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Panel on Constitutional Affairs Updated background brief prepared by the Legislative Council Secretariat for the meeting on 4 January 2018

Practical arrangements for the 2018 Legislative Council By-election

Purpose

This paper summarizes past discussions by the Panel on Constitutional Affairs ("the Panel") on the practical arrangements for the Legislative Council ("LegCo") by-elections since the First LegCo.

Background

2. Since the 1998 LegCo election, five LegCo by-elections have been held, namely, the 2000 LegCo Hong Kong Island ("HKI") geographical constituency ("GC") by-election, the 2001 LegCo Election Committee by-election, the 2007 LegCo HKI GC by-election, the 2010 LegCo by-election and the 2016 LegCo New Territories East ("NTE") GC by-election.

3. In accordance with section 35 of the Legislative Council Ordinance (Cap. 542) ("LCO"), the Clerk to LegCo must, by notice published in the Gazette, declare the existence of a vacancy in the membership of that Council within 21 days after becoming aware of the vacancy. Section 36(1)(a) of LCO further stipulates that the Electoral Affairs Commission ("EAC") must, in accordance with regulations in force under the EAC Ordinance (Cap. 541), arrange for a by-election to be held when the Clerk to LegCo makes a declaration as to the existence of a vacancy in the membership of LegCo. The Guidelines on Election-related Activities in respect of LegCo Election issued by EAC ("the EAC Guidelines") apply to all LegCo general elections and by-elections.

4. According to section 8 of the EAC Ordinance, EAC shall 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 the Ordinance or any other Ordinance. An extract on "Review and Recommendations" from the EAC Report on the 2016 LegCo NTE GC by-election is in **Appendix I**.

5. LegCo by-election will be held on 11 March 2018. The nomination period for the by-election will run from 16 to 29 January 2018. The by-election will be held to fill four vacancies in membership of LegCo, including one vacancy for each of the three GCs (HKI, Kowloon West and NTE); and one vacancy for the Architectural, Surveying, Planning and Landscape functional constituency.

Relevant discussions of the Panel

Timeframe for holding a by-election

6. Some members called on the Administration to consider amending LCO to provide for a timeframe for holding by-elections for filling vacancies in the membership of LegCo. There was a suggestion that a LegCo by-election should be held within five months after such a vacancy arose. The Administration advised that the existing legislation only stipulated that no by-election would be held to fill a vacancy occurring in the membership of LegCo/District Councils ("DCs") within the four months preceding the end of the current term of office of LegCo/DCs. The established practice was that EAC would arrange a by-election as early as possible.

Access to polling stations

7. For the 2010 LegCo by-election, some members expressed concern that only 85% of the polling stations were accessible to persons with disabilities ("PWDs"). They requested the Administration to undertake to provide polling stations with 100% barrier-free access facilities to PWDs in future elections, and to set up an enquiry hotline to answer PWDs' enquiries.

8. The Administration advised that the Registration and Electoral Office ("REO") would make the best endeavour to identify polling stations which could be easily accessible to PWDs. In identifying venues for use as polling stations, REO would arrange for venues accessible to PWDs as far as practicable. However, this would depend on constraints such as availability of venues suitable for use as polling stations, and consent of the venue management. If there was no other suitable choice and a venue which was not readily accessible to PWDs had to be used, REO would try to provide, where circumstances permitted, temporary ramps to increase the accessibility of the polling stations to PWDs. A poll card would be sent to each elector, which provided a hotline number and attached a map which indicated whether the polling station allocated to the elector was suitable for use by PWDs. If a PWD was allocated to a polling station unsuitable for his use, he could make a request, not later than five days before the polling day, to REO for reallocation to a polling station accessible to PWDs in his constituency. Where feasible, REO would also arrange for

Rehabus service for electors with disabilities to commute to the relevant polling stations.

Election advertisements

Mode of delivery

9. On the sending of election advertisements ("EAs") and related materials, some members expressed support for encouraging candidates to disseminate EAs by electronic means for the protection of the environment. They considered that REO should provide candidates with the choice of receiving the address labels of electors for sending EAs on an individual or household basis, in order to reduce the consumption of address labels. Some other members, however, held the view that each candidate should be provided with the address labels pertaining to the electors in the constituency concerned, including those who had provided REO with their email addresses, so that candidates could have a choice of sending their EAs by post to electors when they needed to. There was also a suggestion of providing cash rebates to those candidates who chose not to utilize the free postage provided by the Government, with a view to providing financial incentive to encourage candidates in sending EAs to electors by more environmentally friendly means instead of by post.

