

CHAPTER 1 BACKGROUND

Introduction

1.1 Following the third term Legislative Council Election (“the Election”), we were appointed by the Chief Executive as members of the newly formed Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections (“the Committee”)¹ on 15 December 2004. This Chapter outlines the incidents leading to the formation of the Committee. It also sets out our terms of reference and the ambit of the review conducted by us.

2004 Legislative Council Election

1.2 The Election was held on 12 September 2004. 60 Members (30 for the five Geographical Constituencies (“GCs”) and 30 for the 28 Functional Constituencies (“FCs”)) were returned through the Election. About 1.78 million electors cast their votes in the Election, making a record turnout rate of 55.64%. For FCs, about 135,000 electors cast their votes for the 17 contested constituencies, amounting to 70.10% of the total electorate of these FCs.

1.3 On the polling day and the days after, there was wide media coverage about the election results and complaints relating to the polling

¹ The Committee is chaired by Dr. Daniel TSE Chi Wai and comprises Mr. Philip CHEN Nan Lok, Mr. Daniel LAI and Mr. Herbert TSOI Hak Kong coming from respectively, the management and logistics, information technology and legal fields.

and counting arrangements. The complaints mainly included: (a) shortage of ballot boxes in many polling stations leading to voting being delayed, long queues of voters outside the stations and some voters being turned away; (b) use of cardboard boxes as ballot boxes in a few stations; (c) opening of ballot boxes by some polling staff to rearrange the ballot papers inside the boxes; (d) delay in announcing the election results; and (e) discrepancies between the number of ballot papers issued and the number of votes in the final outcome for some FCs. Some newspapers and academics commented that the shortage of ballot boxes on the polling day had made Hong Kong a laughing stock in the international community and the incident would tarnish Hong Kong's international image. The chaos on the polling day has aroused great public concern.

Reports of the Electoral Affairs Commission on the Election

1.4 According to section 8 of the EAC Ordinance (Cap. 541), the Electoral Affairs Commission ("EAC") shall, inter alia, make a report to the Chief Executive, within three months after an election, on matters relating to that election in respect of which the Commission has any function under Cap. 541 or any other Ordinance. In view of the public concern on the various problems regarding the practical arrangements of the Election, EAC submitted an interim report to the Chief Executive on 8 November 2004 to give an account of the progress of investigation carried out by EAC and its findings in respect of the major areas of complaints. The Interim Report was published on 10 November 2004. It set out EAC's findings in respect of the following five major areas of

complaints at that time -

- (a) insufficient supply of ballot boxes and the propriety of the various contingency measures adopted (i.e. the opening of sealed ballot boxes to rearrange ballot papers and the use of cardboard boxes as ballot boxes) during the poll;
- (b) legality or otherwise of the contingency measures adopted;
- (c) ballot discrepancies in four FCs;
- (d) voter turnout figures and delay in announcing election results; and
- (e) eviction or exclusion of candidates or their agents from polling stations.

1.5 EAC continued its investigation into the uncompleted complaint cases as well as other outstanding issues after the submission of the Interim Report. It submitted the Final Report to the Chief Executive on 11 December 2004, which was made public on 15 December 2004. The Final Report described how EAC conducted and supervised the Election, gave an updated report on the findings of the uncompleted complaint cases and outstanding issues mentioned in the Interim Report, and set out EAC's recommendations on improvement measures for future elections. Both the Interim and Final Reports are available at the webpage of EAC.

Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections

1.6 The EAC Interim Report affirmed that the integrity of the Election had not been affected but its findings reveal a number of administrative and planning errors relating to the practical arrangements for the Election. EAC has also proposed that consideration be given as to whether it is necessary to seek assistance from outside experts to follow up on the findings and recommendations. The various problems identified in the Interim Report reveal that there is room for improvement in the planning and conduct of elections. In view of this, the Chief Executive announced on 10 November 2004 that a non-statutory independent committee of experts would be set up to review the management, planning and conduct of elections, and to make recommendations on improvement measures. This Committee was appointed on 15 December 2004.

