresses of the penal institutions as their correspondence addresses.

Ballot Paper Issuing Procedures

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

Logistics

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

4.17 A Statistical Information Centre ("SIC") was set up inside the CCC for compiling and collating the hourly voter turnout statistics of all polling stations and the counting results from each counting station. Voter turnout figures were made available to the public on an hourly basis through press releases and election website for this By-election.

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

4.19 A MC was set up at the Hong Kong Convention and Exhibition Centre (“HKCEC”) to facilitate the dissemination of interim counting results to the candidates, the media and members of the public. Press releases and election results were also published at the MC.

4.20 The Police rendered assistance in maintaining law and order in the polling stations, the No Canvassing Zones (“NCZs”), the No Staying Zones (“NSZs”) and the counting stations. The Civil Aid Service also assisted in providing crowd management services at about 275 polling stations with larger number of electors.

Turnout of Electors

4.21 A total of 906 557 electors from the three GCs cast their votes, representing an overall turnout rate of 43.13%. For the Architectural, Surveying, Planning and Landscape FC, a total of 5 392 electors cast their votes, representing an overall turnout rate of 70.77%. A breakdown of the hourly turnout rate for this By-election is shown at **Appendix I**.

EAC’s Visits to Polling Stations

4.22 On the polling day, the Chairman and two Members of the EAC

cast their votes at their designated polling stations. They also visited polling stations in different districts, including the DPSs at the Lai Chi Kok Reception Centre and Cheung Sha Wan Police Station, and the BPSS at the Kai Tak Community Hall. They then proceeded to the CCC to monitor the progress and situation of the poll. Moreover, they met the media together at the Hong Kong Park Sports Centre in the morning and at the Kai Tak Community Hall in the afternoon, to provide electoral 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

Geographical Constituencies

5.1 As only one LegCo Member needed to be elected in each of the three GCs and the Architectural, Surveying, Planning and Landscape FC in this By-election, only one candidate was required to form each list and the candidate who obtained the highest number of valid votes would be elected. For GCs, the polling-cum-counting arrangement was adopted for this By-election. All polling stations, except for the three SPSs with less than 500 electors and 23 DPSs, were converted into counting stations immediately after the close of poll for counting of GC votes cast at the polling stations. Ballot papers cast at the SPSs were directly sent to their respective main counting stations (“MCSs”) for vote counting. Ballot papers in respect of the Architectural, Surveying, Planning and Landscape FC were conveyed to the CCS at the HKCEC for counting.

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

5.3 While the ballot boxes containing the GC ballot papers cast at

the three SPSs were directly conveyed to and counted at their respective MCSs, the ballot boxes containing GC ballot papers cast at the DPSs were sent to the designated BPSSs for sorting according to each GC before they were placed inside a receptacle and delivered to the respective MCSs for counting. The sorting process was open to the candidates, their agents, members of the public and the media for observation. These ballot papers were then mixed with those cast at the MCSs before they were counted, in order to safeguard voting secrecy.

5.4 Before the count, counting staff emptied the GC ballot boxes and first sorted out any misplaced FC ballot papers. The misplaced FC ballot papers were put in sealed envelopes and delivered to the RO of the FC at the CCS. No misplaced ballot papers for the FC were found in the ballot boxes for the three GCs in this By-election.

5.5 Upon the commencement of the count, the polling staff would immediately take up the role of counting staff, and the PRO, assisted by the DPRO(s), APROs and counting staff, was responsible for conducting the count. The PRO was also responsible for determining the validity of questionable ballot papers. An analysis of the ballot papers not counted (including those which were invalid and questionable ones which were rejected by the PROs after determination) is shown at **Appendix II (A)**. An analysis of invalid ballot papers kept by the PROs is shown at **Appendix III (A)**.

5.6 When the counting of GC votes at a counting station was

completed, the PRO would make known the counting results to candidates or their agents present at the counting zone. The candidates or their agents were then given the opportunity to request a re-count of votes. When there was no request for a re-count, the PRO would report the counting results to the SIC by fax. When the counting results of all counting stations in a GC (including GC ballot papers misplaced in FC ballot boxes counted at the CCS) were available, the SIC would inform the RO concerned of the consolidated counting results of all counting stations. The RO then made known the consolidated counting results to the candidates, their election agents or counting agents present at the MC. The candidates or their election agents might at that time request a re-count of votes of all the counting stations for that GC.

