

PART ONE

PROLOGUE

CHAPTER 1

AN OVERVIEW

Section 1 – Introduction

1.1 A general election was held on 12 September 2004 to return 60 Members of the Legislative Council (“LegCo”) for the third term of four years commencing 1 October 2004, upon the prorogation of the second term LegCo on 22 July 2004.

Number of Members Returned

1.2 In accordance with Annex II of the Basic Law, the third term of the LegCo shall be composed of 60 members, amongst which 30 were to be returned by Functional Constituencies (“FCs”) as in the last general election. For the Geographical Constituencies (“GCs”), the number of Members to be returned through direct election was increased from 24 to 30. The number of members to be returned for the five GCs and the 28 FCs respectively are listed in **Appendix I**. The Election Committee, on the other hand, ceased to return Members to the LegCo.

This Election

1.3 The election has achieved a record turnout of about 1.78 million electors at the poll. The turnout rate of 55.64 % (1,784,406 GC electors) was also a record, representing an increase of about 2.35% over the former record of 53.29%

(1,489,705 GC electors) in the 1998 LegCo Election. It was keenly contested with 88 candidates nominated for 30 GC seats and 71 candidates nominated for 30 FC seats. Contest was most keen in the New Territories West GC where 12 lists of 29 candidates contested 8 seats and in the Accountancy FC where 9 candidates contested one seat. Out of a total of 159 candidates nominated, 31 (about 19.5%) were nominated for candidacy at a Hong Kong public election for the first time.

1.4 For the Electoral Affairs Commission (“EAC” or “the Commission”), it was also a very demanding and challenging election, plagued by controversial issues and complicated problems from the beginning to the end. These issues, amongst others, included forged electors’ registration forms and suspected cases of voter intimidation. These acts were alleged to have been taken with a view to influencing the voting behaviour of the electors or coercing them to vote for certain candidates. These controversial issues and the negative campaigning among contesting candidates had given rise to a large number of complaints attracting widespread media and public attention. Not only was the Commission required to spend much time and efforts in investigating these complaints, the Chairman was frequently invited to attend interviews or phone-in and pre-election discussion programmes at various radio and television stations to answer questions from the public, election observers and commentators on these issues.

1.5 With a view to improving and refining the electoral process, a number of new measures were introduced for the first time in this election for the convenience of electors and candidates. Firstly, the design and production of an A3 sized GC ballot papers so that the photographs, emblems and names of the bodies to which

candidates belonged or which supported them could be provided to enable easy identification for the electors. The introduction of a larger and much heavier ballot paper gave rise to two consequential measures. The need for the making of newly designed ballot boxes and the adoption of the in situ polling-cum-counting arrangement with a view to speeding up the count and to alleviate the problem involved in transportation of ballot boxes, which would arise from the heavier ballot papers. Secondly, instead of the past practice of person to person calls, the Interactive Voice Response System (“IVRS”) was introduced in order to facilitate more efficient reporting of hourly voter turnout figures from 501 polling stations. Regrettably, administrative errors in the implementation of these new measures in one go on the polling day created problems during the poll and the count. The Commission expresses deep regret and tenders its sincere apology to the public, electors and candidates for the inconvenience and confusion caused by these problems during the election. It would also like to tender its gratitude to those who have accepted the difficulties graciously with understanding and forgiveness.

1.6 Chapters 10 and 11 of this report give a detailed account of these issues and the problems prevailing at the various stages of the elections and explains how the Commission had coped with these problems and overcome the issues at the various stages of election in order to safeguard the secrecy of the vote and defend the integrity of the electoral processes.

Section 2 – Report to the Chief Executive

1.7 The Commission is required under section 8(1) of the Electoral Affairs Commission Ordinance, Cap 541 (“EACO”) to submit a report on an election to the Chief Executive within three months after the polling day of the election.

The Interim Report

1.8 To address the grave concern expressed by the public on the inadequacies and problems in the conduct of the election, an Interim Report was submitted to the Chief Executive on 8 November 2004 which gave an account on the Commission’s investigation outcome, views and recommendations on the following major classes of complaints:

- (a) insufficient supply of ballot boxes and the adoption of various related measures during the poll;
- (b) legality or otherwise of the emergency measures directed by the EAC;
- (c) ballot discrepancies in four FCs;
- (d) eviction or exclusion of candidates or their agents from polling stations;
and
- (e) use of polling stations by disabled persons.

1.9 The Chief Executive released the Interim Report to the public on 10 November 2004.

This Report

1.10 Further to the publication of the Interim Report, this final report aims at giving a comprehensive picture of how the Commission conducted and supervised the election at its various stages, and to report on findings and development of the outstanding complaint cases and issues mentioned in the Interim Report revealed by in-depth investigations after the publication of the Interim Report. In brief, this report gives a detailed account of the preparation work and the implementation of the electoral arrangements, identifies the major shortcomings and problems which prevailed in the election and puts forth the Commission's recommendations for improving the arrangements for future elections in the light of the experience gained from the election.

1.11 Subject to the Chief Executive's agreement, the report may be made public, so as to enhance the transparency of the EAC's work in the conduct and supervision of the election.

PART TWO

BEFORE THE POLLING DAY

CHAPTER 2

DELINEATION OF GEOGRAPHICAL CONSTITUENCIES

Section 1 – The Legal Requirements

2.1 One of the most important tasks that the Commission had to undertake during the preparation stage of the election was the delineation of constituencies for GCs. According to section 4(a) of the EACO, the Commission has to make recommendations on the boundaries and names of GCs for a LegCo election. For the 2004 LegCo Election, the EAC is required by section 18 of the EACO to submit to the Chief Executive a report on its recommendations by 9 September 2003, ie not more than 36 months after the preceding general election held on 10 September 2000.

2.2 The Commission started the demarcation work around May 2003, based on the population forecast prepared by the inter-departmental Ad Hoc Subgroup formed under the Working Group on Population Distribution Projections chaired by the Planning Department (“AHSG”). In order to achieve a higher level of accuracy, it is necessary to project the population distribution figures at a date as close to the election date as practicable. The AHSG was requested to provide a population forecast as at 30 June 2004, since the 2004 LegCo Election was to be held in September 2004.

2.3 The Basic Law stipulates that the number of Members of the LegCo to be returned by GCs is to be increased from 24 to 30 for the 2004 LegCo Election.

Against this background, the LegCo (Amendment) Ordinance 2003 stipulates that –

- (a) there are to be 5 GCs;
- (b) 30 Members are to be returned; and
- (c) the number of Members to be returned for each GC is to be a number not less than 4 nor greater than 8.

2.4 Preliminary delineation proposals were then drawn up based on the stipulated number of GCs and Members to be returned by each of them, as well as the statutory criteria stipulated in section 20 of the EACO and the working principles adopted by the Commission. Reference had also been made to comments expressed by District Officers (“DOs”) of the Home Affairs Department (“HAD”) in drawing up the proposals.

Section 2 – Preliminary Proposals and Public Consultation

2.5 After considering a number of options, the Commission decided to adopt the boundaries and names of the existing GCs, and the number of Members to be returned by each GC was determined as follows:

<u>GC</u>	<u>No. of Member to be Returned</u>
Hong Kong Island	6
Kowloon West	4
Kowloon East	5

New Territories West	8
New Territories East	7
Total:	<u>30</u>

2.6 The above preliminary proposals, with maps, were open for public consultation during the period of 15 July to 13 August 2003 in accordance with section 19 of the EACO. A public forum was held on 7 August 2003 to receive oral representations on the proposals from the public.

Section 3 – The Final Recommendations

2.7 Having carefully considered the public representations, the Commission decided to adopt its provisional recommendations as final recommendations. In accordance with section 18 of the EACO, the Commission submitted a report on its recommendations for delineation of the GCs and the names proposed for each constituency to the Chief Executive on 8 September 2003.

2.8 The report contained a detailed account of the EAC's work in the demarcation exercise, and the recommendations in it were accepted and approved by the Chief Executive in Council on 7 October 2003. Having considered the EAC's report, the Chief Executive in Council made the Declaration of Geographical Constituencies (Legislative Council) Order 2003 on 7 October 2003 which was then tabled in LegCo for negative vetting on 15 October 2003. The finalised set of maps with the delineations was published by the Commission in January 2004 for general information of the public.

CHAPTER 3

REGISTRATION OF ELECTORS

Section 1 – Qualification for Registration

3.1 Only a registered elector is eligible to vote at a LegCo election. The qualifications for registration as electors for the GCs and FCs are provided in the LegCo Ordinance, Cap 542 (“LCO”).

Geographical Constituencies

3.2 An individual is eligible to be registered as a GC elector if he:

- (a) is aged 18 or above as at 25 July 2004;
- (b) is a permanent resident of Hong Kong;
- (c) ordinarily resides in Hong Kong, with his residential address stated in the application for registration being his only or principal residence in Hong Kong;
- (d) holds a valid identity document or applies for a new/replacement identity document; and

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

Functional Constituencies

3.3 The LCO provides the qualification for registration as electors of the 28 FCs. Electorates of FCs are generally composed of members of professional or trade organisations, representative bodies of the relevant sectors, or holders of licences/franchises.

3.4 The FC electorate consists of both natural persons and corporate bodies. A requirement for a natural person to be an FC elector is that the person must be a GC elector. Among the 28 FCs, 18 of them consist of corporate electors. A corporate elector is required to cast its vote through an authorised representative (“AR”) who is a natural person and a GC elector appointed by the corporate elector to vote on its behalf.

3.5 The appointment or replacement of the AR must be registered with the Electoral Registration Officer (“ERO”). A person who is qualified to be an elector of more than one FC can only become an elector of one of the FCs. With the exception of the four special FCs, namely, Heung Yee Kuk, Insurance, Transport and Agriculture & Fisheries, a person can choose to register as an elector for one of the remaining 24 FCs as he qualifies. An FC elector cannot be an AR for the same FC, but can be an AR for another FC. Also, an AR cannot be appointed as the AR of another corporate elector at the same time.

Section 2 – Registration Regulations

3.6 Two sets of regulations were in place since previous elections for the purpose of setting out the procedure relating to the registration of electors. The Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation, Cap 541A (“EAC (ROE) (GC) Reg”) governs the registration of electors for the GCs. On the other hand, the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation, Cap 541B (“EAC (R) (FCSEC) Reg”) caters for the registration of electors of the FCs.

Section 3 – Change in the Registration Cycle

3.7 The cycle of voter registration adopted for the 2000 LegCo general election had been revised for the 2004 election. Formerly, the deadline for applications for registration was 16 March, and the provisional register (“PR”) and the final register (“FR”) were published not later than 15 April and 25 May respectively each year. In 2000, the LegCo general election was held on 10 September, which meant that the FR was published about four months before the election. A noticeable drawback of this cycle was that because of the considerable time gap between the publication of the FR and the polling day, changes in the addresses of the electors during this four-month gap could not be reflected in the FR. As a result, electors who had changed addresses during this time gap could not vote in the constituencies where they currently resided.

3.8 To ameliorate the situation, the Administration looked into the feasibility of bringing the publication of the FR as close to the polling day as practicable and concluded that it could be brought to as close as two months before the election without affecting the preparation work or electioneering activities of the candidates.

3.9 The proposed amendment to the registration cycle was introduced by the Electoral Provisions (Miscellaneous Amendments) Bill 2002, which proposed, among other things, that, in a year when the District Council (“DC”) election is held, the closing date for application for registration would be 16 July, and the publication of the PR and FR would fall on a date not later than 15 August and 25 September respectively. In other years, including the year of 2004, the closing date for application for registration would be 16 May, and the new deadlines for publication of the PR and FR would fall on 15 June and 25 July respectively. After being passed by LegCo, this bill was gazetted on 27 December 2002. Subsequently, the EAC (ROE) (GC) Reg and EAC (R) (FCSEC) Reg were amended accordingly.

Section 4 – The Registration Campaign

3.10 To appeal to the eligible members of the public to register as electors and to remind those already registered to report to the Registration and Electoral Office (“REO”) any change of their addresses should they have moved, a large-scale registration campaign was launched from 3 April to 16 May 2004 under the coordination of the Constitutional Affairs Bureau (“CAB”) and with the joint

efforts of the REO, HAD, Information Services Department (“ISD”) and Radio Television Hong Kong (“RTHK”).

3.11 The registration campaign included a series of publicity and promotional activities, such as announcements of public interests on the television and radio, advertisements in major MTR stations and display of posters. Celebrities were appointed Ambassadors to provide publicity focus and attraction for the campaign. Concerts and shows were held in various shopping malls. To adopt a multi-pronged and results-oriented approach, registration counters at major Registration of Persons Offices were set up to facilitate eligible persons, who turned up at these offices to apply for or to collect their identity cards, to register as electors at the same time. To target those who had changed addresses, household visits to newly developed residential areas were also conducted.

3.12 Of the 536,293 registration forms received as at the statutory cut-off date on 16 May 2004, 496,650 were received during the 6-week campaign period. The total number of electors recorded in the 2004 FR for GCs and FCs was 3,207,227 and 199,539 respectively, among which 303,885 (9.5%) and 44,371 (22%) were newly registered electors.

Section 5 – Suspected Forgery of Voter Registration

3.13 In June 2004, a member of the public said in a phone-in radio programme that she had been notified by the REO that her voter registration application could not be processed as some of the required personal particulars

were missing, when in fact she had not submitted any application. She therefore suspected that someone had forged her signature in the voter registration form and submitted the application on her behalf without her consent. The source of the application form was later traced to a community service organisation in Tseung Kwan O. The incident was widely reported by the news media, and was followed by a large number of similar complaints to the REO. By the end of October 2004, the REO had received 86 complaints involving 536 suspected cases of forged signature on elector registration forms.

3.14 As forgery of documents was a criminal offence, the REO referred all the suspected cases to the Police for investigation. Since there was concern about the authenticity of other voter registration forms faxed to the REO by the same organisation, the REO conducted a search for the voter registration forms received from that organisation, and referred suspicious cases to the Police for further action. The wave of complaints on suspected cases of forged voter registration subsided as soon as the police had started investigation on persons suspected of having involved in the incidents.

3.15 To ensure that the election would be conducted in an fair, honest and open manner, the Chairman of the Commission saw the need to defend the credibility of the voter registration system. He and senior REO officers had attended press interviews and phone-in programmes to explain the established procedures on safeguarding the authenticity of voter registration. He also repeatedly emphasised in public announcements that any persons who were involved in the suspected voter registration scams were unwise and would only

suffer themselves, as electors' dissatisfaction might be reflected in their choices of candidates in the election. The EAC/REO had pledged that if there were any other similar cases in the future, the REO would also refer them to the Police for further action.

Section 6 – The Registers

3.16 The REO published the PR for GCs and FCs on 15 June 2004. It included the names and principal residential addresses of those whose names were included in the previous FR, updated by the REO on the basis of information reported by electors or obtained from other sources, and similar particulars of eligible applicants who had applied for registration before 16 May 2004.

3.17 An omissions list was published in conjunction with the publication of the PR in 2004. This list contained the particulars of the persons who were formerly registered in the 2003 FR but were not included in the 2004 PR and proposed to be omitted from the 2004 FR on the grounds that the ERO had reasons to believe that these persons had been disqualified or had ceased to be eligible to be registered, eg they had passed away or they had changed their principal residential address but the new address was not known to the ERO.

3.18 Both the PR and the omissions list were made available at the REO and all District Offices (that section of the register relevant to the district) for public inspection during the period 15-29 June 2004, when members of the public might lodge with the ERO objections against any entries in the PR. People whose

applications for registration had been rejected or whose names had been put on the omissions list might also lodge claims with regard to such cases.

3.19 By the end of the public inspection period, the ERO received no objections or claims for both GCs and FCs.

3.20 The FR was published on 21 July 2004. It listed the particulars of a total of 3,207,227 electors. A breakdown by GCs and FCs is at **Appendices II to IV**.

CHAPTER 4

LEGISLATION GOVERNING THE ELECTION

Section 1 – Ordinances and Subsidiary Legislation

4.1 The supervision and conduct of the 2004 LegCo Election was governed by the following ordinances:

- (a) the EACO which empowers the EAC to perform its various functions in supervising the conduct of the election;
- (b) the LCO which provides the legal basis for conducting the election; and
- (c) the Elections (Corrupt and Illegal Conduct) Ordinance, Cap 554 (“ECICO”) which prohibits election-related corrupt and illegal activities and is administered by the Independent Commission Against Corruption (“ICAC”).