1.7 Our terms of reference are –

Having regard to the reports of EAC and any other further information obtained by the Committee regarding the arrangements for the Election, and in the light of the Committee's assessment of the management responsibilities for these arrangements –

(a) to review and advise on how:

- (i) the Registration and Electoral Office (“REO”) may better support EAC in carrying out its statutory functions in the conduct and supervision of elections;
 - (ii) REO may better perform its functions in relation to the management, planning and conduct of elections; and
 - (iii) the communication system and other arrangements for the counting of votes and for the reporting, compilation and announcement of polling and counting figures and other relevant matters can be improved, and
- (b) to make such recommendations as it considers necessary for further follow-up action.

Ambit of the Review and Modus Operandi

1.8 We are fully aware that issues of concern relating to the Election, ranging from the nomination process and electioneering to the polling and counting arrangements, were many and varied. Taking account of the terms of reference of the Committee, we decided to put our focus on the practical arrangements of the polling day and the associated management responsibilities with a view to drawing up recommendations to improve the management, planning and conduct of elections in future. We would not touch upon political issues such as the merits and demerits of the

existing electoral system and the political responsibilities arising from the incident. Nor would we deal with criticisms or discontent about the election results, if any.

1.9 We have taken the two reports compiled by EAC on the Election as the basis for our review. In this regard, we note that EAC is an independent statutory body responsible for the conduct and supervision of elections and it has the statutory powers to handle complaints arising from its directives. As mentioned in paragraph 1.4 above, EAC is required under the EAC Ordinance (Cap. 541) to submit a report to the Chief Executive within three months after the completion of the Election, and the report must include all the complaints received together with the Commission's assessment, as what EAC did by issuing the Interim and Final Reports in November and December 2004 respectively. In our review, we have identified and examined major issues of concern involved in the complaints instead of investigating any individual complaint cases that should fall within the ambit of EAC's statutory responsibilities and authority, and are being/have been dealt with under the established system.

1.10 We divided our work into three stages. The first stage was to solicit views and gather information, during which we examined the two EAC reports, related legislation and documents including the Operation Manual issued by REO, the Guidelines on Election-related Activities in respect of the Legislative Council Elections ("the Guidelines") issued by EAC, and relevant information available in the public domain such as the

Legislative Council (“LegCo”) Motion Debate on 27 October 2004. We also invited views from those concerned including meeting with individuals and organizations that may enable us to better understand the issues involved. At the second stage, we evaluated the views and information obtained, and identified major issues of concern. At the final stage, we formulated our conclusions and recommendations, and wrote this report.

1.11 To collate views and information on the practical arrangements of the polling day and above all, to invite suggestions on the improvement measures during the first stage of our work, we issued a press release on 14 January 2005 and placed advertisements on newspapers on 14 and 21 January 2005 to invite views from the public. We have also invited written submissions from 122 individuals and five organizations including LegCo Members, Presiding Officers (“PROs”), Returning Officers (“ROs”) and complainants. Details of these individuals and organizations, and a sample of the invitation letter and the advertisement are **at Annex A and B** respectively. A total of 37 submissions were received including some after the deadline. We have also met with five individuals and seven organizations, some of which on more than one occasion. In addition, we have asked REO to arrange a demonstration to show us the operation of a polling station including the duties of different categories of polling staff in a station on the polling day. We express our gratitude to all those who have attended the meetings, or offered views and advice to us. Their names, except those who have requested for anonymity, are set out **at Annex C**.

1.12 We have taken into account the views and information collated when conducting the review and drawing up the conclusions and recommendations in Chapter 4. For views on issues not covered by our review, such as comments relating to election advertisements, and suggested amendments to specific provisions of the related Guidelines, we will refer them to the relevant authorities for follow-up action.