5.7 There was no request for re-count from the candidates or their agents of the New Territories East and the Hong Kong Island GCs. The ROs concerned announced the election results at around 4:20 am and 4:40 am on 12 March 2018 respectively. One candidate of the Kowloon West GC requested a re-count. The PROs concerned started the re-count at about 4:50 am on 12 March 2018 after the RO concerned accepted the request for re-count. Upon completion of the re-count, the PROs made known the results of the re-count to candidates, election agents or counting agents at the counting stations, and then submitted the above results to the SIC. When the results of the re-count of all counting stations for the Kowloon West GC (including the GC ballot papers misplaced in FC ballot boxes counted at the CCS) were available, the SIC informed the RO concerned of the consolidated counting results.

The RO then made known the results of the re-count to the candidates, election agents or counting agents present at the MC. As there was no further request for re-count, the RO announced the election result of the Kowloon West GC at about 8:00 am on 12 March 2018.

5.8 The election results for each of the three GCs were published in the Gazette on 16 March 2018 and are now reproduced at **Appendix IV (A)** for easy reference.

Architectural, Surveying, Planning and Landscape Functional Constituency

5.9 The counting of votes for the Architectural, Surveying, Planning and Landscape FC was held centrally at the CCS. FC ballot boxes from different polling stations were delivered to the CCS at the HKCEC for counting after the close of poll. RO for the Architectural, Surveying, Planning and Landscape FC was designated as the Chief RO to supervise the overall operation of the CCS.

5.10 At the CCS, ballot boxes for the Architectural, Surveying, Planning and Landscape FC were delivered to the designated counting zone and opened by the RO or ARO. Areas were designated at the CCS for candidates, their agents, members of the public and the media to observe the count. The counting staff would first sort out any misplaced GC ballot papers. To preserve the secrecy of votes, the misplaced GC ballot papers that were sorted out would remain folded. The misplaced

GC ballot papers were then sealed by counting staff and delivered to the General Zone where misplaced ballot papers of the same GC were grouped together before they were handed to the ROs concerned. There were nine misplaced GC ballot papers found in the FC ballot boxes. The respective ROs were responsible for determining the validity of questionable ballot papers identified by counting staff during the counting process. An analysis of the ballot papers for the Architectural, Surveying, Planning and Landscape FC that were not counted is shown at **Appendix II (B)**. An analysis of invalid ballot papers kept by the PROs is shown at **Appendix III (B)**. The election results of the Architectural, Surveying, Planning and Landscape FC were announced at about 4:30 am on 12 March 2018 and were published in the Gazette on 16 March 2018. They are now reproduced at **Appendix IV (B)**.

EAC's Visits to Counting Stations

5.11 The EAC Chairman and Members visited the counting station at the Jockey Club Government Secondary School after the close of poll and emptied the ballot box together with the Secretary for Constitutional and Mainland Affairs. The EAC Chairman and Members met with the media and provided electoral statistics and answered questions from the media. After that, they visited the CCS at the HKCEC to observe the counting process.

Release of Election Results

5.12 Following the practice adopted in the 2016 LegCo General Election, the REO posted up the counting results of GC votes for each polling station on the Counting Results Display Panels in the MC. Besides, to enhance transparency of the count and facilitate timely dissemination of the counting result in progress, interim counting results were released during the count starting from around 1:10 am on 12 March 2018. The cumulative number of valid votes obtained by each candidate list in the Interim Counting Result System was updated once the counting results at individual counting stations of the GC were confirmed. The interim counting results of the respective GCs and the Architectural, Surveying, Planning and Landscape FC as well as the final election results were displayed on on-site display screens or televisions set up at the CCS and the MC for reference by the candidates, their agents, members of the public and the media. Various interim counting results and election results were also uploaded to the election website for public information on a real-time basis. The press and the media were briefed on the above arrangements before the polling day.

Conclusion of the Count

5.13 The entire count was completed in around nine hours after the close of poll. The EAC Chairman and Member met the media after the announcement of the election results at the MC. 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. Some complaints revealed the deficiencies in certain aspects of the electoral arrangements and helped the EAC make better arrangements for future elections.