4.2 These ordinances were complemented by seven subsidiary legislation which provided the detailed procedures for the conduct of the election. They are –

- (a) the EAC (Electoral Procedure) (LegCo) Regulation, Cap 541D (“EAC (EP) (LC) Reg”);

- (b) the EAC (Nominations Advisory Committees (LegCo)) Regulation, Cap 541C (“EAC (NAC) (LC) Reg”);
- (c) the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation, Cap 541A (“EAC (ROE) (GC) Reg”);
- (d) the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation, Cap 541B (“EAC (R) (FCSEC) Reg”);
- (e) the LegCo (Subscribers and Election Deposit for Nomination) Regulation, Cap 542C;
- (f) the Particulars Relating to Candidates on Ballot Papers (LegCo) Regulation, Cap 541M (“PCBP (LC) Reg”); and
- (g) the EAC (Financial Assistance for LegCo Elections) (Application and Payment Procedure) Regulation, Cap 541N (“EAC (FA) (APP) Reg”).

The last two were new regulations that were introduced to provide for the implementation of a newly designed ballot paper and the Financial Assistance Scheme available to candidates.

Section 2 – EAC (Electoral Procedure) (LegCo) Regulation

4.3 To improve the electoral arrangements, which is a continuous commitment of the EAC for every election, the EAC revised the EAC (EP) (LC) Reg and the electoral guidelines taking into account the operational experience of past elections as well as suggestions and complaints received from the public and other parties concerned, with a view to improving the conduct of the election.

4.4 The EAC (Electoral Procedure) (LegCo) (Amendment) Regulation 2004 was made to –

- (a) provide for the counting of GC votes at individual polling stations after the close of poll;
- (b) repeal all references to the Election Committee in the Regulation; and
- (c) make other necessary amendments to streamline the electoral arrangements.

Suspected Voter Intimidation

4.5 In scrutinising this Amendment Regulation, the LegCo and the public expressed grave concern on the protection of the secrecy of the vote and the adequacy of existing legislation against duress on electors with a view to influencing their voting behaviour. The concern had arisen because a number of

callers to radio phone-in programmes claimed that they had received telephone calls, some allegedly from Mainland organisations, urging them to register as electors and vote (or not to vote) for candidates of certain particular political parties. Some even reportedly urged the electors to use camera-equipped mobile telephones to take photographs of their marked ballot papers to confirm that they had cast their votes as instructed. Implicit threats or bribery on the basis of business/employment interests were also allegedly involved in some cases. The issue immediately attracted a spate of media interest and a few complaints were received by the EAC quoting similar incidents. As the complaints might involve breach of section 13 of the ECICO on corrupt conduct to use or threaten to use duress against electors, the cases were referred to the ICAC and Police for investigation.

4.6 Amid raging negative campaigns among rival candidates and growing public concerns of possible behind-the-scene interferences, the EAC considered it of paramount importance to protect the secrecy of the vote and to restore the electors' confidence in the integrity of the electoral system. To address the concern on the use of mobile phones inside polling stations during the poll, consideration had once been given to making it an offence for electors to switch on their mobile telephones or leave them switched on inside polling stations. The idea was subsequently not pursued, as it might be too restrictive and electors who forgot to switch off their mobile telephones inadvertently would be caught by the legislation. It was also considered that the existing legislation, which already made it an offence for people to take photographs in polling stations without permission and to use mobile telephones contrary to a direction of electoral staff, would be sufficient. Nevertheless, to prevent any misconduct while minimising the inconvenience to

electors and, most importantly, to maintain the confidence of the public in the integrity of the electoral system, the Commission decided to adopt a number of administrative and legislative measures to tackle the issue, having regard to the operational implications in implementation. The details included –

- (a) more prominent signs be displayed outside and inside polling stations (including voting compartments) to remind electors of the relevant requirements set out in section 45 of the EAC (EP) (LC) Reg, stipulating that it is an offence for a person to use a mobile telephone, paging machine or any other device for electronic communication, or to film, take photographs or make any audio or video recording within a polling station without the express permission, in writing, of the Presiding Officer (“PRO”), Returning Officer (“RO”) or the EAC;
- (b) on issuing a ballot paper to an elector, the polling staff to remind the elector not to use mobile telephone or camera inside the polling station;
- (c) the curtain in front of the voting compartments be removed so that the polling staff, the candidates and their agents could observe whether the elector was using a mobile telephone or camera inside the voting compartment;
- (d) where space permitted, the restricted zone just outside voting compartments be enlarged and no person would be allowed to enter or stay in the zone when an elector was marking the ballot paper inside the

voting compartment, so that the elector's choice on the ballot paper would be prevented from being seen by other persons; and

- (e) the maximum penalty for offences relating to the taking of photographs at a polling station without permission and violation of the secrecy of the vote (ie sections 45(2) and 96 of the EAC (EP) (LC) Reg) be increased from imprisonment of 3 months to 6 months, apart from a fine of \$5,000.

In addition, publicity measures were also enhanced to remind electors of the above measures through various channels such as press release, announcement of public interest, media interviews of the EAC Chairman and his meetings with political parties or electoral bodies. The EAC Chairman repeatedly emphasised to the public that the secrecy of the vote is the safest bulwark against the alleged duress or threats to vote for a candidate. Apart from the fact that using these illegal means is an offence under the ECICO, the vote is kept secret during the voting process and, as protected by the same statute, no one is required to tell which candidate he has voted for, or is going to vote for.

4.7 The Amendment Regulation was gazetted on 14 May 2004. After consideration by the LegCo, some amendments were made. These include, among others, raising the "200 electors" threshold for the purpose of defining small polling stations to "500 electors" so that ballot papers from polling stations with less than 500 registered electors would be mixed before counting. The LegCo passed the endorsing resolution on 9 July 2004. The amendments were also reflected in the finalised electoral guidelines, where appropriate.

Section 3 – Particulars Relating to Candidates on Ballot Papers (LegCo) Regulation

4.8 To better facilitate electors in identifying candidates of their choice during the voting process, the EAC decided to make a new regulation to allow for the printing of photographs of candidates and particulars of candidates, including the names and emblems of organisations which supported them or to which they were affiliated. The new Particulars Relating to Candidates on Ballot Papers (LegCo) Regulation (“the Regulation”) sets out procedures for printing specified particulars relating to candidates on ballot papers for use in LegCo elections, including –

- (a) the registered name and emblem of a prescribed body or the registered emblem of a prescribed person;
- (b) a personal photograph of the candidate; and
- (c) the words “Independent Candidate(s)” or “Non-affiliated Candidate(s)”.

A prescribed body means a local political or non-political body, and a prescribed person means a person who is registered in a FR of electors for GCs and is not disqualified from being so registered or from voting at an election.

4.9 In formulating the Regulation, reference was made to the former EAC (Printing of Name of Organisation and Emblem on Ballot Paper) (LegCo)

Regulation gazetted in December 1999, which was repealed by the LegCo in January 2000 due to Members' reservations on certain features. The Regulation was drawn up by the EAC at the request of the Administration in the light of comments from some LegCo Members expressing their wish for measures to facilitate easy identification of candidates by electors. In drawing up the Regulation, the EAC took pains to simplify the procedure to make it more user-friendly than the former regulation.

4.10 The Regulation was gazetted on 12 December 2003. After consideration by the LegCo, some amendments were made to streamline the operational arrangements. The resolution to endorse the Regulation was passed by the LegCo on 4 February 2004.

4.11 For the 2004 LegCo Election, 45 applications for registration of name and emblem were received from organisations, political parties and prospective candidates. After consideration, the EAC approved 39 applications. No objection had been received thereafter, and the registered names and emblems were gazetted on 28 May 2004. A register of registered particulars was made available for public inspection as required by the Regulation at the REO office thereafter. A mechanism to de-register the names and emblems that are registered is also put in place.

Section 4 – EAC (Financial Assistance for LegCo Elections) (Application and Payment Procedure) Regulation

4.12 The LegCo (Amendment) Ordinance 2003 enacted on 3 July 2003 provides for a Financial Assistance Scheme for candidates of LegCo elections. Under the Scheme, candidates or lists of candidates who get elected or have received 5% of valid votes or more will be given financial assistance, and the amount payable is the lowest of –

- (a) the amount obtained by multiplying the total number of valid votes cast for the candidate or list of candidates by the specified rate (pitched at \$10 per vote for the 2004 LegCo Election), or, for an uncontested election, the specified rate multiplied by 50% of the number of registered electors for the constituency; or
- (b) 50% of the declared election expenses of the candidate or list of candidates; or
- (c) if the declared election expenses of the candidate or list of candidates exceed the declared election donations of the list, the difference in amount between those expenses and donations (financial assistance is not payable if the declared election donations of a candidate or list of candidates equal or exceed the declared election expenses of the candidate or list of candidates).

4.13 The EAC (FA) (APP) Reg is a new Regulation designed for the purpose

of setting out the detailed implementation procedures for the Financial Assistance Scheme. This Regulation, which was gazetted on 19 December 2003, contains provisions for making claims and their submissions, auditing and verification of claims, withdrawal of claims, payment of claims after verification and repayment of financial assistance to the Government. After consideration by the LegCo, some amendments were made on the operational details and the endorsing resolution was passed by the LegCo on 25 February 2004.

4.14 To assist candidates in complying with the relevant procedures of the Scheme, a set of guidance notes was prepared by the REO, with assistance of the Hong Kong Institute of Certified Public Accountants, to facilitate auditors who are engaged by candidates to perform the auditing task.

4.15 To ensure that the candidates who have applied for assistance under this Scheme have sufficient time to compile the return and declaration of election expenses and donations and to comply with the requirement of submitting an auditor's report on their returns, the deadline for submission of the election expenses return has been extended to 60 days (instead of 30 days) after the gazettal of the result of the election.

CHAPTER 5

THE GUIDELINES

Section 1 – The Preparatory Work

5.1 The EAC is empowered under section 6(1)(a) of the EACO to issue guidelines to facilitate the conduct or supervision of an election. The purpose of producing the guidelines is to ensure that all public elections are conducted in an open, honest and fair manner. The guidelines provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. They also give directions in layman's language on how to comply with the relevant electoral legislation and identify common pitfalls so that candidates can avoid breaching the law and regulations out of inadvertence.

5.2 The Commission has at all times made its best endeavours in refining the electoral arrangements for elections. Before each general election, the EAC will revise the electoral guidelines. The revision is done on the basis of the guidelines used for previous elections, taking into account the operational experience of each election, as well as suggestions and complaints received from the public and other parties concerned. Before the promulgation of each set of guidelines, a 30-day period of consultation will be conducted during which representations are invited from the public and all parties concerned on the proposed guidelines. A public forum will also be held at which the EAC will receive oral representations from the public. The guidelines will then be revised taking into account the views received

during the public consultation period before they are finalised for issue to the public.

5.3 For LegCo Elections in 1998 and 2000, the EAC published a set of guidelines for the exclusive use of the LegCo Elections held in those years. For the 2004 election, the EAC published a set of guidelines which aimed at serving not only the 2004 election but would apply to all LegCo elections and by-elections conducted under the LCO after the date of its publication in July 2004. A loose-leaf format was adopted for the production of these guidelines. In the event that future amendments to the guidelines are necessary, only loose-leaf amendment sheets will be issued without the need to print a new set for every general election. It will save manpower and financial resources in the long run.

5.4 The REO started the drafting work in December 2003, modelling on the 2000 LegCo Election guidelines, and making reference to the guidelines issued for the previous elections, ie the DC Elections, Election Committee Subsector Election and 2002 Chief Executive Election. It also took into account the operational experience in those elections, the DC by-elections and the Village Representatives elections, as well as the complaints and suggestions received in past elections with a view to introducing improvements on the electoral arrangements for the election.

Section 2 – The Draft Guidelines

5.5 The major changes proposed in the draft guidelines, as compared with the guidelines for the 2000 LegCo Election, included the following:

(I) Changes caused by amendments to electoral legislation or introduction of new legislation

- (a) new dates regarding voter registration for GCs and FCs in a non-DC election year;
- (b) revised subscription requirements to allow a candidate list in the GC election to submit no more than 200 subscribers and a candidate in FC election no more than 20 subscribers;
- (c) decentralised vote counting arrangements for GCs and centralised vote counting arrangements for FCs and special FCs;
- (d) new arrangements for printing of specified particulars (including photographs, emblems and political affiliation) relating to candidates on ballot papers; and
- (e) the new Financial Assistance Scheme for candidates, and extension of the deadline for submitting the election expenses return to not later than 60 days after gazettal of election results.

(II) Changes made in the light of operational experience and/or suggestions/ complaints received from past elections

- (a) requirement for each elector subscribing a nomination to sign the nomination form personally;

- (b) more details on how election expenses should be counted for prejudicing the election of a candidate, and how the value of a commercial or non-commercial space for display of election advertisements (“EAs”) and joint advertisements should be accounted for;
- (c) RO to issue a notice to candidates requiring them to remove their EAs posted at the private premises within the No Canvassing Zone (“NCZ”) on the polling day;
- (d) requesting all management bodies of the organisations or buildings concerned to treat all candidates/GC lists of each constituency fairly and equally;
- (e) requiring all persons who put up publicity materials, including those which do not appear election-related, in the nomination period on private premises to declare to the management body concerned whether they are candidates or intend to stand as candidates in the election;
- (f) adding a statement to remind candidates to consider the public’s concern over the noise level of loudspeakers on broadcasting vans;
- (g) more clarifications as to why prior written consent of support was needed, the use of title of office bearer, and whether a candidate needed to share the expenses for the EAs if he appeared in another candidate’s EA to indicate his support;

- (h) a new provision introducing the addition of a caption to a photograph in an EA as a means to minimise misunderstanding regarding consent of support; and
- (i) advising the candidates not to distribute their EAs together with any materials published by any person, organisation, or government agency or department.

5.6 In accordance with the EACO and the established practice, the Commission conducted a 30-day public consultation from 22 March until 20 April 2004. In the light of a suggestion received during a previous EAC consultation exercise, the above changes were highlighted in a Message from the Chairman enclosed in the proposed guidelines, explaining the consultation mechanism and to provide a more focused basis for the public to give their comments. During the consultation period, members of public were invited to give their views on the proposed guidelines and lodge their written representations with the EAC. A forum was held in the afternoon of 2 April 2004 in the conference room of the REO when the Commission was present to listen to the oral representations put forth in person by those who attended the forum. The Commission heard two representations. Before the close of the public consultation period, the draft guidelines were discussed by the LegCo Panel on Constitutional Affairs and the views of LegCo Members were taken into account in producing the final version of the Guidelines on Election-related Activities in respect of the Legislative Council Election (“the Guidelines”). A total of 17 written representations were received through the public consultation exercise.

Section 3 – Changes after Public Consultation

5.7 After considering the representations and views of LegCo Members, the Commission made a number of changes to the proposed guidelines. The major ones include:

- (a) the increase of the threshold for small polling stations from 200 to 500 registered electors, in response to a representation on the preservation of voting secrecy, so that ballot papers from polling stations with less than 500 registered electors would be mixed before counting;
- (b) clarification that materials published by any person, including a candidate, for the purpose of prejudicing a candidate or candidates(s) are treated as EAs, if reference could be made from the materials to identify the candidate(s) being prejudiced;
- (c) a new provision to specify that for current affairs or other programmes on TV and radio which were not election-related, candidates might take part as guests in these programmes insofar as their participation was pertinent; and
- (d) elaboration that comments made by broadcasters for the purpose of promoting or prejudicing a candidate would be treated as EAs, if reference could be made from the materials to identify the candidate

being promoted or prejudiced. If such comments were determined by the Commission as EAs, the Commission would refer the matter to the Broadcasting Authority for appropriate action.

5.8 Apart from changes made as a result of representations received, new arrangements introduced to the EAC (EP) (LC) Reg as mentioned in paragraphs 4.6 to 4.7 above were also incorporated into the Guidelines. The opportunity had also been taken to include other changes to reflect new electoral arrangements, including the new recounting arrangement for GC votes and the inclusion of a guidance note on personal data privacy in respect of electioneering activities.

5.9 The finalised Guidelines were published in July 2004. A press conference was held on 10 July 2004 to announce the publication, and a press release was issued to inform the public accordingly. The Guidelines were made available for browsing at the web and for distribution at a number of venues, including District Offices and the REO.

5.10 After the publication of the Guidelines, the Chief Electoral Officer (“CEO”)/REO had received a number of requests for meetings from prospective candidates and agents as well as delegate of political parties seeking advice on do’s and don’ts in conducting electioneering activities. The REO staff tendered advice and answered questions at these meetings.