10. The Administration advised that it would step up publicity to encourage electors to provide their email addresses. According to REO, it had been an established practice to provide each candidate upon request with a set of address labels pertaining to the electors in the constituency. Having regard to the views expressed by members, the Administration agreed to implement a new measure since the 2012 LegCo General Election to allow candidates to choose between address labels printed on a household basis (i.e. one address label for one household) and address labels printed on an individual basis (i.e. one address label for each individual elector except those who have provided REO with their email addresses for receiving EAs).

Appearance of other persons in election advertisements

11. Some members expressed concern on whether prior written consent had to be obtained from the persons who appeared in photographs published in a candidate's EAs. The Administration explained that under section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), if the name, logo or pictorial representation of any person or organization was included in an EA in such a way as to imply, or to be likely to cause electors to believe, that the candidate had the support of the person or organization concerned, the candidate was required to obtain consent of the person or organization concerned. To avoid misunderstanding, if an EA carried a photograph of the candidate

participating in an activity with other attendees, the candidate concerned could consider adding a caption to specify or explain the particular nature of the event. However, if the photograph was likely to cause electors to believe that the candidate had the support of those persons appearing in the photograph, it would be prudent for the candidate to obtain the prior written consent of the persons concerned.

Use of the Internet and social media to publish election advertisements

12. Some members expressed concern about possible breaches of electoral laws that might arise from the expression of views on the Internet (including social media). The Administration explained that under the existing regulatory framework, if a web surfer published a publication on the Internet (including social media) merely for expression of views and did not intend to promote or prejudice the election of any candidates, such publication would not normally be regarded as EAs, and the expenses incurred would not be election expenses. There was no breach of electoral laws in such cases. However, if a web surfer published any form of publication on the Internet for the purpose of promoting or prejudicing the election of a candidate or candidates (hence publishing an EA), the expenses incurred (notably the electricity and Internet access charges in normal circumstances), however trivial, were election expenses under ECICO and hence could subject the web surfer to criminal liability of illegally incurring election expenses.¹

13. The Administration recently conducted a public consultation exercise on, among others, a proposal that a targeted exemption of the criminal liability should be provided under ECICO in respect of a third party (including individuals and groups, except for the candidates whose election was being promoted or prejudiced and their election expense agents) who incurred electricity and Internet access charges in publishing EAs on the Internet (including social media). According to the Administration, the proposed relaxation should be able to address cases of inadvertent breach resulting from a mere expression of views by these third party web surfers, without exempting those web surfers who had incurred election expenses such as the cost of setting up and designing online platforms for promoting the election of a candidate. It would not affect the obligation of candidates or their election expense agents

¹ ECICO regards expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate as election expenses. Under ECICO, election expenses could only be incurred by a candidate and his/her election expense agents, and the aggregate amount of election expenses incurred by or on behalf of the candidate is subject to a prescribed threshold. A person other than a candidate or a candidate's election expense agent, who incurs election expenses, commits an offence and is liable upon conviction to a fine of \$200,000 and imprisonment for three years.

under the existing electoral legislation. The definitions of EAs and election expenses under the existing legislation would also remain intact. The Panel was consulted on the proposal on 20 November 2017. Members in general expressed support for the proposal in principle.

Exit polls

14. Some members were concerned that there were third parties conducting exit polls on their own means and disclosing the results to certain candidates for the purpose of assisting them in canvassing votes during an election, thereby causing unfairness to the other candidates. EAC had in the past reminded the media and organizations concerned that they should not announce the results of exit polls or make specific remarks or predictions on the performance of individual candidate before the close of poll. Since the 2015 DC Ordinary Election, EAC had also required applicants or the applicant organizations for conducting exit polls to make a statutory declaration to abide by the relevant terms and the EAC Guidelines² on the conduct of exit poll. Failure to comply with the terms of the statutory declaration or requirements of the EAC Guidelines could result in revocation of the approval for the conduct of exit poll, censure or even reprimand by the EAC in a public statement. If applicants or applicant organizations knowingly made a false statement on a material particular in the statutory declaration, they could be subject to criminal liability.