6.2 The complaints-handling mechanism also acts as a mutual check among candidates and through complaints, they would better understand the requirements of the electoral legislation and Guidelines. The EAC is committed to handling complaints received fairly and efficiently.

The Complaints-handling Period

6.3 The complaints-handling period for this By-election started from 16 January 2018, i.e. the day when the nomination period commenced, and ended on 25 April 2018, i.e. 45 days after the polling day.

The Complaints-handling Parties

6.4 A total of five designated parties were responsible for handling complaints during the complaints-handling period. They were the EAC,

ROs, Police, ICAC and the PROs (who discharged the duties on the polling day only). Complainants could lodge their complaints with any of the above parties. Each of these parties had their respective areas of responsibilities depending on the nature of the complaints.

6.5 The EAC dealt with cases that were within its jurisdiction and not covered by any statutory provisions involving criminal liability. The ROs were 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, use of sound amplifying devices, etc. The Police handled cases that involved possible criminal liability, e.g. breaches of the EAC (EP) (LC) Reg and criminal damage of EAs. The ICAC attended to cases that involved possible breaches of the Elections (Corrupt and Illegal Conduct) Ordinance, Prevention of Bribery Ordinance (Cap. 201) and ICAC Ordinance (Cap. 204). The PROs received complaints at the polling stations on the polling day and took action on the spot regarding cases which required immediate attention, e.g. use of sound amplifying devices in the vicinity of the station, unlawful activities carried out in the NCZs or NSZs, etc.

6.6 The EAC Secretariat assumed the role of the co-ordinator for collating complaint-related statistical information from other parties and compiling a consolidated report for submission to the EAC during the complaints-handling period.

The Number and Nature of Complaints

6.7 By the end of the complaints-handling period on 25 April 2018, a total of 1 778 complaints were directly received from the public by the five parties mentioned above. Details are as follows:

<u>Complaints-handling Party</u>	<u>No. of complaints directly received from the public</u>
EAC	578 cases
ROs	670 cases
Police	365 cases
ICAC	22 cases
PROs	143 cases
Total:	1 778 cases

The majority of the complaints were related to EAs (700 cases) and disturbances to electors caused by canvassing activities (518 cases). A breakdown of the complaints by receiving party and nature is shown at **Appendices V (A) – (F)**.

Handling of Complaints on the Polling Day

6.8 On the polling day, as mentioned in paragraph 4.18 above, a CC was set up in the REO's office at the Harbour Centre to handle complaints. ROs and AROs also set up district command centres at their offices to receive and handle complaints. The PROs received and

handled complaints on the spot at the polling/counting stations. Moreover, designated police officers were on duty in the police stations in each district to attend to complaints and the ICAC also had designated officers manning a complaint hotline to deal with incoming calls on the polling day.

6.9 The CC, ROs and PROs received a total of 810 complaint cases on the polling day. The majority of these complaints could be resolved on the spot (e.g. unauthorised display of EAs, illegal canvassing in NCZs, noise disturbances to electors caused by loudspeakers, etc.) and they had been expeditiously dealt with and resolved. For the more complicated cases, they would either take a longer time to handle or need to be referred to relevant departments for investigation and follow-up actions.

6.10 Of the 810 cases handled by the CC, ROs and PROs on the polling day, 701 cases (i.e. about 87%) were resolved before the close of the poll and the remaining 109 cases would require further follow-up actions.

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

The Outcome of Investigations

6.12 During the complaints-handling period, the EAC and ROs received 687 cases and 1 098 cases respectively (**Appendices V (B) and (C)**). As at 28 May 2018, of the cases which have been dealt with, 3 cases were found substantiated by the EAC while 558 cases were found substantiated or partially substantiated by the ROs. A total of 233 warning letters have been issued to the infringing parties. A breakdown of the outcome of investigations for the EAC and ROs is shown at **Appendices VII (A) and (B)**. There were still 45 cases under investigation by the EAC and 22 cases under investigation by the ROs.

6.13 The Police received a total of 395 cases (**Appendix V (D)**). As at 28 May 2018, investigation of 381 cases has been completed and a breakdown of the outcome of investigations is at **Appendix VII (C)**. There were still 14 cases under investigation.