CHAPTER 6

APPOINTMENTS AND NOMINATIONS

Section 1 – Appointment of Nominations Advisory Committees

6.1 For the sake of providing the ROs and candidates with free legal advice on the eligibility of the candidates, in case they needed it, 4 legal professionals were appointed as Nominations Advisory Committees (“NACs”) under the EAC (NAC) (LC) Reg. They were Messrs Lawrence LOK Ying-kam, Senior Counsel, WONG Ching-yue, Senior Counsel, HO Bing-kwan, and Anson KAN Kam-choy. All of them were experienced members of the legal profession and were not affiliated with any political organisations. Their appointment covered the period from 19 March 2004 to 6 August 2004 and was published in the Gazette on 19 March 2004. The EAC also issued a press release announcing their appointment on the same date. During their appointment period the NACs received 15 requests from the ROs and candidates for legal advice.

Section 2 – Appointment of, and Briefing for, ROs

6.2 Five DOs of the HAD and 18 directorate officers of relevant policy bureaux were appointed ROs of GCs and FCs respectively on 21 June 2004.

6.3 The EAC Chairman hosted a briefing session for all the ROs in the afternoon of 9 July 2004 at the Hong Kong Polytechnic University in Hung Hom.

Also present at the briefing session were the CEO/REO and representatives of the Department of Justice (“DoJ”), ICAC, Food and Environmental Hygiene Department (“FEHD”), Housing Department (“HD”), Lands Department (“Lands D”) and Leisure and Cultural Services Department (“LCSD”). The EAC Chairman highlighted the major electoral arrangements for the ROs’ attention, including the nomination procedure, appointment of agents, polling and counting arrangements, matters relating to the NCZ and No Staying Zone (“NSZ”), provisions in the legislation and the Guidelines governing EAs and election expenses, and handling of complaints. Representatives from the ICAC briefed the participants on the major provisions of the ECICO and the referral of complaints related to the Ordinance to the ICAC.

Section 3 – Appointment of Assistant ROs

6.4 To provide assistance to the ROs, 69 Assistant ROs (“AROs”), who were senior officers of District Offices or relevant policy bureaux, were appointed. For providing legal advice to the ROs and PROs during the count, 35 AROs (Legal) were also appointed. They were all legal officers, the majority of whom came from the DoJ and the rest of whom came from the Lands D, Land Registry and Legal Aid Department.

Section 4 – Nomination of, and Briefing for, Candidates

6.5 The qualification and disqualification for the nomination of candidates for GCs and FCs were governed by the LCO and the nomination procedure was set out in the EAC (EP) (LC) Reg.

6.6 Nomination of candidates commenced on 22 July 2004 and closed at 5 pm on 4 August 2004, during which candidates handed in their nomination forms in person to the respective ROs. This two-week period was announced in a notice in the Gazette published on 25 June 2004.

Geographical Constituencies

6.7 By the close of nomination the ROs received 37 nominations, of which 35 were confirmed valid by the ROs and two were verified as invalid on the respective grounds of inadequate subscribers and failure to lodge election deposit as required under section 16(3)(a) of the EAC (EP) (LC) Reg and section 40(1)(a) of the LCO. 35 lists of validly nominated candidates for the 5 GCs were published in the Gazette on 13 August 2004.

Functional Constituencies

6.8 By the close of nomination the ROs received 72 nominations, of which 71 were confirmed valid by the ROs and one was verified as invalid on the ground that he was a prescribed public officer at the time of nomination according to sections 39(1) and 39(5)(f) of the LCO. The names of 71 validly nominated candidates for the 28 FCs were published in the Gazette on 13 August 2004. There were altogether 11 FCs which were uncontested.

6.9 To draw the attention of the candidates and their agents to the major

provisions of the relevant electoral legislation and the Guidelines and the important points they should look out for, a briefing session, chaired by the EAC Chairman, was held on 7 August 2004 at the Hong Kong International Trade and Exhibition Centre (“HKITEC”) in Kowloon Bay. Also present at the session were the CEO/REO, representatives from the DoJ, ICAC, Hongkong Post and the Office of the Privacy Commissioner for Personal Data. Subjects covered included requirements relating to EAs and election expenses, appointment and roles of the various types of agents, conduct of electioneering activities, avoidance of corruption and illegal practices and the need to protect the privacy of electors with respect to personal data used for electioneering purpose. The latter was the subject of a number of complaint cases in the 2003 DC Election.

6.10 The EAC Chairman appealed to the candidates and their agents to abide by the requirements laid down in the electoral legislation and the Guidelines and to co-operate with the authorities concerned to ensure that the election would be conducted in an open, fair and honest manner. He stressed that, to that end, the Commission and all the government departments concerned would make every endeavour to enforce the law and the Guidelines.

6.11 After each of the briefing sessions the ROs determined, by means of drawing lots, the order of the candidates’ names that would appear on the ballot paper and the designated spots to be allocated to the candidates for displaying their EAs.

Section 5 – Printing of Introductory Leaflets of Candidates

6.12 As in other public elections, introductory leaflets showing the name, photograph, political platform and other details of candidates would be mailed to electors to facilitate their making an informed choice when casting their votes for particular candidates. As in past elections, the Government Logistics Department (“GLD”) was tasked to print the leaflets. Since a large volume of leaflets would need to be produced, the GLD hired the services of three contractors to help complete the printing work.

6.13 As the REO was required to mail the leaflets to over 3 million electors, the printed leaflets were delivered to the REO by the printer in batches between 11 and 20 August 2004. Following the practice of past elections, the REO staff conducted random checks on the delivered leaflets. As the random checks did not reveal any problem, the leaflets were mailed to electors starting from 17 August. The mailing process had to commence well before the polling day because the leaflets would be mailed to electors together with the poll cards which informed electors of the designated polling stations, and section 31(1) of the EAC (EP) (LC) Reg stipulated that the poll card had to be sent to each elector at least 10 days before the polling day.

6.14 The hand-folding task of the printed leaflets was contracted out by the GLD to 17 Non-Government Organisations (“NGOs”) arranged by the Social Welfare Department with the prior knowledge of the REO. During the hand-folding process, it was found that 12 leaflets were incorrectly bounded, in that the name and other details of a candidate did not appear in consecutive pages. In order

to avoid causing any possible confusion to electors, the REO decided immediately to withhold the mailing exercise and informed electors to ignore the mail that they might have already received.

6.15 In addition, the REO with the assistance of GLD conducted a full-scale check on all the introductory leaflets of candidates before starting to send out the electoral mails again. For easy identification by electors, all introductory leaflets in the new mailing packages carried a chop to indicate that they had been inspected. Despite additional time required for the full checking, the REO had ensured that all electoral mails reached the electors before the statutory deadline. Additional expenses of about \$3.65 million were incurred arising from the incident and consequential remedial actions.

6.16 In response to the request by the Commission, the GLD investigated the incident and reported to the EAC. In its report, the GLD stated that after a post-delivery full-scale check conducted by the REO and the GLD, it was established that due to occasional machine or inadvertent human errors during production, a total of 42 copies of leaflets were found to be defective with printing or binding defects that would affect the presentation of the candidates' platforms (eg, mismatching a list with the platform of another list), out of the 3.31 million leaflets printed. The GLD considered that as the defective copies had not occurred in any large numbers or in any systematic manner, it did not consider that there were any unacceptable or significant errors in the printing or binding processes of the GLD and the three contractors. According to the GLD, there are no acceptable or authoritative acceptable quality levels for printing matters in the local printing trade.

The US Government Printing Office's Quality Assurance Through Attributes Program for Printing and Binding (used in Contract Terms) provided for a typical acceptable quality level of up to 1 critical defect and 5.5 non-critical defects per 100 items. The quantity of defective copies found in the GC pamphlets, being 0.0015% of all copies checked, was well within this standard.

6.17 As for the contractors, the GLD commented that since they had already produced some 6,010 "overs" (ie extra copies) in their print-runs which more than covered the number of defective copies found, the GLD did not intend to claim for damages against them, based on the normal trade practice to replace defective copies on a one-for-one basis.

6.18 The Commission's further enquiries revealed that prior to the REO's decision to conduct a full-scale check, the REO, assisted by the GLD and NGOs, had started to look out for pagination errors in those leaflets not yet sent out to electors. The REO's decision was prompted by the uncertainty of the possible extent of the printing errors among the remainder of the printed leaflets, and the need to avoid causing confusion to electors.

6.19 Having examined the report and subsequent clarification from GLD, the EAC accepted that the GLD had performed its work according to its normal quality control mechanism, and that the REO had taken prudent steps to ensure the accuracy of all unmailed leaflets. The interests of candidates and electors were safeguarded. Nevertheless, the EAC and the CEO regretted the inconvenience and confusion that might have been caused to the public, electors and candidates. The

Commission's views and recommendations on the options to be adopted in future are set out in Chapter 14.

Section 6 – Issue regarding Candidature

6.20 After the close of nomination, a candidate of the Kowloon East GC, Mr. HO Wai-to, was detained on the Mainland. Legal advice was sought on whether the situation would render the candidature of Mr. Ho invalid. After consideration, the DoJ advised that Mr. Ho's detention on the Mainland did not amount to imprisonment in the context of the relevant provisions of section 39 of the LCO, which provided for the disqualification of a person from being nominated as a candidate. The Commission subsequently passed the legal advice to the RO of the GC concerned for his reference. Having considered the advice, the RO was satisfied that Mr. Ho's candidature remained valid.

6.21 A press release was issued on 24 August 2004 to inform the public of the decision and the above consideration, so as to enhance transparency of the election.

CHAPTER 7

POLLING AND COUNTING ARRANGEMENTS

Section 1 – Recruitment of Polling and Counting Staff

7.1 As in previous general elections, a service-wide recruitment exercise was launched to invite suitable serving civil servants from various government departments to serve as electoral staff for the conduct of the election. For the election of GCs, the polling-cum-counting arrangement was to be adopted, and the staff recruited were asked to take up both polling and counting duties, as in the 2003 DC Election. In addition, they would also have to serve FC electors since electors were provided with a one-stop service, ie an FC elector needed only to go to the GC polling station to cast his GC and FC votes. Since centralised counting was to be adopted for FCs, counting staff had to be recruited for the counting of FC votes at the Central Counting Station (“CCS”).

7.2 The general response to the recruitment exercise was moderate. Out of a total of 21,815 applications received, 14,969 staff members of various government were appointed PRO, Deputy PRO (“DPRO”), Assistant PRO (“APRO”), Polling Officer, Polling Assistant, Counting Supervisors, Assistant Counting Supervisors and Counting Assistants on the polling day. There was less choice of candidates for the appointments as compared to the recruitment exercises in previous elections (25,000 and 22,000 applications were received for the 2000 LegCo Election and the 2003 DC Election respectively).

7.3 The appointees who were appointed polling officials ie PRO, DPRO and APRO are senior non-directorate government officers of different professional, general and departmental grades and those who were appointed polling staff (ie Polling Officers and Polling Assistants) are relatively junior officers of departmental, general or other grades. They all volunteered to participate in the conduct of the election. In order to strengthen the built-in stronghold of neutrality, fairness and honesty for the election, the appointees were assigned to take up tasks at polling/counting stations outside their normal working area. Before arranging postings for the appointees, the REO would require them to disclose if they had any close relationship with any candidate, and if so, they would not be assigned to work in any polling station. To ensure that those who were assigned to work in polling stations would be neutral and fair towards the contesting candidates or lists of candidates they were assigned by the REO to man polling stations at random without their prior knowledge. The assignments were done on purpose so as to reduce the possibility that they might act in favour of any candidate in the area covered by the stations. All these measures were taken to bolster the neutrality and independence of the electoral arrangements and to avoid any collusion that might affect the integrity of the polling and counting processes.

Section 2 – Briefing for PROs

7.4 In the light of the operational experience from the 2003 DC Election, the EAC directed that a series of intensified training programmes should be designed for the polling officials and staff. All PROs and APROs are required to attend one

session of intensive briefing with a view to equipping them with the requisite knowledge and skills for the efficient management and implementation of polling and counting functions. Five sessions of such briefings were held for 1,000 PROs and DPROs in August and September 2004 at the Queen Elizabeth Stadium and the Central Library. The training sessions covered important provisions of the EAC (EP) LC Reg, ballot paper control, demonstration of the operation of the IVRS, and a Questions and Answers Session hosted by the EAC Chairman which focused on the determination of the validity of GC ballot papers.

Section 3 – Training for Polling and Counting Staff

7.5 To equip the other polling staff with the necessary operation know-how for discharging their duties, a number of general as well as specific training sessions were organised in August and September 2004 in the Queen Elizabeth Stadium and the Central Library. All polling staff are required to attend one session of general briefing and one workshop with hands-on exercises on compilation of statistical returns for polling staff tasked to perform such duties. Altogether, ten sessions of general briefing and nine workshops were organised.

7.6 As regards counting staff for FC ballot papers, apart from a briefing session held in August 2004 at the Queen Elizabeth Stadium, 12 mock-counting sessions were held at the HKITEC to provide them with hands-on practice.

Section 4 – Identifying Venues as Stations

7.7 As all seats in the 5 GCs were contested, the REO had to identify about 100 suitable venues as polling stations in each of the 5 GCs. The overriding principles in identifying these venues were that they should be easily and conveniently accessible to electors. Since it was the first time the in situ poll-cum-count arrangement was adopted in a LegCo election, another essential criterion in the selection of venues was that they should have sufficient space for conducting both the poll and the count.

7.8 Successful acquisition of a suitable venue depended to a large extent on the helpfulness and co-operation of the owner or management of the venue and the availability of the venue on polling day. The REO staff had encountered difficulties in securing permission from some owners or management bodies of private premises for using their venues. The major reasons for rejecting the REO's requests were that the venues were under renovation or activities had already been scheduled on the polling day. Nevertheless, the REO managed to secure 501 venues to be designated as stations.

Section 5 – Polling Arrangements

7.9 Of the 501 venues, 16 were designated as small polling stations serving an electorate of less than 500 and 287 were designated as special polling stations, ie stations accessible to the disabled.

7.10 On the day preceding the polling day the recruited station staff, with the assistance of the REO staff, set up the designated venues as stations, in such a way

that the place was designed to suit the two functions, ie as a polling station for both GCs and FCs and a counting station for GCs. The place was divided into two portions, one as the polling area where the voting compartments, ballot boxes and ballot paper issuing desks were, and the other as the counting area, temporarily closed till after the close of poll. In some smaller venues where this arrangement was not practicable the place would have to be converted to a counting station after the close of poll.

7.11 Outside each station, areas were designated by the RO as NCZs and NSZs to provide the electors with a free and safe environment on their way to the station. A notice was put up at a conspicuous spot at or near the station, notifying the public of the existence of the related NCZ and NSZ.

7.12 As in the 2003 DC Election, the staff manning the stations were to work through the polling and counting hours. In view of the long polling and counting hours, the manning scale for each polling station for the 2004 LegCo Election was adjusted upwards by one to three polling officers so that the polling staff could take turn for resting.

7.13 During the polling hours the PRO, assisted by the DPRO and APROs, would be the officer in charge of the polling function.

New Ballot Boxes

7.14 As a result of the implementation of the PCBP (LC) (Reg) mentioned in

Chapter 4, the Commission and the REO redesigned a new type of ballot paper of A3 size so that the specified particulars of candidates could be shown on the ballot paper in an easily legible manner, having taken into account the views and suggestions of Members of the LegCo Panel on Constitutional Affairs. Consequently, a new type of ballot box had to be produced as the much larger old ballot boxes would be too heavy to handle when filled with the much heavier new ballot papers. The new ballot box was designed in such a way that ballot papers folded once would fall flat and pile up neatly one over another inside the ballot box. In practice, however, the ballot box could not accommodate as many ballot papers as originally envisaged, giving rise to an early shortage of ballot boxes in many polling stations and a series of consequential problems, the causes and effect of these inadequacies had been described in detail in the Interim Report. Our recommendations for improvements are set out in Chapter 14 of this report.

Section 6 – Counting Arrangements

Geographical Constituencies

7.15 The “list system of proportional representations” was adopted by the election of GCs. In the light of the past experience gained from the four recent DC by-elections and the 2003 DC Election, the Commission considered that the polling-cum-counting arrangement would be appropriate for the election of GCs. This arrangement had proved to be successful in previous DC by-elections and the 2003 DC Election, when the election results were available much earlier than before. It also reduced the time and risk involved in the transportation of ballot

boxes from the polling stations to counting stations, and would have the effect of saving manpower and financial resources.

7.16 Some LegCo Members, however, expressed concern that standards adopted by PROs in determining the validity of ballot papers might not be consistent. They were also concerned about the openness and transparency of the counting process, as candidates might have difficulty in deploying a sufficient number of agents to monitor the counting process at all stations and the conversion of all polling stations to counting stations.