Training of staff

15. Some members expressed concern that as revealed in the petitions and complaints received by EAC, some Presiding Officers, Deputy Presiding Officers and polling staff were not very familiar with the electoral legislation, guidelines and the directives laid down in the operational manual issued for the Presiding Officers and polling staff. The Administration was urged to enhance staff training, and not to recruit non-civil servants as electoral staff.

16. The Administration advised that a majority of the electoral officers were civil servants and were experienced. To enhance training for electoral staff, an experience-sharing session would be added and training manuals would be beefed up to give more detailed guidance to electoral staff. In addition, polling management training which included crisis management, quality polling service, emotional intelligence training and experience sharing workshop would be organized for staff at the supervisory level. For those polling staff assigned to the duties of compiling statistical returns and counting results, specialized training on statistical work and hands-on practice would be provided to them.

² EAC has promulgated guidelines in relation to the conduct, publication and broadcast of exit polls conducted within No Canvassing Zones to avoid unfair interference with the election process by unduly influencing electors.

Polling hours

17. Some members considered that the polling hours of public elections which lasted for 15 hours (from 7:30 am to 10:30 pm) were rather long compared with many other places. They were of the view that the public might be receptive to a moderate change in the polling hours, which would not be too difficult for electors to get used to and would not significantly affect the voter turnout. In addition, shortening the polling hours would enable REO to return the venues of the polling stations as early as possible on the following day. Some other members, however, opposed shortening the polling hours as this might have an impact on the voter turnout and affect those electors who needed to work on the polling day. The Administration recently conducted a public consultation exercise on review of electoral arrangements which included, among others, the polling hours. The Administration pledged to consider the views and comments of members in mapping out the way forward.

Recent development

18. The Administration will brief the Panel on the practical arrangements for the 2018 LegCo By-election at the next meeting on 4 January 2018.

Relevant papers

19. A list of relevant papers which are available on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
2 January 2018

Section 7 – Review and Recommendations

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

(A) Text Version of Introduction to Candidates for Electors with Visual Impairment

7.2 To assist electors with visual impairment in reading the contents of the election platform in the Introduction to Candidates, the REO has encouraged candidates to provide a text version of their Introduction to Candidates for uploading onto the dedicated website since the 2012 LegCo General Election. The text version contains typed text that includes the candidates' numbers, names, ages, occupations, political affiliations, email addresses or websites and election platforms, so that electors with visual impairment can read the contents of the Introduction to Candidates with the aid of computer software. While the provision of the text version is optional, the EAC and the REO have all along encouraged candidates to use text version to convey their electoral messages to electors with visual impairment.

7.3 In this By-election, all seven candidates supported the appeal of the REO and provided text version of their Introduction to Candidates to cater for the needs of electors with visual impairment, so as to enable them to know more about the contents of the Introduction to Candidates through the dedicated website for the election.

Recommendation:

7.4 The EAC is pleased to note that all candidates in this By-election have made active efforts in providing a text version of the Introduction to Candidates to cater for the needs of electors with visual impairment. The EAC has also noticed that some members of the community proposed making it a mandatory requirement for candidates to provide the text version. However, to make it a must for a candidate to provide a text version of his/her election platform together with the relevant contents for inclusion into the Introduction to Candidates may not be desirable as a candidate should have the right to decide how he/she would like to promote his/her idea and election platform to the electors. Instead, a more suitable way is to foster an electoral culture that is more friendly to electors, and would arouse candidates' awareness of the right of electors to receive electoral information and the importance of it. In this way, candidates will strive more actively for the chance to reach out to electors of different sectors. Besides, the initiative of providing a text version has just been implemented since the last election cycle and candidates may need more time to fathom the effectiveness of this initiative and to adjust their election strategies and arrangements. The

fact that 100% of the candidates have provided a text version of their Introduction to Candidates in this By-election indicates that this initiative may have gradually gained the acceptance from candidates. The EAC is of the view that continuous monitoring on the implementation of this initiative is required before considering whether any adjustments may be required. Meanwhile, the REO should continue to appeal for candidates' support of this initiative to enable electors with visual impairment to receive electoral information as far as possible.