6.14 The ICAC received a total of 32 cases (**Appendix V (E)**). As at 28 May 2018, investigation of 5 cases has been completed and a breakdown of the outcome of investigations is at **Appendix VII (D)**. There were still 27 cases under investigation.

Section 7 – Review and Recommendations

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

(A) Reviewing the Arrangements for Briefing for Candidates

7.2 At the briefing for candidates held on 1 February 2018, a candidate had expressed the view that the briefing had taken up considerable manpower and resources and was quite long-winded. He suggested a review be conducted with considerations to improving the arrangements so that candidates could be exempted from attending the briefing. The EAC Chairman responded at the briefing that it was an established practice for the EAC to organise the briefing for candidates with a session for the drawing of lots to determine the candidate numbers and allocate designated spots for the display of EAs. Following a review on the relevant arrangements and having considered the views collected in the past, the drawing of lots is now held before the briefing, so that candidates who do not wish to attend the briefing may leave after the drawing of lots. As election-related legislation and guidelines are quite intricate, the briefing is arranged by the EAC to enable candidates

to raise questions in case of doubt. If candidates were unable to attend the briefing for whatever reasons, their agents could do so on their behalf. Moreover, the contents of the briefing by the EAC Chairman as well as other electoral information has all along been uploaded to the election website for browsing by candidates at any time they wish. In any case, candidates are free to decide whether they will like to attend the briefing or not.

7.3 **Recommendation:** With technological advancement and the increasing dissemination of information, electoral information provided for the candidates uploaded to the Internet have become more detailed². Accordingly, the contents covered in the briefing have already become more concise. In addition, candidates can also make enquiries or request information through email or the REO's hotline. Nevertheless, it is a longstanding practice to organise briefing for candidates, and the briefing is also an opportunity whereby the candidates and/or their agents can meet with the EAC Chairman. However, having considered the problems of disrupting the order that have occurred at briefings in recent years, it is suggested that the REO should review the arrangements as a whole.

(B) Formulation of Contingency Plans

7.4 In accordance with the EAC (EP) (LC) Reg, if it appears to the

² Examples of which are: the Candidate Folder, the election website setting out all kinds of related information, the webpage on clean elections run by the Independent Commission Against Corruption, and the Hong Kong e-Legislation which includes the electoral legislation.

EAC that the election, the poll or the count is likely to be obstructed, disrupted, undermined or seriously affected by any of the following occurrences specified in Schedule 2 to the Regulation, it may adjourn the election, the poll or the count by making a declaration:

- (a) a typhoon or other climatic condition of a serious nature;
- (b) riot, open violence or any danger to public health or safety; or
- (c) an occurrence which appears to the EAC to be a material irregularity relating to the election, the poll or the count.

Apart from formulating a contingency plan in respect of this By-election for handling the adjournment of the election, the poll or the count due to the above-mentioned scenarios, the REO has also enhanced the contingency plan to strengthen the security measures and laid down detailed guidelines, addressing to the security issues of the fallback venue in the 2017 Chief Executive (“CE”) Election. In order to deal with other possible incidents, the plan also contained a series of corresponding contingency measures including those set out in paragraph 3.9 above.

7.5 The CCS and MC of this By-election were set up at the HKCEC in Wan Chai, while the fallback CCS and MC were set up at the Hang Hau Sports Centre in Tseung Kwan O. Whereas suspected wartime bombs were found on two occasions at the Wan Chai construction site for

the MTR's Sha Tin to Central Link in late January 2018, the nearby shops, offices and apartments had to be closed for one to two days and the staff/residents in the buildings concerned had to be evacuated. Since the HKCEC was located close to the construction site where the bombs were found, it was highly likely that the CCS and MC set up at the HKCEC would be unable to operate if bombs were found again in the aforementioned construction site before the polling day. After assessing the risks involved, the REO considered that the chance of having had to operate the fallback venue set up at the Hang Hau Sports Centre was increasingly high. Therefore, comprehensive contingency measures were specifically drawn up for this purpose when preparing the contingency plan for this By-election.