7.17 As regards the concern on the possible inconsistencies in the handling of questionable ballot papers by different PROs, the Commission considered that it should not be a problem, as from the experience in the 2003 DC Election, the PROs had no difficulty in the determination of questionable ballot papers, since the use of the “✓” chop had greatly reduced the number of questionable ballot papers as well as the number of ways that ballot papers could be rendered invalid. Furthermore, an ARO (Legal) would station at each District Office to provide advice for the PROs in the district, while a candidate might appoint counting agents to observe the count and, if necessary, raise objections to the PRO's decisions on the validity of questionable ballot papers. Samples of valid and invalid ballot papers were posted up at each polling station for all to see, enhancing transparency and ensuring fair and consistent determination.

7.18 As regards the openness and transparency of the counting process, according to the experience of past elections, candidates would usually deploy

polling agents to monitor the polling process at polling stations. Candidates may therefore consider appointing their polling agents to be counting agents to monitor the conversion and counting process as well. Furthermore, apart from the candidates themselves and their counting agents, members of the public and the media could also observe the entire counting process.

7.19 The Commission had in fact also explored other options in between decentralised counting and centralised counting like the setting up of several regional counting stations and tasking the responsible RO to handle all questionable ballot papers. Such alternatives were, however, not adopted after deliberation, as they would give rise to logistical problems and delay in the handling and transportation of ballot boxes. The EAC therefore decided to adopt decentralised counting for election of GCs.

7.20 With the exception of the small polling stations, for the election of GCs, all the polling stations were converted into counting stations after the close of poll. When there were two or more polling stations in the neighbourhood, one of which was a small polling station, a station was to be designated by the CEO/REO as the main counting station where the ballot papers cast at the small polling station were to be sent and counted.

7.21 When the count started, the PRO would assume the role of the counting supervisor, ie the officer overseeing the counting process. He would also be responsible for determining the validity of questionable ballot papers.

Functional Constituencies

7.22 With the exception of the four special FCs, namely Heung Yee Kuk, Insurance, Transport and Agricultural & Fisheries for which the “preferential elimination system” was adopted, the “first past the post system” was applicable to the remaining FCs. As in previous LegCo elections, the centralised counting approach was adopted for the election of FCs. To speed up the counting process, the Commission had explored the feasibility of counting by Optical Mark Readers (“OMR”), as in the 2000 LegCo Election. Nevertheless, at a demonstration session to LegCo Members, reservations were expressed by Members on the reliability and credibility of the OMR. As public confidence in the accuracy of count was of paramount importance in the electoral process, the EAC decided that manual counting should be adopted for FCs unless and until the public had full confidence in the use of the OMR. All FC votes cast at different polling stations would be transported to the CCS for counting after the close of the poll.

Central Counting Station

7.23 A CCS was set up in the HKITEC to count the votes of FCs after the poll.

7.24 Based on the experience gained from the last general election, a number of measures were adopted to streamline and speed up the counting of votes for FCs for the 2004 LegCo Election. These included:

- (a) the installation of a computer system to monitor the arrival of the FC ballot boxes delivered from polling stations and to track the movements of such ballot boxes within the CCS;
- (b) the setting up of a general zone where all sealed receptacles (in the form of transparent polythene bags) of ballot papers sorted by FCs would be delivered to this zone first instead of being transferred directly to the respective counting zones for each of the FCs. After all the FC ballot papers had been sorted by constituencies, all sealed receptacles in respect of an FC would then be delivered from this “central clearing house” to the counting zone of that FC in one go. This mode of transportation would reduce the risk of delivering the sealed receptacles to the wrong counting zone;
- (c) the number of counting tables in each counting zone to be determined by the size of the electorate of each FC and hence the number of ballot papers to be counted for that FC;
- (d) the deployment of AROs (Legal) to assist ROs and AROs in opening ballot boxes at the outset to maximise the staffing deployment in order to speed up the count; and
- (e) flexible deployment of counting staff to conduct counts for other FCs after they had finished the count for the FC originally assigned to them.

7.25 A Central Co-ordination Centre was accommodated near the CCS to act as a Command Post for the overall election.

Section 7 – Contingency Measures

7.26 To cater for unforeseen circumstances such as inclement weather or other emergencies like fire or power failure, the following contingency measures were put in place:

- (a) the 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 stations as replacement or additional polling stations to take the place of stations which, for one reason or another, could no longer function properly or to which electors were denied access due to flooding, power failure, etc;
- (d) setting up an Emergency Depot in each of the following four regions: Hong Kong Island, Kowloon, New Territories East and New Territories West, with a reserve pool of stand-by polling/counting staff, a reserve stock of ballot papers and other ancillary items, and vehicles; and

- (e) announcing publicly the implementation of any alternative polling arrangements in case of emergencies such as flooding of individual polling station, and by posting up notices at the stations concerned, wherever necessary.

7.27 The reserve stock of ballot boxes kept in the regional depots mentioned in point (d) above were deployed for use on the polling day. For details, please refer to Chapter 10.

CHAPTER 8

PUBLICITY

Section 1 – An Introductory Note

8.1 Publicity is an important element in the conduct of an election. It arouses the awareness of the public and appeals to them to actively participate in the election by registering as electors, seeking candidature or assisting in canvassing or promotional activities. It also serves to disseminate the relevant information to candidates and electors efficiently and most importantly, to remind them to vote on the polling day. For the 2004 LegCo Election in particular, the significance of publicity was even more profound, the need to fortify the confidence of the public concerning secrecy of the vote and to promote the importance of clean election having been accentuated by the spate of public concern and media interest in the alleged duress to influence electors' voting preference. In the 2004 LegCo Election, the EAC and other government departments concerned contributed much to such publicity. The media of course played a significant role in the exercise.

8.2 Apart from the voter registration campaign described in Chapter 3, other publicity activities organised are detailed in the following paragraphs.

Section 2 – The EAC Chairman and the Media

8.3 At the invitation of a number of broadcasters and newspapers, the EAC Chairman attended more than 30 interviews to talk about the arrangements of the 2004 LegCo Election since the publication of the proposed Guidelines in March 2004 up to the polling day. In fact, the 2004 LegCo Election had attracted widespread attention from the public and the media months before the polling day, as there was much concern about the alleged duress against electors, rumours about electors being asked to take photographs inside polling stations, forgery of signatures on voter registration forms and other electoral matters. The suspected voter intimidation issue and the remedial measures adopted by the EAC are set out in detail in Chapter 4.

8.4 The Chairman had appeared in various television and radio programmes as well as articles of the print media to explain on the said issues, provide an update on the work of the Commission, clarify electoral legislation and guidelines on voter secrecy and urge electors to exercise their voting right on the polling day. He also received calls from the public direct through a number of radio phone-in programmes to answer their queries or listen to their suggestions about the election. Such participation had not only helped enhance the openness and transparency of the election, but also increase public awareness of the on-coming election.

Section 3 – Other Means of Publicity by the EAC

8.5 Apart from meeting with the media, the EAC and staff of the REO had also attended a number of meetings and briefings to discuss electoral issues face-to-face with various bodies. Meetings were held with three political parties to tender advice on the dos and don'ts in conducting electioneering activities and answer questions raised at such meetings, and discussions were conducted with local and overseas bodies to exchange views on electoral issues. Such bodies included the Hong Kong Human Rights Monitor, the National Democratic Institute for International Affairs and the Alliance for Reform & Democracy in Asia. As for our close working partners, briefings were given to officers of the ICAC, including those of its Operations Department and Community Relations Department on the handling of election complaints. In order to let building management bodies understand how applications for electioneering activities by candidates should be fairly handled, briefings were held for officers and outsourced management companies of the HD. Similar briefings were also provided to Mutual Aid Committees, Owners' Corporations and management companies of buildings on a regional basis in the five different GCs. These briefings were well-attended by relevant officers and members of the public, and the audience participated actively during the Question-and-Answer sessions. Through these channels, the importance of a clean and fair election was conveyed to the public.

8.6 The Chairman's briefings with the candidates after the close of nomination were well covered by the media. The Chairman and the two EAC

Members also met the media at the various stops during their visits on the polling day.

8.7 One of the polling-cum-counting stations, the Leighton Hill Community Hall, was open to the public on the day before the polling day to allow members of the public to familiarise themselves with the station set up and voting procedure.

8.8 The REO also issued press releases to keep the public informed of the various important events at the different stages of the election leading to the polling day.

Section 4 – Publicity Launched by Other Government Departments

8.9 The Administration, with a budget of \$30 million, launched a comprehensive publicity programme for the 2004 LegCo Election, to call on all registered electors to cast their votes and to promote public awareness of arrangements and legislative provisions to protect the secrecy of the vote, in order to address the public concern on the alleged duress against electors with a view to influencing their voting behaviour. Publicity activities launched include announcements of public interests on the television and radio, posters, leaflets, parades, carnivals, exhibitions, special TV and radio programmes, and mock voting exercises etc. The publicity programme was coordinated by the CAB with the assistance of the HAD, ISD, ICAC, RTHK and REO. It lasted for eight weeks from 17 July to the polling day on 12 September 2004.

8.10 The RTHK organised election forums for some constituencies which were broadcast on the TV and radio and could be viewed on the RTHK website.

8.11 The ISD launched a website where all the information relating to the 2004 LegCo Election was made available for public browsing.

8.12 The ICAC put up posters and stickers carrying the slogans “Keep Dirty Hands Off Our Elections” and “Support Clean LegCo Election” on most public transport vehicles. Videos on the importance of having a clean election were shown on the video-walls of major shopping arcades.

PART THREE

ON THE POLLING DAY

CHAPTER 9

CENTRAL SUPPORT

Section 1 – The Central Co-ordination Centre

9.1 In line with the practice for past general elections, a Central Co-ordination Centre was set up to oversee the electoral arrangements on the polling day for the purpose of providing a wide range of enquiry, complaint and support services to electors, candidates/agents, ROs/PROs and members of the public.

9.2 Apart from control at the central level, at district level, District Liaison Officers, who were staff of the 18 District Offices, were appointed to handle liaison work between the PROs of polling stations and the respective ROs as well as the Central Command Centre (“CCC”).

9.3 In addition to the above, separate working areas were provided for staff of the CAB, DoJ, Home Affairs Bureau, HAD, ISD and REO at the HKITEC, to facilitate their performance of their respective roles in the conduct of the election.

9.4 There were hiccups in the operation of the CCC which occurred during the poll and the count on the election day. Details of the incidents and the CCC’s efforts in tackling them are set out in Chapters 10 and 11.

9.5 The EAC noted regrettably that the set up of the CCC had proved to be inadequate in coping with a widespread emergency situation which occurred on the

polling day. There is clearly room for improvement in the set up of the CCC from the choice of venue, command structure, manning scale and special contingency plan. The EAC's observation and recommendation for improvements are set out in Chapter 14.

Section 2 – The Complaints Centre

9.6 At the REO office in Harbour Centre, a Complaints Centre (“CC”) was set up to receive and process election-related complaints from the public who might lodge their complaints by phone, by fax or through email. The CC was manned by staff of the Complaints Unit of the EAC secretariat and operated throughout the polling hours from 7:30 am to 10:30 pm.

9.7 A total of 524 complaints were received and handled by the CC on polling day. A total of 2,086 complaints were received and handled by the REO complaint hotline throughout the complaints-handling period from the commencement of the nomination period to 45 days following the polling day. Details of the complaints handled by the REO are in Chapter 13.

CHAPTER 10

THE POLL

Section 1 – General

10.1 On the polling day, 501 polling stations, of which 287 were special polling stations accessible to disabled electors, were opened for operation. The poll started at 7:30 am and ended at 10:30 pm.

10.2 Although there were problems in some polling stations during the poll, it was concluded smoothly and efficiently in a great majority of the polling stations. The overall turnout rate was unprecedentedly high. For GCs, a total of 1,784,406 electors were recorded to have turned up at their respective stations to cast their votes, which represented 55.64% of the voting electorate of 3,207,227. The rate at the last general election in 2000 for GCs was 43.57%. For FCs, 134,852 electors cast their votes for the contested constituencies, amounting to 70.10 % of the total electorate of 192,374 of these FCs. The rate at the last general election in 2000 for FCs was 56.5%. A breakdown of the turnout rate by constituency for this election is shown at **Appendix V**. These figures indicate that the hiccups at the poll in some polling stations might not have dampened the electors' enthusiasm to vote at the election.

10.3 Two types of new equipment were used in the conduct of the poll for this election with a view to facilitate and convenience electors and candidates. These

included a newly designed ballot paper of A3 size and a newly designed ballot box. The large ballot paper was to contain the names and photographs of the candidates on each list of candidates contesting in the constituency, together with their affiliation to political bodies or support from other organisations, if any, and the logos of these bodies, organisations or their personal logos. It made apparent candidates' association with such bodies or organisations and accorded electors with easy and clear reference to the candidates. The new ballot box was introduced to accommodate the heavier ballot papers. Polling-cum-counting arrangement was also adopted, ie each polling station for electors to cast their votes was also to conduct the counting of votes after the close of poll. This arrangement obviated the need to transport ballot boxes to a counting station, saved time and alleviated security problems that would otherwise have to be incurred for the transportation. Electors who had cast their votes and members of the public in the vicinity would also have the convenience of attending the station to observe the count if they were interested. This arrangement had been used and tested in several by-elections of the DCs in 2002 and 2003 and in the ordinary election of the DCs held in November 2003. It had proved to be efficient and problem-free. Unfortunately, the introduction of the new equipment and arrangement for the first time altogether for this large-scale general election had caused serious unforeseen problems affecting the smooth conduct of the poll in a number of polling stations.

10.4 The two major problems arose during and after the poll were (a) insufficient supply of ballot boxes and (b) eviction of candidates and their agents from the polling stations after the close of poll. The EAC has investigated into the cause of these problems and gave a detailed account of its findings on some of the complaints relating to these issues in the Interim Report submitted to the Chief Executive which was published on 10 November 2004. The report can now be

viewed from the EAC's website <http://www.info.gov.hk/eac>. Since the publication of the Interim Report, the EAC has continued with its investigation on the uncompleted complaint cases relating to the controversial issues arising from these two problems. The EAC's latest findings and results of further investigations are set out in the ensuing paragraphs.

Section 2 – Problems during and after the Poll

(a) Insufficient Supply of Ballot Boxes and Consequential Measures Adopted during the Poll

10.5 The insufficient supply of ballot boxes for the GCs and the expedient measures adopted to prevent the poll from coming to a halt had given rise to a number of controversial issues, namely, the opening of ballot boxes, the temporary use of cardboard boxes and over-crowdedness at polling stations. These issues had caused public concern and attracted widespread media attention. The Interim Report has accounted for the reasons for the insufficient supply of ballot boxes and detailed the background, sequence of events, legality of the emergency measures adopted as well as the complaints related to these controversial issues in its Sections 2 to 3 and Appendices II and III respectively.

10.6 After the publication of the Interim Report, the EAC has continued with its investigation into outstanding complaint cases relating to the use of cardboard boxes and opening of ballot boxes during the poll as well as complaints on the over-crowdedness and prolonged queuing at polling stations. An updated summary setting out the investigation findings on these cases is set out at **Appendices VI and VII**.

10.7 The EAC considers that there is clearly room for improvement in the overall planning of logistical support, provision of electoral equipment and replenishment of supplies for the conduct of future elections. The EAC has put forth some recommendations for improvement in Chapter 14.

(b) Eviction or Exclusion of Candidates or Their Agents from Polling Stations

10.8 A major issue that occurred after the poll was the eviction or exclusion of candidates and/or their agents from polling stations when they were being converted into counting stations for counting of GC votes after the close of poll. The EAC had given a detailed analysis of this issue in Section 5 of the Interim Report and set out its initial investigation findings on 15 complaints relating to this issue in Appendix V of the Interim Report.

10.9 Since the publication of the Interim Report, the EAC had spent considerable time and effort in continuing with the investigation of complaint cases relating to this issue. An updated summary of the outstanding cases is at **Appendix VIII**. The EAC will issue replies to the complainants of these cases upon completion of the investigation work.

10.10 Although the investigation findings of the complaint cases confirm that the integrity of polling and counting processes concerned had not been damaged, the issue had aroused suspicion and concern on the credibility of the electoral system. The EAC has conducted a comprehensive review on this issue and made

some suggestions in Chapter 14 with a view to improving the existing arrangement with regard to the admission of candidates and their agents into the polling and counting stations and to forestall the re-occurrence of similar incidents in future.

CHAPTER 11

THE COUNT

Section 1 – Geographical Constituencies

11.1 As described in Chapters 7 and 10 the poll-cum-count arrangement was adopted for this election. All polling stations, with the exception of small polling stations, would be converted into counting stations after the close of poll for the counting of GC votes cast in the polling station, whereas FC votes would be transported to the CCS for counting. While this poll-cum-count arrangement had been adopted in the 2003 DC Election, it was the first time the arrangement was adopted in a LegCo general election.