(B) Specimen of Election Mail Found not Acceptable for Free Postage

7.5 Pursuant to section 43 of the LCO, a candidate who is validly nominated for this By-election may send, free of postage, one letter to each elector to promote or advertise himself/herself. As in previous elections, candidates wishing to make use of this arrangement should first apply to the Hongkong Post for written approval of the specimens of their election mail before they send them to the electors.

7.6 Among the seven candidates contesting in this By-election, six submitted specimens of their election mail to the Hongkong Post for approval, and one of the specimens was found not acceptable. That candidate submitted three sets of election mail specimens for free postage to the Hongkong Post on 28 January 2016, 3 and 4 February 2016 respectively. The Hongkong Post consulted the REO on the contents of these specimens. Having considered the case, the REO sought legal advice from DoJ and was advised that some phrases contained in the

specimens, including “autonomy”, “self-determination for our future”, “self-rule”, “militant resistance”, “challenging repression by force”, “a history different from that of China”, as well as the background of language use and related annotation, were fundamentally in breach of the Basic Law, in particular Article 1 which stipulates that “The Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China.” The so-called “autonomy” referred to and advocated in the specimens, when reading in the context of the specimens as a whole, was against the “high degree of autonomy” being implemented by the Hong Kong Special Administrative Region (“HKSAR”) under the principle of “One Country, Two Systems” as laid down in the Basic Law. The LCO provides that all candidates must declare in the nomination form that he/she will uphold the Basic Law and pledge allegiance to the HKSAR. In this regard, the candidate concerned had already made the required statutory declaration in the nomination form. As such, from the legal perspective, it was considered that the relevant contents would most probably amount to an indication that the candidate was acting against the Basic Law and the contents of the declaration¹. In addition, phrases like “militant resistance” and “challenging repression by force” mentioned in the specimens were also suspected of inciting the use of unlawful violence to achieve one’s goals.

¹ Section 103(1) of the EAC (EP) (LC) Reg provides that “a person who, in an election related document, makes a statement which that person knows to be false in a material particular or recklessly makes a statement which is incorrect in a material particular or knowingly omits a material particular from an election related document commits an offence.”

7.7 After considering the relevant legal advice and the views of the EAC, the REO replied to the Hongkong Post on 15 February 2016 that the mail specimens submitted by the said candidate should not be approved unless the relevant contents were deleted. The Hongkong Post notified the said candidate of the application result on the same day. According to the current arrangement, the candidate can submit a revised version of the specimen to the Hongkong Post before the submission deadline. The candidate concerned later expressed dissatisfaction on this matter to the media, but the Hongkong Post did not receive any revised submission from the candidate subsequently. After the By-election, the candidate concerned also applied to court for leave to apply for judicial review in relation to the above incident.

Recommendation:

7.8 The EAC is of the view that as the current arrangement of free postage for candidates was provided by government departments using public resources, the REO and the Hongkong Post have the responsibility to ensure that they will not be assisting candidates in delivering election mails with contents that are suspected of contravening the law. Neither the EAC nor the REO holds any political stance and there was no political consideration in handling the case. If DoJ's legal advice suggests that the contents of the specimen submitted by a candidate would most probably amount to an unlawful act, the REO has the responsibility to act according to the legal advice so as to ensure that the arrangement of free postage provided by the Government would not

involve any unlawful act. The freedom of speech all along cherished by Hong Kong has not been undermined by this decision. The EAC understands that the arrangement of free postage of election mail serves to enable candidates to promote and advertise themselves by elucidating their election platforms and presenting their visions for candidature. But to avail themselves of this opportunity, candidates must comply with the general requirements on publishing EAs, including all applicable legislation and the Guidelines issued by the EAC. For the case in question, the REO had sought and fully considered the relevant legal advice, reported to the EAC on its justifications in handling the case and taken EAC's views into account. Regarding the questionable contents or phrases of the specimens mentioned above, the EAC also agrees that one must refer to the background of the language usage and the overall context in order to understand the meaning of the words concerned. The EAC respects the concerned candidate's right to apply for judicial review in this incident. The EAC considers that the REO, before the Court has made a ruling in the above judicial review, should continue to take a prudent approach when handling similar cases. Thorough legal advice should be sought from the DoJ and a balance should be struck between various factors of consideration. At the same time, the overall interest of the election should be borne in mind.

7.9 As this case involves relatively complicated and sensitive legal issues, it is necessary for the REO to handle with care. The EAC believes that the experience gained in handling this case could be helpful in dealing with similar cases in future.