7.6 To ensure that the fallback venue could be operated swiftly and effectively, the REO had equipped the venue with necessary facilities and equipment, and prepared an emergency contact list for contacting officers of relevant government departments and staff of the CCS in the first instance. Furthermore, the REO had also arranged coaches and lorries parked near the HKCEC for swift transport of staff and delivery of FC ballot boxes to the fallback CCS for vote counting when necessary. The REO had also devised plans with the Transport Department ("TD") and the Police to assess the road conditions and the maximum vehicular capacity near the fallback venue and informed the PROs of the transport arrangements for the fallback CCS and the relevant routes in advance. Besides, with the assistance of the Fire Services Department, the REO had secured the use of the Fire and Ambulance Services Academy near

the Hang Hau Sports Centre as a temporary vehicle marshalling area for the parking of over 300 ballot box delivery vehicles where necessary. As for the arrangements for the handling of personal data and relevant security measures, please refer to paragraph 7.9 below.

7.7 **Recommendation:** Given the considerable scale of LegCo general elections and by-elections for GCs, the drawing up of a contingency plan for every election to deal with possible emergencies swiftly is of utmost importance. The REO had, on account of the special circumstances of this By-election, devised detailed contingency measures for the CCS and MC at the HKCEC to ensure that the fallback venue could be operated swiftly and effectively when necessary. The EAC recommends that the REO should, in respect of every election in the future, continue to devise a set of appropriate contingency plans after consulting relevant government departments so as to handle special incidents that may occur in a swift and effective manner.

(C) **Security Arrangements at the Central Counting Station and Media Centre**

7.8 As in the past LegCo general elections, the REO had drawn up a security plan for the CCS and MC set up at the HKCEC to ensure smooth conduct of the count. The security measures followed those adopted at the CCS in the 2016 LegCo General Election which included the installation of closed-circuit television (“CCTV”) cameras and stationing of security personnel for maintenance of order at appropriate locations

inside the venue. Besides conducting bag search, members of the public and the media were also required to go through a metal detector scan before admission which was introduced in the 2017 CE Election for the first time.

7.9 For this By-election, the REO has also strengthened the security measures with respect to the handling of personal data. Downloading of electors' personal data from the REO's information system to mobile devices and taking them out of the office premises was not allowed. In addition, CCTV cameras were installed at the entrance/exit of rooms where hard copies of the personal data were stored and security guards were also deployed for provision of round-the-clock surveillance from the venue set-up to conclusion of this By-election. Separate log entry must be made for individual member of staff accessing the rooms. The relevant information stored in the rooms must be kept in steel cabinets fitted with a crossbar and padlock, etc.

7.10 Moreover, a corresponding security plan was formulated by the REO for the fallback venue at the Hang Hau Sports Centre. Under the premise of protection of personal data, the REO would only deliver hard copies of the personal data to the fallback venue when there was indeed a need to activate the venue.

7.11 The REO has formulated the aforementioned security plan in consultation with the Police and the HKCEC (Management) Limited. The plan was examined by the CEO before its submission for

consideration by the EAC, and was put into implementation after obtaining the approval of the EAC.

7.12 All in all, the security check prior to entry to the CCS and MC was conducted smoothly and good order was maintained inside the venue.

7.13 **Recommendation:** The EAC considers the security plan for the CCS and MC in this By-election has been proper. The security check prior to entry to the CCS and the MC was conducted in a smooth manner and good order was maintained inside the venue. The security measures ensured the safe and uninterrupted conduct of the count, and also effectively safeguarded the proper storage and use of personal data kept inside the venue. The EAC considers that the REO should, in future elections, continue to consult the views of the relevant government departments and agencies in drawing up appropriate security plans for the CCS and MC for the maintenance of good order inside the venue and ensuring smooth conduct of the count.

(D) Facilitating Voting of Polling Staff on the Polling Day

7.14 The REO has always encouraged polling staff who are electors to vote at their designated polling stations on the polling day. During the training sessions organised prior to the election, the REO had reminded PROs that they should, as far as possible, make arrangement for polling staff who intended to vote on the polling day to do so without

disrupting the operation of their polling stations. To avoid polling staff from all voting at a particular period of time, thereby affecting the normal operation of polling stations, the REO had also recommended to PROs some flexible arrangements, such as allowing polling staff to vote on the polling day before assuming their duties at the polling stations, or arranging them to vote during their lunch/dinner breaks. Moreover, in this By-election, the REO had deployed more staff to individual polling stations as required by circumstances, and had arranged additional manpower at emergency depots on the polling day to provide back-up for those polling stations whose staff were away to vote.