11.2 The time taken for the 485 polling stations to be converted into counting stations for GCs varied from station to station. On average, the time needed was around one hour, as polling staff was busily engaged in compiling statistics for not only GCs but also the various FCs at the close of poll, apart from the physical conversion of the polling stations.

11.3 The ballot boxes containing cast ballot papers from the 16 small polling stations were transported to their respective main counting stations. These ballot papers were mixed with those cast at the main stations before they were counted, in order to preserve the secrecy of the votes cast in small polling stations in view of their small electorate size.

11.4 The PRO was solely 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 consideration) is shown in **Appendix IX**. The percentage of unmarked ballot papers is quite similar to that in the 2000 LegCo Election. The analysis of invalid ballot papers kept by PROs is shown in **Appendix X(A)**.

11.5 During the count, ROs and AROs of GCs stationed at the GC counting areas of the HKITEC to oversee the count at the polling stations, with the assistance of two AROs (Legal). When the count at a polling station was completed, the PRO reported the counting result to the Statistical Information Centre through the IVRS. The ARO of the GC concerned, upon receipt of the reported counting result from the PRO, called back the PRO to verify the counting result and report such data to the RO. After the receipt of counting results from all polling stations in the GC, the RO then informed the candidates and their election/counting agents of the counting results of all counting stations, the estimated number of misplaced GC ballot papers, questionable ballot papers and invalid ballot papers. After all the FC ballot boxes had been opened at the CCS and all the misplaced GC ballot papers had been counted, the RO then made known the aggregate counting result to the candidates and their agents. The election result was declared when there was no request for re-count.

11.6 The results of the count for respective GCs were declared from about 7:45 am to shortly after 12:00 noon on 13 September 2004, with the first being the

Kowloon West GC and the last being the Hong Kong Island GC, as candidates of the Hong Kong Island GC requested for a re-count of all the votes in the constituency when the counting result was made known to them at about 6:30 am that morning.

11.7 The election results of GCs were published in the Gazette on 17 September 2004 and are now re-produced at **Appendix XI** for easy reference.

Section 2 – Functional Constituencies

11.8 Unlike the decentralised counting arrangements for GCs, the counting of votes for the 17 contested FCs was centrally held at the CCS housed in the HKITEC. As in past elections, in the CCS a public area was designated for candidates, their agents, the media and members of the public to observe the count. One of the ROs was designated the Chief RO to supervise the operation of the CCS.

11.9 Upon receipt of FC ballot boxes from the polling stations, in the first instance, the counting staff sorted out the misplaced GC ballot papers, if any, and delivered them to the relevant ROs of GCs. There were totally 26 misplaced GC ballot papers found in FC ballot boxes. Arrangements were then made to sort the FC ballot papers by individual FCs, mix ballot papers from two or more polling stations to preserve the secrecy of the vote, and then sort them by candidates. The respective RO was responsible for determining the validity of questionable ballot papers identified by counting staff. An analysis of the ballot papers not counted for FCs is at **Appendix XII**. The analysis of invalid ballot papers kept by PROs is

shown in **Appendix X(B)**. The results of all segment counts were then added up to produce the overall result of each FC.

11.10 When the counting result of an FC was declared, it was displayed on the two large video walls installed at the Press Centre for reference of the media and the public, as in the case of GCs.

11.11 The time for declaration of counting result for individual FCs varied. The first FC in this respect was the District Council FC for which the counting result was declared shortly after 8:00 am on 13 September, while the last one was the Accountancy FC for which the counting result was declared around 11:30 am on 13 September.

11.12 The election results of the 17 contested FCs and the 11 uncontested FCs were published in the Gazette on 17 September 2004 and are now re-produced at **Appendix XIII** for easy reference.

Section 3 – Problem in Compilation of Voter Turnout Figures and Announcement of Election Results

11.13 As briefly mentioned in Section 4 of the Interim Report, the failure of the IVRS on the polling day had given rise to the following problematic issues:

- (a) delay and mistakes in the compilation of voter turnout statistics; and
- (b) consequential delay in the announcement of counting/election results after the count.

11.14 The EAC has directed a comprehensive investigation into the failure of the IVRS and to identify the causes of the above problems. Statements and reports were obtained from REO officers of the Election Division and the contractor concerned. In view of the specialised technical nature, an in-depth investigation was conducted by another team of REO staff from the Operations Division with information technology background. Raw data including event logs of the servers handling the incoming calls and the contents of the database on polling day were also examined. Upon the conclusion of the investigation, the team has prepared a report at **Appendix XIV**.

Background and Findings of the Investigation Report

The System

11.15 The IVRS was deployed to automatically collect electoral statistical figures through telephone calls from all 501 polling and counting stations. The major advantage of using the IVRS is to seamlessly collect the required information from the 501 polling stations in a timely manner. Such electoral statistical information included:

- (a) opening time of all 501 polling stations;
- (b) voter turnout figures of all 501 polling stations for GCs and FCs on an hourly basis;

- (c) complaint statistics of all 501 polling stations, 18 District Offices and the Committee & Research Division of REO at three-hour intervals; and
- (d) counting results from 485 counting stations.

736 telephone lines were installed for the IVRS to receive calls from polling stations and the parties concerned.

11.16 The IVRS was first used to collect such electoral figures on the polling day in the 2003 DC Election, and was deployed again in the 2004 LegCo Election. Before deciding to use the IVRS for compilation of voter turnout statistics and reporting the results of the count, the REO had considered other means such as the use of the internet and fax. After taking into account factors including the installation of system equipment, procedures of use and resources involved, it was decided that the IVRS be adopted.

11.17 The prime contractor for the IVRS project was the Continuous Technologies International Limited (“CTIL”), which was selected through a tendering process. It was responsible for programme design, computer hardware and project management. Two other sub-contractors were engaged for provision of telephone lines and the computer centre. The IVRS was made up of three components:

- (a) the IVRS machines which were responsible for receiving telephone calls from polling stations and relevant parties;

- (b) the database machines for storing data; and
- (c) the web server which was responsible for retrieving data from the database machine and then display the information on the web page.

For each of the components, standby machines were set up to cater for 100% resilience and contingency.

Procedures for Collection of Voter Turnout Statistics

11.18 The collection of hourly voter turnout figures from each polling station on the polling day involved the following procedures:

- (a) For GCs, the polling staff at the ballot paper issuing desk would record the voter turnout by marking a stroke of the Chinese character “正” for each elector. The total number of strokes recorded in the hour would be the voter turnout for that hour. For FCs, the polling staff would first take the number of the counterfoil of the last ballot paper issued to subtract from it the number of the counterfoil of the first ballot paper issued at start of the hour in the pad, and then add one. Each polling station would have to compile voter turnout figures for one GC (ie the GC within which it was situated) and up to a maximum of 17 FCs, depending on the composition of FC electors it served.

- (b) The APRO would go round each issuing desk to ask the polling staff for the previous hour's turnout in respect of the GC and each FC, and then add up all the figures for each constituency so reported by all the issuing desks.
- (c) The APRO would then inform the DPRO of the figures, so that the DPRO would report them through the IVRS.

11.19 Should any polling station fail to dial in the IVRS at the specified time, they were required to add the voter turnout figures to the next period of time and report them during the next hour in aggregate. Automatic reminder calls would then be dialed to such outstanding polling stations at the next reporting period.

Procedures for Reporting of Counting Results

11.20 After the counting of votes for GCs at a polling-cum-counting station, the station had to report the valid votes counted for each candidate (or candidate list) and the total number of invalid votes for the station. As in the case of reporting voter turnout, users could only enter into the system after the authentication process of checking the correct password.

11.21 The procedures involved in the reporting of counting results from each counting station were:

- (a) the IVRS to receive the valid votes counted for each candidate (or candidate list) and the total number of invalid votes from the counting station;
- (b) the system to immediately display the information on the IVRS web page; and
- (c) the relevant ARO to give a return call to the polling station manually to check with the PRO against the information displayed on the web. Should no mistake be spotted, the ARO would press a function button on the web to “authorise” the counting results of the counting station.

11.22 After the authorisation by the ARO, the record of the counting station would be frozen in the system and no one, other than the RO, could further amend it.

Supervision of the System

11.23 On the polling day, the IVRS Office was set up in the Press Centre of the HKITEC and manned by REO officers of the Technical Services (“TS”) Team. It closely monitored the work of the CTIL and the display of voter turnout figures as well as counting results on the two video walls in the Press Centre on the election day. An IVRS Support Hotline was also set up to answer enquiries from users of the IVRS in the REO Office at Cornwall House, Quarry Bay.

11.24 For the CTIL, there was one Project Manager stationing at the HKITEC to provide on-site support, with other managerial and operational staff at its Computer Centre in Quarry Bay and its office at Taikoo Place to provide other technical support.

Design of the System

11.25 Out of the four reporting functions of the IVRS, the voter turnout figure reporting function had failed. There was a shortfall in the design of the software programme which seriously impaired the capacity and performance of the database server to retrieve records and perform calculation. That explained why the system was very busy on polling day, except for the first two hours and a few hours in the evening after a patch to rectify the software problem was applied. The programming error led to the cut off of calls by the system before the whole calculation was completed.

Testing Deficiencies

11.26 After reviewing the detailed approach of various kinds of system testing prior to live production on polling day, it was noticed that the test cases in the simulation did not represent the true live situation. Instead of testing on the basis of one GC and 17 FCs (or at least the actual average of 14 FCs) per polling station, the test cases to simulate the reporting process of each polling station consisted of voter turnout figures for one GC and one FC only. Had the simulation in the loading test been more complete and reflected the actual input of each of the 501

polling stations for a 15-hour period, the software problem would have surfaced during the test and rectification could have been made prior to live production.

Contingency Planning

11.27 For the IVRS being deployed on polling day, the CTIL had adopted an approach of 100% redundancy in designing the hardware contingency for all major servers. However, a detailed contingency plan for software system failure was lacking. While it is not practicable to put in place a large pool of staff in reserve for a full-scale manual-based contingency plan, there should have been a more detailed contingency plan with a reasonable level of backup staff just in case there is a need of shifting part of the data collection to manual mode because of a significant system failure. Such a plan was not well defined or organised prior to the election and details were only formulated after problems had been encountered on polling day.

Delay in the Release of Counting Results and Announcement of Election Results

11.28 The counting results of GCs from counting stations were also collected through the IVRS. All counting stations successfully reported the figures through the IVRS, and the AROs subsequently authorised the counting results on the web interface without any problems.

11.29 Below was the time when the ARO authorised the counting result of the last counting station in each GC:

<u>GC</u>	<u>Polling Station</u>	<u>Time of Authorisation by the ARO</u>
Hong Kong Island	C3701	5:44 am of 13 September
Kowloon West	E0501	5:32 am of 13 September
Kowloon East	H0501	5:24 am of 13 September
New Territories West	K0601	4:54 am of 13 September
New Territories East	Q1301	3:53 am of 13 September

11.30 However, the counting results were not promulgated immediately upon completion of the count. Sometime before the first GC (New Territories East) completed its count, the Commission's attention was drawn to a 69% voter turnout rate as indicated by the IVRS computer system, which far exceeded the initially announced figure. The Commission was informed by the REO staff responsible for verification of voter turnout data that this phenomenon occurred in the computer system because of the malfunctioning of the IVRS. Some polling stations encountered problems when using the IVRS to report voter turnout figures. Thus, the voter turnout data had to be verified manually with all the 501 polling stations. The Commission's investigations have revealed that the inflated turnout rate was caused by the merging of the updated data (ie data verified manually) from the back up database with the old data in the online database (ie data supplied through the IVRS). During the merging process, the updated and old data existed at the same time. It was only after the merge was completed and verified that the old data was purged from the online system. During the interval, the voter turnout displayed on the IVRS computer system was therefore much higher than the actual turnout, and the percentage of votes counted which was based on these inaccurate

figures was therefore also erroneous. While awaiting the completion of the manual verification of the voter turnout figures, the Commission decided to suspend the display of all data on the video walls after 4:00 am of 13 September, so as not to mislead the public. At around 6:30 am the verification of voter turnout figures was completed. The counting results were then made known to candidates. The delay (from the completion of the count to the completion of the verification of voter turnout figures) in the release of counting results for each GC, is as follows –

<u>GC</u>	<u>Delay in Promulgation of Counting Results</u>
Hong Kong Island	46 minutes
Kowloon West	58 minutes
Kowloon East	66 minutes
New Territories West	96 minutes
New Territories East	157 minutes

Responsibilities

11.31 The root cause of the problems encountered on 12 September was the system design flaw admitted by the CTIL. The software developed by its project team contained a serious bug which overloaded the system capacity and in turn caused all the disruptions in reporting the hourly voter turnout figures by polling staff. If this bug had been detected and avoided at the test stage, the chaotic situation in collecting the voter turnout would not have happened.

11.32 The test plan developed by the CTIL was far from satisfactory. The user requirement had been clearly conveyed to the vendor at the very first beginning.

This was well documented during the tendering stage and the project team of the CTIL should be fully aware of the basic requirement for the system to report the hourly voter turnout figures for at least one GC and up to 28 FCs. It was most unfortunate for the project team to come up with a test plan which simulated the reporting requirement for one GC and one FC only. It might be due to their belief (as stated in a letter from the CTIL dated 20 September) that “the most probable area of failure for the kind of system arises from high levels of concurrent activity ... the problem of the cumulative effect of data collection encountered on Election Day did not appear during the testing duration.” The emphasis of the stress test was therefore placed on the ability of the system to make connections for a large number of calls at the same time and the possibility of a problem in software was neglected. Had the test plan been more carefully thought out, the fatal error in the system design should have been detected much earlier and rectification made before the polling day.

11.33 The contingency plan proposed by the CTIL concentrated on hardware failure only. The standby machines were proven functional when the vendor first suspected that the system failure was due to hardware problem and triggered the pre-defined contingency of switching the operation of the primary database server to the secondary server. Unfortunately, the problems on 12 September did not lie in the hardware and the vendor did not have a contingency measure to cater for the scenario of a software failure. The patch to rectify this software problem took too long to develop. The time taken to find a solution far exceeded the requirement stipulated in the User Requirement Specification Document, ie the IVRS must be capable of resuming its operation within 8 minutes in case of any system failure.

11.34 The TS Team of the Election Division of the REO could have been more proactive in supervising the vendor, especially during the testing stage. The REO staff involved in this project relied too heavily on the vendor in preparing the test plan and devising the contingency measures in case of system failure. As the end users of the system, they had a role to play in monitoring the performance of the vendor. Before endorsing the test plan proposed by the vendor and accepting the result of the test that the system was ready for live production, the officers responsible should have been prudent enough to question whether the test conducted by the vendor did actually simulate the real situation. The subject officers, probably due to their lack of adequate experience and expertise in the IVRS trade, did not cast doubt on the testing approach adopted by CTIL.

11.35 Based on the investigation findings, the REO would seek legal advice from the DoJ on appropriate follow up action with the CTIL including the question of possible compensation.

11.36 The REO is in the process of setting up an Information Technology Management Unit which will comprise professional IT contract staff from the private sector. It will provide technical support for IT projects and administer the implementation and management of e-government initiatives in the department. In future elections, the unit may provide technical advice to end-user divisions on IT related projects, such as IVRS or optical mark recognition systems, that may be employed in the process of polling or counting.

Section 4 – Ballot Discrepancies in four FCs

11.37 Another controversial issue which occurred during the count concerned the counting of votes for four FCs, namely Social Welfare, Labour, Accountancy and Health Services, as some candidates of these FCs claimed that there were discrepancies between the number of ballot papers counted and the number of voter turnouts as announced. A candidate of the Accountancy FC has raised subsequent questions relating to the methodology adopted for accounting for ballot discrepancies. Since Section 4 of the Interim Report has already provided detailed explanation in this aspect, it will not be reiterated in this report to avoid repetition.

11.38 Apart from the four FCs mentioned above, two complaints were received from LegCo Members (one by the Hon Ronny Tong and the other by the Hon HO Chun-yan and his group) alleging that the number of votes counted was 350 less than the number of ballot papers issued for the Education FC. The EAC has made an investigation to check the voter turnout figure, the number of ballot papers recorded in the ballot papers accounts as well as the actual number of ballot papers counted. The findings are as follows –

	(A)	(B)	(C)
	Voter turnout figure (as provisional reference only, as verified)	Ballot paper account figure (total number of ballot papers believed to be in ballot boxes, as verified)	Number of ballot papers counted
Education FC	55,956	55,914	55,898

11.39 It is noted from the table above that the voter turnout figure and the

number of ballot papers issued (ie columns (A) and (B)) were both greater than the number of ballot papers actually counted (ie column C).