(C) Operation of the Media Centre

7.10 To facilitate the dissemination of counting results of the By-election to candidates, media and the public, an MC was set up at the TKLSC on the polling day. Apart from a designated working area for the media to cover the By-election, the MC also had a separate area with about 300 seats exclusively for the candidates and their supporters. Furthermore, a public zone with about 600 seats was also set up by the REO for the public to observe the announcement of election results.

7.11 For the sake of fairness, admission of the public to the venue was arranged on a “first-come-first-served” basis. Relevant admission arrangement was announced by the REO on the dedicated website and through a press release before the By-election. Moreover, the REO set up a dedicated hotline on the polling day to answer enquiries about the admission arrangement for that evening. Generally speaking, admission of the public was maintained in an orderly manner. The MC was filled to capacity at about 1 am on the following morning, with announcement made accordingly and immediately to the public by the REO on the dedicated website, through press release and a mobile broadcasting device at the venue.

7.12 House rules of the MC were displayed at the entrance of the MC and prominent spots inside the venue to remind persons admitted into the MC to behave in an orderly manner. Although supporters of individual candidates shouted out slogans from time to time to show their

support for individual candidates, good order was maintained throughout as a whole.

Recommendation:

7.13 In respect of this By-election, the EAC considers that the TKLSC was an appropriate venue for setting up the MC, and is satisfied with its overall operation. The EAC notes that, due to the size constraint of the TKLSC, there was after all only limited space designated as the public area. To accommodate more members of the public to observe the announcement of election results, the REO may consider adjusting the number of seats in the public area in future elections, so as to accommodate more members of the public, as well as to allow more flexible use of limited space to cater for different circumstances.

(D) The Loss-of-key Incident of a Polling Station

7.14 On the night of the polling day, the polling station at CUHKFAA Chan Chun Ha Secondary School (Code: R2501) was converted into a counting station immediately after the close of poll and opened to the public for observation of the counting process. The PRO and DPRO were then to open the four ballot boxes containing ballot papers one by one in the counting station.

7.15 According to the existing arrangement, each ballot box has to undergo a sealing procedure before use. The PRO will first lock the

back door of the ballot box with a padlock (the PRO will open the back door to retrieve the ballot papers inside the box during the count), then use a string to tie the sealing certificate which bears the signatures of the PRO and two other witnesses onto the catch of the back door of the ballot box with a knot. The PRO will first invite candidates, election agents or polling agents who are present to be the witness. In the event that the above persons are not at the scene, the PRO will invite a police officer, a member of the CAS or one of the polling staff present to be the witnesses. The sealing certificate should also bear a red seal in order to forestall the certificate and the above knot being tampered with. According to established procedures, each ballot box is affixed with a key to the padlock. The key should be attached to one of the handles on the side of the ballot box with a plastic cord after the ballot box is locked, and the key will be used by the PRO to open the ballot box during the count.

7.16 The four ballot boxes in the said counting station had all been locked in accordance with the sealing procedure, with the sealing certificates bearing the seal attached. The PRO opened the first two ballot boxes successfully, but when he was about to open the third one, he discovered that no key was attached to the handle of the ballot box. He then instructed polling staff to search for the key in question and proceeded to open the fourth ballot box, which was emptied onto the counting table and the unloaded ballot papers were then mixed with those of the other two ballot boxes. The PRO and DPRO carefully inspected the third ballot box that could not be opened and found that the padlock, sealing certificate and seal were all intact. There was no sign that the

ballot box had been tampered with. Since the key of the ballot box could not be found, the PRO called the REO to report the incident and requested legal advice on the proposal to break the padlock with tools. The REO noted that the ballot box had not been tampered with and, after seeking legal advice, informed the PRO that he could break the padlock with tools in the presence of the candidates and/or their agents, and mix the ballot papers inside the box with those of the other ballot boxes for counting. This is because there is no provision laid down in the electoral legislation that would allow ballot papers from individual ballot boxes to be counted separately. Subsequently, the PRO borrowed some tools (a screwdriver and a hammer) from the school and prepared to break the padlock. Meanwhile, arguments broke out among those who were present to observe the counting process. They questioned why the key of the padlock was lost and whether the padlock should be broken with tools. The PRO informed the people at the scene that legal advice on using tools to open the ballot box had already been sought, and that the ballot papers inside the ballot box should be mixed and counted together with those on the counting table.