7.15 **Recommendation:** Voting is a civil right of all eligible electors. The EAC opines that the Government should proactively consider adopting appropriate measures in future elections, including studying whether arrangements can be made for polling staff to vote in advance, so as to facilitate voting by polling staff. Subject to the successful recruitment of sufficient polling staff, the REO should continue to reserve additional manpower on the polling day to provide support to polling stations in need.

(E) **Provision of Interactive Voice Response System Telephone Enquiry Service for Visually Impaired Electors**

7.16 The REO all along has put in place various measures to help electors with special needs exercise their right to vote. To further facilitate electors with visual impairment to access the “Introduction to

Candidates” and other electoral information, the REO, apart from continuing to provide an enquiry hotline for this By-election, has introduced on a trial basis a 24-hour Interactive Voice Response System (“IVRS”) to enable visually impaired electors to call at any time to listen to the recording made from the text version of the “Introduction to Candidates”. Through the IVRS, electors with visual impairment can also be redirected to operators of REO’s enquiry hotline during its operating hours to obtain other electoral information. Moreover, the REO has also arranged an additional telephone line at all ordinary polling stations to enable visually impaired electors to, if necessary, have access to the IVRS using the telephone in the polling stations to listen to information in the text version of the “Introduction to Candidates” before casting their vote.

7.17 In order for electors with visual impairment to learn about this new arrangement, the REO has sent e-mails to nine relevant non-governmental organisations about three weeks before the polling day to brief them about the various measures and arrangements, in particular the above-mentioned IVRS, that had been put in place to help visually impaired electors vote in this By-election. In addition, e-mails were also sent to those visually impaired electors who had registered for receiving REO’s e-mails regarding electoral arrangement, informing them that they could call the IVRS to listen to the recorded version of the “Introduction to Candidates”. The IVRS came into operation on 15 February 2018 until the close of poll on 11 March 2018. The system ran smoothly in the above period. During the whole service period, a total of 148 cases

involving the use of the IVRS were recorded, 37 of which involved the use of the telephone provided in the polling stations during the polling hours to call the IVRS for relevant information.

7.18 **Recommendation:** The REO has successfully piloted the use of the IVRS in this By-election to facilitate the receipt of electoral information among visually impaired electors. This was partly due to the fact that only a limited number of recordings of the text version of the “Introduction to Candidates” had to be made as there were a relatively small number of candidates in this By-election. Based on the experience gained in this By-election, the REO should review the arrangements concerned including the conduct of a study on the feasibility of providing the relevant service in major elections (e.g. District Council ordinary elections, LegCo general elections, etc.) where a large number of candidates are involved. In case it is impracticable to make numerous recordings of the text version of the “Introduction to Candidates” due to time constraints, the REO should explore other means, including electronic means, to provide the same or like information to electors with visual impairment. Moreover, the REO should consider enhancing the publicity activities in future elections so as to increase the usage of the IVRS service by electors with visual impairment.

(F) **Mechanism for Notification of Commencement of Counting Procedures**

7.19 In this By-election, the REO adopted basically the notification mechanism that was first introduced in the 2017 Central and Western District Council By-election for the Peak Constituency and Tung Wah Constituency in order to ensure that counting of votes would only commence after voting had been completed at all polling stations within the same GC. At the close of poll, the PROs at various polling stations were required to report the completion of voting to the SIC of the REO, after which they would convert the polling stations into counting stations and wait for further instructions from the REO. Upon ascertaining the completion of voting at all polling stations within the same GC, the SIC would issue instructions by Short Message Service (“SMS”) to all PROs and DPROs under the same GC to commence the counting process, with a follow-up re-confirmation over the telephone with the PROs. Regarding the need for a re-count in the Kowloon West GC, the SIC also issued instructions over the telephone to all PROs concerned to commence the re-count. The REO is of the view that the arrangement of using SMS to issue instructions to PROs on the polling day in this By-election was efficient and effective.

7.20 **Recommendation:** The EAC considers that the REO’s arrangement of using SMS to issue instructions to PROs has worked well in this By-election. It opines that the REO should consider continuing with this arrangement in the conduct of various public elections in the future, as well as widening its application, including issuing instructions

on re-count to PROs through SMS.