11.40 Regarding the voter turnout figure in column (A), as stated in paragraph 4.5 of the Interim Report, the voter turnout figure announced on an hourly basis were just an indicator showing the general trend of the number of electors turning up at the poll, and these figures were meant for provisional reference only. In view of the difference of 58 between columns (A) and (C), which only constituted about 0.1% of the voter turnout figure, it is considered that there was nothing irregular about the relatively small discrepancy.

11.41 As regards the difference of 16 between the ballot paper account figure and the number of ballot papers counted (ie columns (B) and (C)), as already stated in paragraph 4.3 of the Interim Report, this phenomenon is common in elections, as an occasional elector may obtain a ballot paper from the issuing desk, but, instead of marking it and casting it into the ballot box, take it away. The relatively small discrepancy (which only constituted about 0.03% of the ballot paper account figure) is acceptable and unexceptional, for it had always been accepted by candidates and all concerned in all past elections without question.

11.42 In any case, the differences of 58 and 16 would not affect the result of the election, as there was a large difference of 35,362 between the votes obtained by the candidate who was elected and the votes obtained by the runner-up. It is therefore considered that the differences should not be a cause for concern with regard to the election result of the Education FC.

Section 5 – Impact on Late Announcement of Election Results

11.43 Section 3 above has accounted for the late announcement of election results for GCs which was relating to the problem in compilation of voter turnout statistics. There were, however, other issues related to the late announcement of election results. These included long working hours of the polling-cum-counting staff, as well as inconvenience caused to the venue management of some polling stations.

Long Working Hours of the Polling-cum-counting Staff

11.44 For the polling-cum-counting arrangement, which was similar to that adopted in the 2003 DC Election, all polling staff recruited to man the polling stations, with the exception of those working in small polling stations, had to work through the poll and the count. But unlike the 2003 DC Election, the compilation of statistical returns was more complicated because of the FCs. Nevertheless, the completion time of the count varied from station to station, the earliest at 11:57 pm on 12 September and the latest at 5:37 am on 13 September.

11.45 While the working procedures and time needed for the poll and the count did not vary greatly as compared with those of the 2003 DC Election, the time that polling staff could leave the polling station was much later in the 2004 LegCo Election. There were, on average, about 100 polling stations in each GC, and the counting results of all polling stations in the GC had to be added up before the overall result could be produced. As indicated in paragraph 11.29 above, the time

that AROs verified the counting result of the last polling station in their respective GCs ranged from 3:53 am to 5:44 am on 13 September. After obtaining the overall result of the whole GC, the RO would need to inform the candidates of it and see if there was any request for re-count.

11.46 As a result, a polling station which had completed the count for GCs votes cast in the station within a short time would still need to wait for the completion of count in the last polling station and the confirmation that no re-count (or further re-count) for the whole GC was required, before they could finish work. These extra procedures were peculiar to a LegCo election (as there was normally only one polling station in most of the constituencies in DC elections), and the completion of such steps required much more time. The situation was further exacerbated by the problem in the compilation of voter turnout statistics as stated in paragraph 11.30 above.

11.47 The overall result was that polling staff was requested to stand by at the counting stations and were exhausted by the unexpectedly long waiting time which extended well into the morning of 13 September. Polling/counting staff was told before the polling day that the estimated time of their release would be about 4:30 am when all the ROs would have decided whether a recount had to be conducted. The polling/counting staff eventually had to stay in situ for approximately six hours more before they were given permission by the ROs to close down the counting stations and leave. All the polling/counting staff had subsequently been paid an additional honorarium of \$500 for the extra working hours.

Inconvenience to Venue Management of Polling Stations

11.48 Owing to the late release of polling staff at polling stations, inconvenience was also caused to the venue management of stations which had scheduled activities in the morning of 13 September, such as schools and community centres. The Commission is particularly grateful to them for their understanding and patience in this regard.

Conclusion

11.49 In view of the above issues, it is considered that a review should be made on the working hours of polling staff and the counting arrangement for GCs. Details of the recommendations are in Chapter 14.

Section 6 – Error of Reporting of Counting Results by two Counting Stations

11.50 In the course of the checking of the counting forms for all 485 counting stations after the election, the REO discovered that two counting stations made mistakes when they reported the counting results through the IVRS. The two stations were J3301 SKH Kei Lok Primary School in Ngau Tau Kok and K1401 Lei Muk Shue Community Hall in Tsuen Wan.

Polling Station J3301 SKH Kei Lok Primary School

11.51 According to the counting forms for the station, the DPRO who was responsible for reporting the counting results reported totally 284 valid votes less than the actual valid votes counted. As in the case of other counting stations, the counting form that recorded the counting results for polling station J3301 contained the following information –

- (a) the number of valid votes counted for each candidate list before determination of the questionable ballot papers by the PRO;
- (b) the number of votes recorded on questionable ballot papers that were accepted by the PRO for each candidate list; and
- (c) the aggregate of the number of votes for (a) and (b) above for each candidate list.

11.52 Counting stations only needed to report the data of paragraph 11.51(c) when reporting the counting results through the IVRS. The REO found that the DPRO of polling station J3301 wrongly reported the data of paragraph 11.51(a) above through the IVRS as if they were the data of paragraph 11.51(c) above. The mistake was due to his carelessness. The discrepancies between the reported results and the actual results are set out in Table 1 below. The relatively small discrepancies did not affect the election results.

Table 1

Candidates List	Candidates	Number of valid votes counted for the station			Number of valid votes counted for the GC	
		Number reported to IVRS (a)	Actual number counted (b)	Discrepancy (b) - (a) (*)	Number announced by RO on the Election Day	Verified number after the Election Day
1	LI WAH MING WU CHI WAI HO WAI TO	862	915	53	56,409	56,462
2	CHAN KAM LAM CHOI CHUN WA CHAN TAK MING	729	847	118	55,188	55,306
3	CHENG ALBERT JINGHAN TO KWAN HANG ANDREW	1,286	1,341	55	73,424	73,479
4	LEUNG KAH KIT ALAN	782	796	14	56,161	56,175
5	CHAN YUEN HAN LAM MAN FAI TANG KA PIU	865	909	44	52,520	52,564
Total :		4,524	4,808	284	293,702	293,986

* The number is same as the number of votes recorded on the accepted questionable ballot papers.

Polling Station K1401 Lei Muk Shue Community Hall

11.53 For polling station K1401, the DPRO input an incorrect figure of “598” as the valid votes counted for candidates list number 7 through the IVRS. The correct number as shown on the counting form should be “593”. The mistake was due to his carelessness. The discrepancies between the reported counting results and the actual counting results are set out in Table 2 below. The relatively small discrepancies did not affect the election results.

Table 2

Candidates List	Candidates	Number of valid votes counted for the station			Number of valid votes counted for the GC	
		Number reported to IVRS (a)	Actual number counted (b)	Discrepancy (b) - (a)	Number announced by RO on the Election Day	Verified number after the Election Day
1	CHAN WAI YIP ALBERT	194	194	0	36,278	36,278
2	LEE WING TAT CHAN YUEN SUM	1,201	1,201	0	62,500	62,500
3	HO CHUN YAN CEHUNG YIN TUNG	51	51	0	62,342	62,342
4	LEUNG YIU CHUNG WAN SIU KIN ANDREW	359	359	0	59,033	59,033
5	CHOW PING TIM	19	19	0	1,725	1,725
6	CHAR SHIK NGOR STEPHEN	38	38	0	9,116	9,116
7	TAM YIU CHUNG CHEUNG HOK MING LEUNG CHE CHEUNG AU YEUNG PO CHUN TSUI FAN CHAN HAN FAN LO KWONG SHING ANDY NG KING WAH	598	593	- 5	115,256	115,251
8	NG TAK LEUNG	8	8	0	1,920	1,920
9	CHOW LIANG SHUK YEE SELINA TING WOO SHOU KENNETH	142	142	0	50,437	50,437
10	LUI HAU TUEN SIU SHING CHOI CHAN CHOI HI	13	13	0	4,511	4,511
11	LEE CHEUK YAN IP NGOK FUNG	159	159	0	45,725	45,725
12	YIM TIN SANG KONG FUNG YI TAI YIN CHIU KWUN TUNG WING	8	8	0	14,570	14,570
Total :		2,790	2,785	- 5	463,413	463,408

11.54 The mistakes made by the two DPROs had nothing to do with the IVRS. The IVRS was found to be effective and reliable in receiving and calculating the counting results reported by counting stations. The AROs, on the other hand, were not able to realise the mistakes as they did not have access to the counting forms prepared by the counting stations at the material time. The mistakes were merely made by the carelessness of the reporting staff.

11.55 While the IVRS was effective in processing the counting results reported by counting stations, it was, same as other computer systems, not able to detect data wrongly input due to human errors. Furthermore, there were complaints that the working time for the polling-cum-counting staff in the election was too long. To address these problems, the Commission would consider seriously as to whether the decentralised counting arrangements should be modified such as setting up a district counting station for counting all the votes within the district or setting up a regional counting station for counting all the votes within the GC. Details of the recommendations are in Chapter 14.

Section 7 – Posting of Counting Results at the Press Centre

11.56 There were complaints that the counting results of some 100 counting stations were not displayed at the notice board outside the Press Centre on 13 September 2004 and that such results were only uploaded to the election website on 15 September 2004.

11.57 Staff of the CCC would post the counting results for individual counting stations on the notice board upon the ARO's confirmation that he had verified the counting results with the station. The posting action started at about 12:30 am on 13 September 2004 but was suspended shortly after 4:00 am (see paragraph 11.30 above). When the ROs started declaring the election results at about 7:30 am at the Press Centre, staff of the CCC resumed posting up the counting results. The results of all 485 counting stations were posted up by about 10:00 am.

11.58 On 15 September, the REO provided a set of counting results of the relevant counting stations for the candidates, and uploaded the results to the election website at the same time. The results released on 13 September and 15 September were identical.

CHAPTER 12

EAC VISITS

12.1 As in previous elections, the three Members of the EAC paid personal visits to the polling and counting stations to see what was happening on the spot. Each of the Members had his/her individual itinerary throughout the day, which together covered a total of 23 polling stations and 11 counting stations in the 18 districts. Early in the morning on the polling day, they first cast their votes at the polling station to which they were allocated. Then they assembled at the Press Centre of the HKITEC in Kowloon Bay to meet the media before embarking on their tours. Before noon they met again at the Boundary Street Sports Centre No.2, a polling station in the Yau Tsim Mong District, where they briefed the media on their views about the polling arrangements observed during their morning visits. After lunch they started with the visits again and gathered again at the CCC Kei Wan Primary School (Aldrich Bay) in the Eastern District to meet the media to round up their daytime round of visits.

12.2 In the evening of the polling day the EAC Members joined together slightly before 11 pm at the Leighton Hill Community Hall, a counting station in the Wan Chai District, where the Chief Executive, EAC Chairman and Secretary for Constitutional Affairs opened and emptied a ballot box. Thereafter the EAC Chairman and Members each went on their visits of counting stations and then assembled at the Central Co-ordination Centre after midnight to wait for the

election results. After the close of count the EAC met the media to sum up on the count.

12.3 The EAC has obtained first-hand information and given directives on issues relating to the poll and the count on the polling day, the details of which are in Chapters 10 and 11.

12.4 Apart from the scheduled visits stated in the paragraphs above, the Chairman of the Commission had also paid a visit to the Ying Wa Girls' School when he was aware of the crowded condition there, and stayed until the situation improved later in the day after permission had been obtained by the PRO from the venue management to expand the polling station to the carpark.

PART FOUR

VOICES FROM THE PUBLIC

CHAPTER 13

THE COMPLAINTS

Section 1 – A General View

13.1 Complaints in elections are common. The complaints-handling mechanism is one of the means adopted by the EAC to safeguard the fairness and integrity of the electoral system.

13.2 With its experience gained from processing complaints in the past years, the EAC noticed that some complaints revealed deficiencies or errors in certain areas of electoral arrangements and prompted the EAC to look for remedial measures that would bring about better arrangements for future elections.

13.3 Complaints also provide a monitoring system to candidates to exercise mutual checks among themselves and through these complaints, they understand the electoral law and guidelines better. The EAC has all the time been endeavouring to handle the complaints received efficiently and fairly to let the public know that justice is safeguarded and to ensure that the complaints-handling mechanism is not abused.

Section 2 – The Complaints-handling Period

13.4 The complaints-handling period started from 22 July 2004, ie the day when the nomination period commenced, and ended on 27 October 2004, ie 45 days after the polling day.

Section 3 – The Complaints-handling Parties

13.5 During the complaints-handling period, five different parties were responsible for processing complaints: the EAC, ROs, Police, ICAC and, on the polling day, the PROs as well. Members of the public could lodge their complaints with any of these parties. Each of these parties had their respective area of responsibilities for handling complaint cases. A committee, known as the Complaints Committee (“CCm”), was set up under the EAC to deal with cases that were within its jurisdiction and not covered by any statutory provisions involving criminal liability. The CCm comprised all three Members of the EAC and a District Court Judge. It was supported by the Complaints Unit of the EAC secretariat. The division of work among other parties was as follows:

- (a) the ROs were responsible for handling complaint cases of a minor nature under the authority delegated to them by the EAC, eg those relating to EAs, electioneering activities conducted on private premises, use of sound amplifying devices, etc;
- (b) the Police handled cases that involved criminal liability, eg breaches of the EAC (EP) (LC) Reg and criminal damage of EAs;
- (c) the ICAC attended to cases that involved breaches of the ECICO, Prevention of Bribery Ordinance, Cap 201 and ICAC Ordinance, Cap 204; and

- (d) the PROs received complaints on the polling day at the polling stations and took action on the spot on those cases which required immediate attention, eg use of sound amplifying devices in the vicinity of the station, unlawful activities carried out in the NCZ or NSZ, etc.

Section 4 – The Complaints: Number and Nature

13.6 By the end of the complaints-handling period a total of 3,914 cases were received direct from the public by all of the five parties: the CCm (1,463 cases), ROs (1,099 cases), Police (721 cases), ICAC (87 cases) and PROs (544 cases). The majority of the cases concerned EAs (931 cases) and disturbances to electors caused by loudspeakers/canvassing activities over the phone or at the electors' residence (741 cases). Apart from the above, each of the parties also received complaints which were referred from the other parties. A detailed breakdown of these cases by the receiving party and nature is shown on **Appendices XV (A)–(F)**. Many of the complaints received related to issues concerning the conduct of the poll and the count mentioned in Chapters 10 and 11. For certain categories of cases which are worth special attention, they are detailed in Sections 7 to 9 below.

Section 5 – Handling of Complaints on the Polling Day

13.7 On the polling day, as mentioned in Chapter 9, a CC was set up in the REO office in Harbour Centre to handle the complaints received. There were designated police officers on duty in the police stations in the 18 Districts to attend

to complaints. There were also ICAC officers designated to man a complaints hotline during the polling hours. The PROs received complaints on the spot.

13.8 The number of complaint cases received on the polling day amounted to 2,149. The majority of these cases concerned on-the-spot incidents and they were expeditiously dealt with and resolved, for there would be no point in taking action on these cases on the following day when the issues under complaint had long been overtaken by events or the people concerned had vanished, eg in cases of electioneering activities taking place in NCZs, noise nuisances caused by the use of sound amplifying devices, etc.

13.9 Non-stop action was taken on complaints received on the polling day. Phone calls kept on coming in at the CC without any pause. The cases were given prompt and thorough attention and referred immediately to the appropriate authority for action. Cases received by the ROs and PROs were also handled without delay.

13.10 There were cases which could not possibly be resolved on the spot, eg cases which involved breaches of the ECICO that required ICAC investigation. Follow-up action on these cases took a longer time.

13.11 Of the cases handled by all parties on the polling day (including those they received themselves and those referred to one another among themselves), 61.48% were resolved before the close of poll.

13.12 The CC handled a total of 524 cases on the polling day. 14 complicated cases were submitted to the CCm for handling in the same manner as those received during the rest of the complaints-handling period. A summary of the remaining 510 straightforward cases was submitted to the CCm for information.

13.13 A breakdown of the complaint cases received on the polling day is shown in **Appendices XVI (A)–(F)**.

Section 6 – The Outcome of Investigations

13.14 As at 27 October 2004, of the 2,086 cases handled by the CCm (including those it received and those referred to it by the other parties), 63 were ruled as substantiated or partially substantiated. The offenders were warned by letters. Altogether the CCm issued 46 warning letters.

13.15 Of the 1,410 cases handled by the ROs (including those they received and those referred to them by the other parties), 762 were found substantiated or partially substantiated as at 27 October 2004. Under the authority delegated by the EAC, the ROs issued warning letters to the offenders. There were 172 of these letters.