7.17 In fact, when the PRO was preparing to break the padlock with tools, a polling staff discovered a key inside a transparent plastic bag holding the sealing certificate and informed him. However, the PRO was not sure whether that key in the plastic bag was the lost one. To avoid causing unwarranted speculation among those who were present in the station in case this key could not open the padlock, the PRO considered it more appropriate to continue to open the ballot box by

breaking the padlock with tools and made this decision. According to the post-incident investigation conducted by the REO, the key in that plastic bag is believed to be the lost key of the padlock (see para. 7.21).

7.18 Some people at the scene were dissatisfied with the arrangement and raised queries, demanding that the PRO should count the ballot papers inside the ballot box separately. They also clamored and threatened to storm into the counting zone. Police officers responsible for maintaining order at the scene then reported the situation to their seniors and requested reinforcement, while the PRO also reported the latest situation of the counting station to the REO. The REO and RO, after discussing the situation, contacted the Support Wing of the Hong Kong Police Force and the Sha Tin Police District Station respectively for reinforcement and assistance. The REO also sent the ARO (Legal) to the counting station urgently to provide on-the-spot legal advice on the procedures of opening the padlock to the PRO. Police reinforcement subsequently arrived at the counting station and appropriate deployment was made inside and outside of the counting station based on the prevailing circumstances, so as to maintain order in the station and prevent interference with the counting process. After arriving at the scene and learning about the situation, the ARO (Legal) considered using appropriate ways other than using the key to open the ballot box a legally reasonable option after confirming that the padlock, sealing certificate and seal were all intact and there was no sign of the ballot box having been tampered with. The ARO (Legal) also reminded the PRO that counting agents at the scene must be invited to inspect if the seal of the

ballot box in question was intact before using tools to break the padlock. Also, the ballot box should be opened in the presence of the aforementioned agents and the public and the ballot papers inside the ballot box in question should be mixed and counted together with other ballot papers.

7.19 As the tools borrowed from the school might not be able to break the padlock efficiently and effectively, the PRO requested the Police to provide a pair of snips and assist in breaking the padlock. The PRO then explained to the people at the scene the procedure to break the padlock and the counting arrangements that would follow. He also explained that the main purpose of police reinforcement was to help maintain order and ensure that the counting process would be conducted smoothly. The police reinforcement, after entering the counting station, remained outside the restricted zone of the counting table and did not touch any ballot papers or ballot boxes.

7.20 Although there were still some people clamoring at the scene at that time, the situation was gradually under control. The PRO then invited the four counting agents present to inspect if the seal of the ballot box in question was intact. After scrutinizing the seal, none of the counting agents raised any objections to the observation that the ballot box had not been tampered with. As the polling staff were not good at using the pair of snips provided by the Police, the PRO asked a police officer in plain-clothes to help break the padlock of the ballot box using the pair of snips. The police officer did not touch any ballot papers

during the process. The PRO and DPRO then emptied all the ballot papers inside the ballot box in question onto the counting table and mixed them with other ballot papers for counting. The whole counting process took about two hours and finished smoothly under the surveillance of the counting agents and all those at the scene. The counting results, after verification, completely tallied with the estimated number of votes in the ballot boxes as recorded in the ballot paper account.

7.21 The electoral equipment of the polling station concerned, including the sealing certificate of the ballot box in question and the broken padlock, was then delivered to the REO for retention. Staff of the REO later found a key inside the transparent plastic bag holding the sealing certificate (i.e. the key as mentioned in para. 7.17 above), and invited the PRO concerned to check together if the key belonged to the padlock of that ballot box. It was found that the key could fit into and turn in the keyhole of the padlock. Thus, it was highly probable that the key might be the one that was lost in the said polling station on the polling day.

7.22 As for the reason why the key had been placed inside the transparent plastic bag holding the sealing certificate, the PRO stated that the key was attached to the handle of the ballot box in question with a metal clasp after the box was sealed on the polling day. Furthermore, according to the investigation of the REO, none of the polling staff indicated that they had placed the key inside the plastic bag.