(G) Arrangements for Return of Polling Venues in Morning after Polling Day

7.21 A total of 319 ordinary polling stations were set up by the REO in this By-election for eligible electors to cast their votes in the Hong Kong Island, Kowloon West and New Territories East GCs. Seventy five of these stations were set up in venues of the Leisure and Cultural Services Department or Home Affairs Department such as sports centres and community centres. While there was no need for the REO to return these venues by 6:00 am on the day after the polling day, the majority of the remaining polling stations which were set up in schools were required to be returned by 6:00 am on the day after the poll for teachers and students to resume classes at normal time.

7.22 In the 2016 LegCo General Election, a large number of electors were still waiting for the issuance of ballot papers at some polling stations when the poll was scheduled to close, causing delays in vote counting. Although fallback venues had been arranged by the REO for vote counting in accordance with established practice, the EAC, after taking into account the risks involved in moving (e.g. the possible effects on vote counting due to the loss of ballot papers or electoral documents by counting staff in the process of moving to the fallback venues), did appeal to the various venue management bodies for assistance so that the counting staff would be allowed to continue vote counting in situ after

6:00 am. However, as the request was made with short notice to the school management, management of some of the schools did make the request that the counting staff could leave the school as early as possible as they were worried their continued staying in the school premises after 6:00 am on the day after the polling day might affect the teachers and students having classes at schools. Having regard to this experience, and taking into account the fact that more than half of the polling stations were set up in school premises, and to avoid the same situation happening again, the REO had liaised with officials of the Education Bureau (“EDB”) before the conduct of this By-election and reached consensus on the arrangements concerning the return of the school premises on the day after the polling day. If the REO envisaged that it was necessary for the counting staff to stay in the school premises for a short period of time after 6:00 am on the day after the poll to continue with the vote counting, the REO with the EDB’s assistance would contact the school management which did not allow counting staff to continue staying in the school premises after 6:00 am so that the counting work could proceed continuously in those schools concerned.

7.23 After the close of voting on the polling day of this By-election, polling stations of the Hong Kong Island, Kowloon West and New Territories East GCs were converted into counting stations immediately for vote counting to commence. The election results for the New Territories East and Hong Kong Island GCs were announced at around 4:20 am and 4:40 am on 12 March respectively. For the Kowloon West GC, as the RO concerned acceded to a candidate’s request for a re-count,

votes for that GC were recounted by all PROs concerned starting from around 4:50 am. To ensure a smooth conduct of the re-count, and given that the processing time for the re-count was expected to be shorter, the REO immediately contacted and informed the EDB and the management of the some 40 schools which were used as counting stations for the Kowloon West GC of the situation, and asked the management for their consent to allow the counting staff to stay inside the school premises for a short period of time after 6:00 am so that they could finish the re-count expeditiously. On the other hand, the REO also contacted the management of other venues which had requested the return of the premises by 6:00 am for a similar arrangement. With the support and collaborative efforts of the various schools and organisations, all the re-counts of the votes in the Kowloon West GC were completed at the same counting stations concerned smoothly. Upon the announcement of the election results of the GC concerned by the RO at around 8:00 am on 12 March, staff of all counting stations cleared up the venues and returned them to the respective management bodies of the premises.

7.24 **Recommendation:** The EAC would like to extend its heartfelt appreciation to the EDB and the management bodies of venues (including schools and other organisations) for their support and assistance in ensuring that the recounting work in the Kowloon West GC was conducted and completed smoothly at the same counting stations concerned. In the past, the entire process from setting up the polling stations to completion of the count could generally be finished within two days. However, the ever-increasing voter turnout for the LegCo