13.16 In order to deal with the matters of public concern which required the EAC to focus on the related investigations and production of the Interim Report, and due to the necessity of producing this final report by the statutory deadline, the procedure for issuing public censure against some of the offenders in view of the

seriousness or number of substantiated complaints against them has been postponed until after the preparation of this report.

13.17 Of the 743 cases they handled, the Police had, as at 27 October 2004, investigated and found 264 substantiated, and prosecuted seven offenders while the remaining 257 were warned at scene. As at the same date, of the 136 cases they handled, the ICAC had investigated and found none substantiated. There were still 196 cases under investigation by these two parties.

13.18 A breakdown of the outcome of investigations as at 27 October 2004 is detailed in **Appendices XVII (A)–(D)**.

Section 7 – Complaints on Use of Polling Stations by Disabled Persons

Two Complaints

13.19 There were two complaints received on the use of polling stations by disabled person, both relating to the same polling station, namely, St. Stephen's Girls' Primary School. It was noted that both complaints were related to the physical setup of the polling station which consisted of two floors: a small reception area at the ground floor and the issuing desks and voting compartments on the first floor.

13.20 The first complaint appeared in the press release dated 15 September 2004 issued by a group of candidates led by Mr Ho Chun-yan. The complaint was

that the PRO of this polling station allowed an elderly immobile elector to cast her vote outside the station. The other complaint was found in Ms Audrey Eu's speech in the programme "Letter to Hong Kong" broadcast on RTHK on 26 September 2004. The EAC has conducted thorough investigation into these two complaints, the findings of which have been fully covered in Section 6 of the Interim Report. In the light of these complaints, the EAC has put forth recommendations for improvement in Chapter 14.

Views of the Hong Kong Federation of Handicapped Youth

13.21 Apart from the above two complaints, the Hong Kong Federation of Handicapped Youth had also submitted its views to the Commission that the number of polling stations which were suitable for the use of handicapped and wheelchair electors was insufficient.

13.22 Among the 501 polling stations used in the 2004 LegCo Election, 287 of them, which constituted 57% of the total, were suitable for access by the disabled, and the figure was 60 more than that in the 2000 LegCo Election. Nevertheless, in future elections, endeavours will continue to be made to identify venues which are accessible to the disabled for designation as polling stations.

Section 8 – Complaints on Voter Registration

13.23 On the polling day, the PROs received a total of 87 complaints from persons whose names were not included in the voter register and who therefore were not entitled to vote.

13.24 In accordance with the EAC (ROE) (GC) Reg, the ERO may make inquiries regarding persons registered in the existing register but have moved out of their residential address.

13.25 Based on undelivered poll cards or information provided by the HAD or Lands D, the ERO would issue letters (by registered mail) to electors who had moved out of the address recorded in the existing register, asking them to ascertain whether they had moved. In the absence of any response within a specified period of time, the electors' names and principal residential addresses would be included in the omissions list which would be published for public inspection at the same time as the PR.

13.26 If after the publication of the omissions list, there is no objection received from these electors before the deadline for lodging claims, their records would eventually be deleted from the FR.

13.27 After investigation into the complaints, it was found that most of these complaints involved records that had been deleted from the FR either because the electors had failed to notify the ERO about their change of principal residential addresses or the electors had failed to respond to ERO's letters.

13.28 Upon receiving these complaints on the polling day, a written reply has been issued to each of the complainants explaining to them the reasons for their not able to vote on the polling day. The opportunity was also taken to attach an

application form for voter registration for the GC/FC to invite the complainant to re-apply for registration in coming elections.

Section 9 – Election Petition

13.29 It may be worth noting that after the conduct of the election, a candidate of an FC lodged an election petition against the elected candidate of the same FC for engaging in illegal conduct and should therefore not be duly elected. The alleged illegal conduct of the respondent concerned the publication of a materially false or misleading statement of fact about him for the purpose of promoting the election of himself or prejudicing the election of other candidates, including the petitioner, in an election pamphlet.

13.30 The hearing of the petition by the Court of First Instance is still pending.

PART FIVE

AFTER THE POLLING DAY

CHAPTER 14

THE REVIEW AND RECOMMENDATIONS

Section 1 – The Scope of the Review

14.1 After the 2004 LegCo Election was completed, the EAC conducted a comprehensive review of all aspects of the electoral arrangements from the start of the demarcation exercise right up to after the declaration of the election results, taking into consideration suggestions from LegCo Members and the public, subjects raised in the complaints received, suggestions from polling staff and issues identified in the previous chapters regarding the polling and counting processes. The EAC put forth its recommendations for improvements in areas where deficiencies and drawbacks have been identified.

14.2 Before deliberating on the observations and recommendations, the Commission would like to respond to the views of some people who considered that the findings of the EAC's investigations would not be fair and independent. It could not be over-emphasised that the Commission has always endeavoured to make the review of elections as comprehensive and impartial as possible, as what it had done for previous elections. The EAC considers that it is essential to give an account of its views on the election, though comments of others on its views would also be welcome. In conducting the investigations, the Chairman of the Commission had personally conducted interviews of the complainants and polling staff concerned, and questionnaires have been sent to all PROs and DPROs to

gather as much information as possible to facilitate a comprehensive analysis, apart from just making reference to complaints received. This chapter details what the EAC has observed and recommended. Although some of them have been mentioned in the Interim Report, they are also reiterated here for the sake of completeness.

Section 2 – Matters relating to Preparation Work

(A) Printing of Introductory Leaflets of Candidates

14.3 The details of this issue have been covered in paragraphs 6.12 to 6.19 of Chapter 6.

Recommendation:

14.4 In future elections, one option would be to continue with the present arrangement of random checks by the REO. Defective copies detected would be taken out and replaced by good ones. For those undetected and mailed out to electors, electors may approach the REO for a replacement copy if they find their copy defective. However, this option would not be acceptable to candidates for the reason that electors may not notice the errors, and may mistaken the election platform of one list for that of another.

14.5 Another option would be for 100% pre-delivery check by the GLD or 100% post-delivery check by the REO. From the experience of the 2004 LegCo

Election, it would be better for the GLD, which may contract out the printing and checking, to arrange for the conduct of the check and include the additional cost into the printing cost that will be charged to the REO. The cost would depend on the total number of leaflets and the number of pages of each leaflet for checking. Based on the checking exercise for the election, the cost would be around \$2 million. The Commission considers this option too expensive.

14.6 The Commission considers that the cost-effective and defect-obvious way is for the leaflet to be designed in such a way that each candidates' list would bear its number and that the number would appear at the top of the platform of the candidates' list. Further, there should be clear pagination on each page. With these changes, even if there is any printing or binding error, it would be easily detected by electors, who may ask the REO for a replacement copy.

(B) Publicity on Voting System

14.7 While publicity organised by the Government for encouraging voter registration and participation in voting was quite intensive, there have been views from electors that the list system of proportional representation for GC elections and the preferential elimination system of voting for the four special FCs, as compared with the first past the post system for the 24 ordinary FCs, were too complicated to understand and there was apparently not much publicity on this aspect.

Recommendation:

14.8 The EAC considers it useful if future Government publicity programmes would put more emphasis on the voting systems so that the general public may have a clearer picture of how the systems work.

(C) Advance Voting Arrangement

14.9 The EAC noticed a number of suggestions from the public that advance polling should be adopted so as to enable those electors who are not in Hong Kong on the polling day to exercise their voting rights.

Recommendation:

14.10 The EAC notes that a substantial number of electors may need to leave Hong Kong to work on a short-term yet frequent basis in view of the increasing business tie between Hong Kong and the Mainland. Advance polling can, however, only be allowed by legislation, which is beyond the EAC's ambit. The EAC considers that this matter relating to facilitating electors to exercise their voting rights should be seriously considered by the Government.

(D) Arrangements for the Press Centre

14.11 Some candidates were not satisfied with the logistics arrangements for

the Press Centre set up at the HKITEC in Kowloon Bay on the polling day. There were not sufficient seats for the candidates and their agents and supporters, and drinking water was not provided. Some candidates also complained that they could not get in touch with the EAC Chairman in the early morning of 13 September 2004 in regard to the late announcement of election results.

14.12 The Press Centre was set up at the Ground Floor Plaza of the HKITEC. It had a total floor area of 2,052 m² as compared to 3,096 m² for the 2000 LegCo Election at the Hong Kong Convention and Exhibition Centre. The HKITEC was selected for the election in 2004 because it was the only venue that was also available for the fallback day of the election (in case the poll had to be postponed) ie 19 September 2004.

14.13 In view of limited space in the Press Centre, the REO could only provide a total of 500 seats in the Press Centre for the candidates, their agents and supporters and other members of the public, and 250 of the seats were designated for the candidates and their agents. In addition, a public room with TV broadcasting of voter turnout figures and counting results and a seating capacity of 250 was provided near the Press Centre for the supporters and other members of the public. The CCS also had 250 seats for the candidates and their agents and supporters to observe the counting of votes. Distilled water drinking machines were available at the Press Centre, CCS and public room. The EAC noted that the Press Centre was very crowded in the early morning of 13 September 2004. The EAC sincerely apologises to the candidates, their agents and supporters for the inconvenience caused.

14.14 For all past elections, the REO only publicised the enquiry hotline and complaints hotline, but did not mention the channels that the Chairman/Members of the Commission and the CEO could be contacted. This made it difficult for the candidates to contact them on urgent and important issues. The Commission considers that there is room for improvement in this respect.

Recommendation:

14.15 From the experience of the election, the REO should identify a venue that would be spacious enough to accommodate a large number of candidates and their agents and supporters at the Press Centre for future elections. The REO should also remind the staff that when they receive specific requests from the candidates or their agents for meeting with the Commission or the CEO, they should draw the attention of the Commission and the CEO to such requests.

(E) Layout of the Press Centre

14.16 A member of the media suggested that it would be desirable to involve participation from the media in the design of the Press Centre, as they were end-users of the facilities in the venue. It was pointed out, in particular, that the media had to put up their booths at the narrow space behind the main entrance, which could pose a problem to the safe passage of people moving in and out.

14.17 Having checked with the ISD which was responsible for the set up of the

Press Centre, the Commission noted that the ISD had conducted briefing sessions for the media on the layout, functions and facilities of the Press Centre before the election both in the ISD office and on site in the Press Centre. Views expressed by the media during the briefing sessions were all entertained as far as the budget allowed. The ISD also stated that the location of the booths for the electronic media was changed in accordance with the views expressed in the briefings, and had been agreed by all electronic media on site. In fact, additional facilities, including the provision of video splits of the video walls for the electronic media was provided, as suggested by a member of the media.

Recommendation:

14.18 Endeavour will continue to be made to ensure that the physical layout of the Press Centre would best facilitate the media in reporting the event in future elections.

Section 3 – Matters relating to Operational Aspects

(A) Design of Ballot Boxes

14.19 Experience on the polling day showed that the design of the new GC ballot boxes was flawed, as ballot papers inserted into it did not invariably fall flat and pile up neatly one over another as expected.

Recommendation:

14.20 The design of ballot boxes for GCs (including dimensions and shape) should be reviewed with reference to the size and thickness of ballot papers to be used, and taking into account the possible ways that ballot papers may be inserted into the boxes by electors.

(B) Test on Ballot Boxes

14.21 As only A3-size paper of ordinary thickness were used for testing the capacity of ballot boxes, and no further test was undertaken after the design of ballot papers had been confirmed, there was a serious over-estimation of the number of ballot papers that could be contained in each ballot box.

Recommendation:

14.22 All newly designed ballot boxes should be cautiously tested by various means, including real life trial use by electors using dummy ballot papers which are of the same size and thickness as genuine ones. Likewise, all newly designed polling equipment should be put together for thorough tests beforehand.

(C) Design of Ballot Papers

14.23 The A3 size ballot papers for GCs clearly showing photographs, emblems and other particulars of and relating to the candidates in legible size seemed to have been well received.

Recommendation:

14.24 The same design of ballot paper should be retained, but should be tested to ensure that it is compatible with the design of ballot boxes.

(D) Folding of Ballot Papers

14.25 The requirement of the large GC ballot paper to be folded once before insertion into ballot boxes should be retained to protect the secrecy of the vote.

Recommendation:

14.26 Consideration should be given to having the ballot paper folded before issue to electors, and the option of pre-folding by machine should be examined.

(E) Operation of the Central Command Centre

14.27 The considerable time required for delivering additional ballot boxes to polling stations in need revealed that there were a number of problems in the operation of the CCC, including:

- (a) inadequate communication between polling station and the CCC, as a number of polling stations stated that they could not contact the CCC because of the busily engaged telephone lines;

- (b) officers manning the CCC were not alert to the seriousness of the potential crisis arising from the shortage of ballot boxes at the initial stage;
- (c) inefficient communication between the CCC and the EAC;
- (d) insufficient structure and positioning of the CCC, as it was not easy for officers manning the command desk, helpdesks and enquiry hotlines to pool their efforts and resources to tackle the issue effectively; and
- (e) lack of a special contingency plan which the CCC could follow for coping with unexpected widespread problems and territory-wide urgent replenishment and delivery of polling equipment.

Recommendation:

14.28 In paragraphs 2.42 and 2.43 of the Interim Report, the Commission has recommended that the following be reviewed –

- (a) the system of communication between each polling station and the CCC;
- (b) the logistics and contingency measures in the supply of election materials and equipment; and

- (c) the command structure of the CCC be strengthened by deploying more senior staff to be in charge,

and that a special contingency plan be carefully considered and made.

14.29 The Commission has given some further consideration to the matter. One possible improvement option for the future would be to have a three-tier structure for the replenishment of supplies (eg ballot boxes, ballot papers, furniture, electoral forms, etc) and the provision of additional staff. The structure could comprise a CCC, five regional centres and 18 district centres. These regional and district centres should each include a depot. Each district centre will support and monitor the adequacy of manpower and supplies of the polling stations in that district. One regional centre should be set up for each GC to monitor the supply and manpower situation of the districts within the GC. The five regional centres would deploy supplies and staff among district centres, where necessary. The CCC would oversee and coordinate the operations of the five regional centres. A central reserve of supplies and staff would also be kept at the CCC for emergency use.

14.30 As supplies from the REO will need to be delivered to the regional and district centres at least two to three days before the polling day for unpacking and checking, the centres should preferably be set up in District Offices, or in nearby government premises for security reasons.

14.31 The ROs and AROs of the respective GCs could be tasked to take charge of the centres within their GC/district. This would provide sufficient authority in

the deployment or redeployment of resources at the GC/district level, and should improve overall efficiency given the local knowledge of these officers.

14.32 The above structure would avoid the situation where all the polling stations have to approach one single contact in case of emergency requiring additional supplies and manpower, thus speeding up response.

(F) Compilation of Voter Turnout Statistics

14.33 The experience in the election revealed that the method and procedures in the collection and compilation of voter turnout statistics would need to be thoroughly reviewed to improve efficiency and accuracy, even if such statistics are only for general reference of candidates and the public.

Recommendation:

14.34 The following should be considered to improve the efficiency and accuracy in compiling voter turnout statistics –

- (a) in view of the various problems that occurred in using a computerized system to report and collect voter turnout statistics in the 2004 LegCo Election, consideration may be given to using other well-tested means or even reverting to the manual approach adopted in previous LegCo elections;

- (b) the assistance of professional experts may need to be solicited in reviewing the existing methodology or procedures in this aspect, with a view to designing ways to improve the accuracy of the hourly turnout figures and ballot paper accounts. Trials would also need to be conducted thoroughly before any new method is to be adopted in a major election; and
- (c) despite the above, an express reminder should be publicly and clearly given to candidates, the media and the general public that the turnout rates provided are imprecise and can only be used for temporary reference only.

(G) Ballot Papers for FCs

14.35 Suggestions were received from a PRO that the number of ballot papers for individual FCs allocated to a polling station should be increased, so that the PRO could give one complete booklet of ballot paper for an FC to each issuing desk, rather than having to break the booklet into separate bundles and distribute them to various issuing desks, which posed difficulties in the compilation of statistics for ballot papers issued for individual FCs by reference to the number on the counterfoil.

Recommendation:

14.36 The suggestion of the PRO should be considered as it can help polling

staff to reduce confusion on the number of ballot papers issued for each FC.

(H) Selection of Polling Stations

14.37 A polling station, namely the Ying Wa Girls' School, which had been used in past elections has proved to be too small during the time when only the School's entrance foyer was used for polling, accentuated by the record turnout rate of the 2004 LegCo Election where many more electors patronised the polling station. This showed that the suitability of the polling station had not been carefully reviewed to take into consideration the size of the venue and the potential number of electors that might turn up.

14.38 As for the suggestion from a LegCo Member that the public should be consulted on the choice of venues as polling stations, in fact consultation with District Offices which were familiar with the local environment had already been made before deciding on the venues to be chosen. The Commission would, however, welcome any suggestions of suitable venues.