Recommendation:

7.23 According to the investigation of the REO, the ballot box in question had all along been placed in the said polling station, with polling staff and police officers on duty there. The PRO and DPRO confirmed after checking the ballot box that the padlock, sealing certificate and the seal were all intact. The counting agents present, after inspecting the seal of the ballot box, also did not raise any objection to or disagreement on the observation that the ballot box had not been tampered with. The EAC therefore considers it appropriate to break the padlock with tools. Concerning whether the ballot papers inside the ballot box should be counted separately, there is no provision in the current electoral legislation that allows separate counting of ballot papers in individual ballot boxes. Also, considering that the ballot box was confirmed to have never been tampered with and that the counting results were verified to be in complete accord with the estimated number of votes in the ballot boxes as recorded in the ballot paper account, the counting result was beyond all doubts based on the above objective evidence. Furthermore, the ballot paper account only records the estimated total number of votes but not breakdown of votes inside each of the ballot boxes. Thus, no matter what the result of the count would be, counting the ballot papers in the ballot box in question separately would not serve any verification purposes. Hence, the EAC regards the arrangement to snip the padlock and mix the ballot papers in the ballot box in question with ballot papers in all other ballot boxes in the same polling station for counting in accordance with statutory procedures appropriate.

7.24 With regard to the loss of key, the EAC is of the view that the investigation result cannot establish which staff placed the key inside the transparent plastic bag holding the sealing certificates. Anyhow, if the PRO had used the plastic cord provided to attach the key to the handle of the ballot box, the key would not have fallen off easily.

7.25 As a whole, the EAC considers this an accident which did not involve any intentional interference. The PRO had handled the matter properly according to the legal advice received. Considering that the ballot box in question had all along been placed in the polling station; that police officers had been on duty in the polling station throughout the polling day; that the ballot box and sealing certificate were confirmed to have never been tampered with after inspection by the PRO, DPRO and counting agents; and that the counting results were verified to be in complete accord with the number of votes in the ballot boxes as recorded in the ballot paper account, the EAC is of the view that the integrity of the election had not been affected by the incident. The EAC considers that the snipping of the padlock of the ballot box was an exceptional arrangement, which would inevitably raise doubts among the public. As regards the fact that the PRO failed to use a plastic cord to attach the key to the ballot box, the EAC had instructed the REO to seriously remind the concerned PRO of the importance of compliance with the operational manual. In addition, to avoid the recurrence of similar incidents, the REO needs to enhance its training for PRO and DPRO in the future, in particular on the arrangement as to how the key should be attached to the

handle of the ballot box after the ballot box is sealed and to arrange one more staff to double check the above procedures.

(E) The Count

7.26 Overall speaking, the time taken for the counting and verification of results for the 2016 LegCo New Territories East GC By-election was about 5 hours. For over 90% of the counting stations, the counting and verification of results were completed within 3 hours. Due to the above-mentioned delay in counting and reporting of counting results to the SIC caused by the loss of a ballot box key at a polling station (Code: R2501), the final announcement of the election results was delayed. Nevertheless, the time used for the counting and verification of results for this election was still shorter than the 6.5-hour taken in the 2015 DC Ordinary Election. Based on the operational experience of the SIC during the 2015 DC Ordinary Election, the REO made improvements in the workflow of results verification for this election. Moreover, the SIC kept close contact with the PROs during the count to monitor the counting progress and provide prompt assistance to them in case they encountered any difficulties. This had helped expedite the completion of the relevant procedures. Furthermore, since only 146 ordinary polling stations were set up for this election, the SIC was able to deploy more adequate manpower to take charge of data collection. As a result of the improvements in these three aspects, the time taken for the counting and verification of results in this By-election was shortened.

Recommendation:

7.27 The EAC is pleased to note that a shorter time was taken to complete the counting and verification of election results in this election. Notwithstanding that the actual circumstances of each election may vary, the EAC suggests that the REO should, having regard to the situation and its past experience, continue to adopt feasible measures in future elections and consider enhancing manpower so that election results could be announced as early as possible.

**Relevant papers on practical arrangements
for the 2018 Legislative Council By-election**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	12.6.2001 (Item IV)	Agenda Minutes
	15.10.2007 (Item III)	Agenda Minutes
	17.3.2008 (Item V)	Agenda Minutes
	19.4.2010 (Item IV)	Agenda Minutes
	16.11.2015 (Item III)	Agenda Minutes

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