elections in recent years has led to a significant rise in the number of ballot papers to be counted, and as a result, the lengthening of the vote counting time. The current polling hours of Hong Kong (15 hours) are the longest as compared to other countries and regions. Given that the count can only commence after the poll at all polling stations for the particular GC/FC had closed, vote counting at many polling stations cannot be completed until the morning after the polling day. If polling hours in future elections are to remain unchanged and taking into account the possible needs for re-count, the REO may have to borrow the venues for more than two days in order to meet the operational needs. As the polling day is still to be fixed on a Sunday, and most of the polling stations are set up at school premises, the EAC recommends the relevant authority to actively consider all possible solutions, including the use of scientific technology and to designate the day following the LegCo election polling day a school holiday or the concerned school management to allocate part of their school premises after 6:00 am for continuation of the vote counting. In this regard, the entire counting process can be completed within the school area without the need to move to the reserve counting stations in order to return the school premises by 6:00 am. Such arrangement should not unduly interfere with teaching in the classrooms. The above measures will preclude the risks involved in the transport of ballot papers and other election materials from the counting station concerned and also ensure that delay will not be caused to the counting process, and on the other hand avoid inconvenience to the management bodies and users of the relevant venues.

(H) Unauthorised Display of Electioneering Vertical Banners

7.25 In accordance with established arrangements, designated spots will be allocated to candidates if they have informed ROs of their intention to display EAs at the designated spots provided by the Government. When using these designated spots, candidates are required to comply with the relevant conditions, including, inter alia, that they should not display any banners (including vertical banners/buntings) at or near railings and fences by the roadside so as to avoid distraction to motorists, interfere the line of sight of motorists and pedestrians, or block of any traffic sign or traffic light signal. These requirements are consistent with those set out in the “Management Scheme for the Display of Roadside Non-commercial Publicity Materials” of the Lands Department, and also reflect the road-safety requirements set out by the TD.

7.26 During this By-election, there were unauthorised display of EAs in the form of vertical banners at railings by the roadside and pavements, which may affect the road users. Based on the observation in previous elections, the problem of unauthorised display of EAs, especially vertical banners, has become more rampant nearer the polling day resulting in the relevant government departments having to deploy large number of staff and resources to carry out clearance.

7.27 **Recommendation:** The EAC is aware that the existing requirements and conditions for display of EAs are devised by the

relevant departments based on road safety considerations. The EAC is of the view that the Government may consider setting up an inter-departmental working group comprising the relevant bureaux and departments to study and review how more effectively the problem of unauthorised display of EAs in the form of vertical banners can be tackled. The working group may explore options such as selecting suitable locations in various districts for the allocation of designated spots for candidates to display EAs in the form of vertical banners. The EAC understands that even if the above option were adopted, unauthorised display of the EAs by individual candidates might still persist, but at least the candidates' request for displaying EAs in the form of vertical banners will be addressed as far as practicable. The working group may also study how to improve on enforcement and clearance actions against unauthorised display of EAs.

Section 8 - Acknowledgement

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

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

Administration Wing of the Chief Secretary for Administration's Office

Agriculture, Fisheries and Conservation Department

Auxiliary Medical Service

Civil Aid Service

Companies Registry

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Health

Department of Justice

Drainage Services Department

Education Bureau

Efficiency Office of the Innovation and Technology Bureau

Electrical and Mechanical Services Department

Fire Services Department

Food and Environmental Hygiene Department

Government Logistics Department

Highways Department

Home Affairs Department

Hong Kong Observatory

Hong Kong Police Force

Hongkong Post

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Legal Aid Department

Leisure and Cultural Services Department

Marine Department

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

Official Languages Division of the Civil Service Bureau

Official Receiver's Office

Transport Department

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

8.4 The EAC is deeply thankful to the government officers serving as ROs, AROs, PROs, DPROs, APROs and polling and counting staff,

and the barristers serving on the NACs, for their contributions to this By-election.

8.5 The EAC would also like to express its appreciation to the CSD, the Police and other LEAs for their assistance to the REO in making the necessary arrangements for registered electors who were imprisoned, remanded or detained on the polling day to vote.

8.6 Moreover, the EAC is grateful to members of the media for enhancing the transparency of this By-election through their extensive coverage.

8.7 The EAC would like to thank each and every elector who turned out to cast their votes, and those who provided support and assistance throughout this By-election to ensure that the electoral legislation and the Guidelines were complied with.

Section 9 – Concluding Note

9.1 At the time of finalising the report, the EAC is engaged in the preparation for the Eastern District Council Kai Hiu Constituency By-election to be held in June 2018. 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 CE thinks appropriate, so that the public may be kept posted as to how the EAC conducted and supervised this By-election.