Recommendation:

14.39 A pre-assessment on the adequacy of space of each prospective polling station should be made with regard to an optimistic turnout rate for the election. Polling stations which are assessed to be too small in case of a high voter turnout rate may not be used for polling again. If there is no alternative in the proximity, consideration should be given to assigning electors to the next nearest polling

station. Moreover, the REO should continue to make every effort to identify venues accessible to disabled persons for use as polling stations in future elections.

(I) Removal of Curtain in front of the Voting Compartments

14.40 To address the public concern about the possible use of camera-equipped mobile telephones by electors to take photographs of their marked ballot papers in the voting departments, the EAC decided to remove the curtains in front of the voting compartment so that the polling staff, the candidates and their polling agents could observe the conduct of electors inside the voting compartment and that the yellow line marked on the floor should generally be two metres, instead of the existing one metre, from the voting compartment, depending on the configuration of individual polling stations. Some electors held the view that the removal of the curtains might affect the secrecy of the vote.

Recommendation:

14.41 This new arrangement worked well generally in facilitating the observing the behaviour of electors inside the voting compartments. The EAC considers that it should be adopted in future elections and that polling staff should also ensure that no electors are allowed to loiter around within the yellow line after they have used the voting compartment. The table on which the elector places his ballot paper to mark his vote should be set in such a position that would cause his body to block the marking from being visible to persons outside the compartment.

(J) Issue of “TENDERED” Ballot Papers

14.42 Under section 60 of the EAC (EP) (LC) Reg, where a person representing himself to be a particular elector or AR applies for any ballot paper after a person has been issued with any ballot paper earlier as such an elector or AR, he will be issued with a ballot paper with the word “TENDERED” endorsed on the front. Such a ballot paper will not be counted at the counting of the votes. There were a few complaints that such an arrangement would in effect deprive the elector of his right to vote.

Recommendation:

14.43 The existing arrangement should continue. The EAC considers it impossible for the polling staff at the ballot paper issuing desk to ascertain whether a person had deliberately impersonated another elector, or whether the elector had deliberately tried to cast his vote twice. The EAC knows of no way to solve this problem and welcomes suggestion in this regard. Those electors with such grievances should report to the Police for investigation if they consider it necessary. Moreover, the REO should remind all polling staff at issuing desks that when they cross out the name and identity number of the relevant entry in the register of electors, this should be cross-checked by another polling staff in order to avoid crossing out the entry above or below the relevant entry by mistake.

(K) Eviction or Exclusion of Candidates or their Agents from Polling Stations

14.44 Investigation findings of the expulsion or exclusion cases have revealed that the causes for the PROs and polling officials concerned to take such acts included the following:

- (a) Misled by the Operation Manual – despite the provisions in the EAC (EP) (LC) Reg which are also clearly reflected in the Guidelines, PROs might have been misled by Checklist E of the Operation Manual for PROs, DPROs and APROs published by the REO (“Operation Manual”) which stated that at the close of poll, “GC candidates and their election agents and polling agents may stay to witness the conversion”. This statement was in fact wrong as counting agents, instead of polling agents, may stay to witness the conversion. This explains why some PROs allowed polling agents to remain in the stations after the sealing of ballot boxes and during the entirety of the period when the stations were converted for counting purposes.
- (b) Misconception about PRO’s authority – For one of the cases in which no agents were admitted for a period of time between close of poll and conversion, the PRO harboured the belief that he had the power or discretion to exclude persons from the stations as a matter of regulating or maintaining order, but apparently without appreciating the importance of ensuring that the electoral processes had to be carried out openly and beyond suspicion.

14.45 A suggestion has been received on the arrangement of video recording at polling stations, so as to prevent any occurrence of illegal or corrupt activities inside the polling stations. In fact, the Commission had, for long, considered whether any visual recording should be made of what happened inside polling stations, to facilitate investigation of cases in which electors are impersonated and are thus issued with “tendered ballot papers”. The EAC had, however, decided against it as the importance of maintaining voter secrecy and the secrecy of the vote far outweighs it. While the concern of the public is noted, the number of complaints received by the ICAC concerning suspected corruption of polling staff (totalling 6 cases) did not support the belief that there was an abnormal and substantial increase over that in the 2003 DC Election (4 cases).

Recommendation:

14.46 To prevent the recurrence of the mistake in future elections, the following remedial measures should be taken:

(a) Amendment of the Operation Manual

To revamp the Operation Manual fully to ensure that its contents fully comply with the provisions of the EAC (EP) (LC) Reg and the Guidelines.

(b) Training for Polling Staff

(i) to strengthen the training for polling staff, so that they would have

a fuller understanding of the EAC (EP) (LC) Reg and be conversant with the Guidelines; and

- (ii) to stress to all polling staff and ask them to keep in mind that all the electoral steps are for upholding the principle that the electoral processes have to be open, fair and honest, and the significance of not only giving effect to the principle, but also acting in such a manner to ensure that the principle is perceived by the public to have been fully complied with.

(c) Conditions of Service for Polling Staff

To motivate more civil servants with electoral experience to apply for the job of polling staff. Consideration may be made to shortening their working hours by having two shifts, ie deploying another group of staff to handle counting duties. An increase of honorarium for polling officials may also provide more incentive, although it is hard to establish whether the slight decrease of the honorarium for polling staff in the 2004 LegCo Election as compared with that in the 2003 DC Election (about 5.9 %) corresponding to the cut in civil service pay had resulted in less encouraging response from applicants.

(d) Recruitment of Polling Staff

In the selection of polling staff, a LegCo Member has suggested that applicants should be required to possess a minimum standard of knowledge on the essential electoral provisions and procedures before they can be appointed for the task. It is considered that there are

difficulties in implementing the proposal, as the number of applicants is beyond the control of the REO, while a fixed number of officers will need to be appointed to ensure that all polling stations have the required staffing level. It is, however, considered that more practical exercises and problem-solving drills may be included in the training for polling staff.

(e) Appointment of Agents

It may be convenient to all concerned to merge the roles of polling and counting agents, so that all agents, except election expense agents, are entitled to remain and get into the station before or after the close of poll. It would be less mistake-prone for polling staff to deal with one kind of agents throughout.

(f) Agents' Access

In view of complaints that candidate's agents could not re-enter the polling station during the period of conversion, it is considered that when the poll closes, the notice to be put up at the main door to inform the public when the station would be opened again for counting should show the telephone number of a polling officer, be it the PRO or an APRO, who may be contacted by agents if they want to enter the polling station when the main door has been locked. This would improve communications between the station staff and the agents, and would facilitate entry of agents who have gone outside after the close of poll and the locking of the door or who have arrived late.

(L) Decentralisation of Counting for GC Votes

14.47 In view of the large number of polling stations in a GC constituency, the procedures for decentralised counting of GC votes at polling stations would need to be reviewed and streamlined to improve efficiency and co-ordination, and to shorten the working hours of polling staff.

Recommendation:

14.48 For better control and monitoring, while minimising the trouble of transporting all ballot boxes to one single CCS, consideration should be made to decentralising the counting of GC votes to the regional level, with one counting station in each of the 5 GCs or to the district level, with one counting station in each of the 18 districts. The downside of these options will be that the election result will be obtained considerably later than that for polling-cum-counting stations due to the time required for transportation of ballot boxes and the fewer counting staff which the single counting station is capable of accommodating.

(M) Request for Re-count

14.49 Views have been received from a PRO about the concern on re-count, since the number of polling stations in a GC constituency was great and a request for an overall re-count in the constituency would substantially lengthen the working hours of polling staff. He considered that the arrangements on re-count should be

reviewed if decentralised counting at individual polling stations was to continue in future LegCo elections.

Recommendation:

14.50 In case the same decentralised counting arrangement at individual polling stations is to be adopted again in future LegCo elections, to avoid the polling-cum-counting staff having to wait for a long time to see if a recount is required, consideration may be given to make it a statutory requirement for an automatic re-count to be conducted right after the first count is completed, which would ensure accuracy and reduce the necessity of a further recount.

(N) General

14.51 As LegCo general elections and DC ordinary elections are significant events in the whole territory of Hong Kong, and have profound effect on the constitutional development, greater participation from and enhanced co-ordination with other relevant government departments should be made on the various arrangements on the polling day.

Recommendation:

14.52 The following should be considered to achieve better co-ordination –

- (a) The setting up of a working group under the EAC to discuss the

logistical arrangements of the election right at the preparatory stage, including the identification of possible crisis, support from different parties in tackling various issues and drawing up of a comprehensive contingency plan (apart from the existing one on inclement weather and emergencies as stated in Chapter 7). The REO and other relevant Government departments should be represented in the working group.

- (b) The setting up of regional and district centres for the replenishment of supplies and the provision of additional staff for the polling stations. For details, please see paragraphs 14.29 – 14.32 above.
- (c) The better use of resources and expertise within the Administration to more efficiently support the smooth conduct of elections. For example, consideration could be given to involving the Civil Service Training and Development Institute in the training of polling and counting staff.

Section 4 – Matters relating to the Guidelines

(A) Punishment on Photographing inside Polling Stations

14.53 To preserve the secrecy of the vote, the EAC amended the EAC (LC) (EP) Reg by increasing the imprisonment term under section 45(2) (ie prohibiting a person to film or take photographs etc within a polling station) and section 96 (ie prohibiting a number of acts which may infringe the secrecy of the vote) from three to six months. The relevant paragraphs of the Guidelines were also revised to this effect.

Recommendation:

14.54 The EAC is of the view that similar amendment should also be made to the EAC (Electoral Procedure) (District Councils) Regulation and the guidelines for the DC elections when they are next updated.

(B) Safe Conduct of Election-related Activities

14.55 Close to the polling day, the Police had published a leaflet to provide general advice to candidates and organisers of election-related activities, such as election meetings or forums, to enable them to conduct such activities safely. Should any safety issues be of a particular concern, as advised by the Police, consideration should be given to seeking advice from the local police station prior to the conduct of the activity.

Recommendation:

14.56 The above Police's advice had been included as an appendix to the guidelines for the DC elections and Village Representative elections when they were recently updated. The EAC will include this information in the next update of the guidelines for the LegCo elections.

(C) Broadcasting Election Advertisements in “Roadshow”

14.57 The EAC has come across an enquiry on whether there was any breach of regulations on EAs shown on “Roadshow”. Under paragraph 11.2 of the Guidelines, commercial broadcasters are generally not allowed to accept advertisements of a political nature. The Commissioner for Television and Entertainment Licensing has subsequently advised that under the Broadcasting Ordinance, “Roadshow” is not a commercial broadcaster and therefore the general prohibition on advertisements of political nature does not apply to “Roadshow”.

Recommendation:

14.58 Consideration should be given to clarifying that “Roadshow” and other non-licensees should not be regarded as commercial broadcasters as mentioned in paragraph 11.2 of the Guidelines and are allowed to broadcast EAs territory wide.

(D) Performance Report Shown on Website during Election Period

14.59 There was a complaint against an incumbent candidate for publishing his performance report on his website during the election period without complying with the requirements for an EA. In that case, the REO treated the above website as EA, since according to paragraph 8.3 of the Guidelines, an EA includes any performance report published or distributed during the election period by an incumbent candidate, no matter whether it has promoted his candidacy or not. The DoJ was of the view that the presumption that a performance report published by

an incumbent candidate during an election period is an EA arises from section 34(9) of the ECICO but that the presumption only applies to printed EAs, not websites. The test of regarding a website containing a performance report as an EA is whether it is published for the purpose of promoting or prejudicing the election of a candidate. As there was no mention of the election or of the candidacy of the incumbent candidate, nor any exhortation to vote for any candidate, the DoJ therefore advised that the website in question should not be considered as an EA.

Recommendation:

14.60 The relevant sections of the Guidelines should be amended to spell out clearly that a printed performance report published by an incumbent candidate during the election period will be an EA, no matter whether it has promoted his candidacy or not, whereas a performance report shown on a website of an incumbent candidate will only be an EA if it is published for the purpose of promoting or prejudicing the election of a candidate.

Section 5 – Lessons Learned

14.61 In paragraph 10.3, we have set out the new equipment and new polling-cum-counting arrangements made for this election, which resulted in the problems that had not been foreseen, affecting the smooth conduct of the poll in a number of polling stations. This is an important though expensive lesson for the EAC. Although all the equipment and arrangements had been tested, they were tested on a smaller scale than required. The simultaneous introduction of too many new

things not tested as to their interaction amongst each other for a large-scale operation will probably create problems. Apart from full testing of any newly introduced equipment and arrangements to ensure that they work, special care need to be taken to ensure their global satisfactory integration and performance.

14.62 Similarly, the tests conducted on the IVRS before its implementation were insufficient resulting in the system not coping with the live situation that obtained on the polling day. Members of the EAC were relying on the competence of the REO staff in reviewing the tests and determining the sufficiency and performance of the system. Perhaps, after the event, we are wiser so as not only to rely on the REO on this very important device for an important service to be performed, and required to be performed satisfactorily, on the polling day. Outside help from the relevant information technology department of the Government should be engaged in the future.

14.63 Members of the EAC relied on the staff of the REO to test the appropriateness and capacity of the new ballot box, which gave rise to the insufficiency of ballot boxes provided to a majority of the polling stations. While the proper folding of the ballot paper for insertion into the ballot box would have alleviated the problem of capacity, adequate training and emphasis had not been given to the polling staff of such a requirement. This should be a lesson to the EAC that corresponding training of the staff is a must to ensure that any newly introduced device should work without any hiccup.

14.64 The need for the polling staff to perform polling and counting duties

continuously for a period of over 24 hours has turned out to be too ambitious, despite the built-in periods of time for rests to be taken by roster. This had caused fatigue and boredom, which even increased monetary incentive would probably not be able to prevent. For future elections, this method of staffing should be discarded.

14.65 These lessons are regrettably learned at a high price. But looking to the future, they are valuable asset for the development and improvement of the electoral processes in the Hong Kong Special Administrative Region.

Section 6 – Recommendation to Publish the Report

14.66 Similar to the Interim Report on the 2004 LegCo Election released on 10 November 2004, the Commission would like to recommend that this report should go public, at a time the Chief Executive thinks fit, so that the public would be fully informed as to how the Commission conducted and supervised the 2004 LegCo Election.

PART SIX

CONCLUSION

CHAPTER 15

ACKNOWLEDGEMENT

15.1 The 2004 LegCo Election has been completed with a phenomenal record-high turnout rate. The Commission attributes this to the dedicated and concerted efforts of all parties involved in the preparation for and conduct of the election.

15.2 The Commission would like to express its gratitude to the following units of the Administration: the Auxiliary Medical Service, CAB, Civil Aid Service, DoJ, Education and Manpower Bureau, Electrical and Mechanical Services Department, FEHD, Department of Health, Home Affairs Bureau, HAD, Hospital Authority, Hong Kong Observatory, Hong Kong Police Force, Hongkong Post, Housing Authority and HD, Immigration Department, ICAC, ISD, Legal Aid Department, Lands D, Land Registry, LCSD, Marine Department, Office of the Government Chief Information Officer, Official Languages Division (of the Civil Service Bureau), Planning Department, GLD, RTHK and Social Welfare Department. The Commission pays special tribute to the Hong Kong Police for its invaluable assistance on the polling day in every respect, but not least in the delivery of additional ballot boxes to polling stations.

15.3 The Commission is also grateful for the assistance of the staff of the REO in the preparation and implementation of the electoral arrangements and in the investigation of the complaints after the election.

15.4 The Commission is also thankful 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.

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

15.6 The Commission 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.

15.7 The Commission is also grateful to the PROs, polling officials and polling staff manning the polling and counting stations who worked under extreme pressure for long hours, but persevered and fulfilled their duties all the same.

15.8 Last but not least, it was the enthusiasm of the electors who participated in the poll that was the prime element in making the election a meaningful event in our community.

15.9 The Commission once again apologises to the electors who had been inconvenienced by the crowdedness and long queues in some polling stations, and is particularly grateful to those who cast their votes notwithstanding. Special

thanks are due to those who have graciously taken the hiccups in the electoral process with understanding, and maintained their trust and confidence in the integrity of the conduct of the election.

CHAPTER 16

LOOKING FOWARD

16.1 The 2004 LegCo Election was held on 12 September 2004. Over 1.78 million electors cast their votes, representing a turnout rate of 55.64%, an all-time high record. This is an important milestone in the electoral development of Hong Kong. Although there were problems in the arrangements, the integrity of the election has not been affected.

16.2 In the meantime, the Commission looks forward to working with the Independent Committee of Experts to be set up by the Chief Executive to review the management, planning and conduct of elections after the release of this report.