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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 18 October 2021

Guidelines on Election-related Activities in respect of the Chief Executive Election to be issued by the Electoral Affairs Commission and practical arrangements of the 2022 Chief Executive Election

Purpose

This paper summarizes the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the Proposed Guidelines on Election-related Activities in respect of the Chief Executive ("CE") Election in 2017 ("the 2017 Proposed Guidelines") issued by the Electoral Affairs Commission ("EAC") and the practical arrangements for the 2017 CE election.

Background

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. Supported by the Registration and Electoral Office ("REO"), EAC is tasked to make preparations for various electoral arrangements for the CE election.

3. The 2017 CE Election was held on 26 March 2017. In June 2017, EAC published the Report on the 2017 CE Election¹ ("the Report") which sets out how EAC conducted and supervised the 2016 Election Committee ("EC") Subsector Ordinary Elections ("ECSSOEs") and the 2017 CE Election. The Report also contains a review on the electoral procedures and arrangements of the 2016 ECSSOEs and the 2017 CE election as well as measures recommended for future elections. The recommendations made by EAC on the 2017 CE Election are in **Appendix I**.

¹ The Report on the 2017 CE Election was issued to all Members on 3 July 2017.

Past discussion of the Panel

4. At its meeting on 20 June 2016, the Panel was briefed on the 2017 Proposed Guidelines. The major changes in the 2017 Proposed Guidelines as compared with the guidelines last issued by EAC in November 2011 are set out in **Appendix II**. At its meetings on 21 November 2016, the Panel discussed the practical arrangements for the 2017 CE Election. The relevant issues raised at these meetings are summarized in the following paragraphs.

Election expenses and electioneering activities

5. During the discussion of the 2017 Proposed Guidelines, some members expressed concern about whether measures were in place to prevent an incumbent CE from having an unfair advantage by using public resources for his/her electioneering campaign in seeking re-election. The Administration advised that in accordance with paragraph 16.8 of the 2017 Proposed Guidelines, a candidate should not use any public resources for his/her electioneering campaign. However, any security, transportation, secretarial services and living quarters to which the candidate was entitled for his/her private purposes by virtue of his/her post or job were not treated as public resources in this context. That said, if any such services/living quarters were inevitably used for the candidate's electioneering campaign, the relevant part of the related costs had to be accounted for as his/her election expenses. A list of common expenditure items which could be counted towards election expenses was in Appendix Q to the 2017 Proposed Guidelines, and that a CE seeking re-election had to separate the resources spent on his/her duties as CE from his/her election expenses and should include relevant particulars in his/her election return.

6. Some members asked whether a person publishing an article to express appreciation of a particular CE candidate's capability in the run-up to the 2017 CE Election would be considered to have published an election advertisement ("EA"). The Administration advised that the definition of "EA" was provided in section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), according to which any publicity materials published by any means "for the purpose of promoting or prejudicing the election of a candidate or candidates at the election" would be counted as EAs. In any particular case, the "intention to promote or prejudice the election of any candidates" had to be proven in considering whether the definition of "EA" was met.

7. Some members considered that an incumbent CE or officials under the Political Appointment System seeking re-election/election as CE should take leave or resign before declaring candidacy. The Administration advised that

the 2017 Proposed Guidelines had clearly set out that a politically appointed official should ensure that, when taking part in election-related activities, great care should be taken that there was no actual or potential conflict of interest with the business of the Government or his/her own official duties. The Administration further advised that according to section 14 of the CE Election Ordinance (Cap. 569), a prescribed public officer (the definition of which included officials under the Political Appointment System) was disqualified from being nominated as a candidate in the CE Election. However, the person concerned would be eligible for nomination as a CE candidate provided that he/she had resigned from public office and that his/her resignation had taken effect.

Polling arrangement

8. During the discussion of the practical arrangements of the 2017 CE Election, members enquired when the new polling date would be for holding another round of election if no candidate was returned even on the next polling day on 7 May 2017 (i.e. 42nd day after the termination of the proceedings for the CE election on 26 March 2017). The Administration advised that the new polling date would then be 18 June 2017 (i.e. 42nd day after the termination of the proceedings for the election on 7 May 2017). If no candidate was returned at an election upon expiry of the term of office of an incumbent CE, acting arrangements would be made in accordance with the Basic Law. Another round of nomination and polling would be conducted when there was a new round of election.

9. With regard to the polling arrangement for CE Elections and duration of the polling hours in respect of different rounds of voting to be held on the polling day, members enquired whether and how electors would be notified if a second round of voting was required in the election. The Administration advised that in the polling notice to be issued to electors, REO would encourage EC members to stay to observe the counting of votes at the central counting station after casting their votes. If another round of voting was required, a public announcement would be made through the electronic media. REO would also notify those electors who had provided REO with their contact telephone numbers or email addresses by Short Message Service and emails, if another round of voting was required.

10. In response to members' enquiry about whether questionable ballot papers should be displayed to all electors, in addition to candidates and their election/counting agents, the Administration undertook to review the arrangement.

Publicity of election

11. Members called on the Administration to step up publicity of the CE election in a more in-depth manner. Apart from promoting clean elections, members requested the Administration to take measures to enhance public understanding of the representativeness and importance of the CE election, targeting EC members as well as the general public. The Administration advised that a series of publicity activities would be launched through various channels, such as radio Announcement in the Public Interest and posters, and a dedicated website would be launched where all the information relating to the election would be made available for public browsing.

Recent development

12. The sixth-term CE Election will be held on 27 March 2022. The Panel will discuss the Guidelines on Election-related Activities in respect of the CE Election to be issued by EAC and the practical arrangements for the CE Election in 2022 at the next meeting on 18 October 2021.

Relevant papers

13. A list of the relevant papers available on the Legislative Council website is in **Appendix III**.

Council Business Division 4
Legislative Council Secretariat
12 October 2021

CHAPTER 14

REVIEW AND RECOMMENDATIONS

Section 1 – A General Remark

14.1 The EAC considers that the 2016 ECSS Ordinary Elections and the 2017 CE Election have been conducted in an open, fair and honest manner, and is generally satisfied with the electoral arrangements. In line with the established practice, the EAC has conducted a comprehensive review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The EAC's review findings and the related recommendations are set out in the ensuing paragraphs.

Section 2 – Review and Recommendations

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(II) The 2017 CE Election**(A) Voting Secrecy**

14.19 The EAC and the Government were extremely concerned about a media report before the polling day alleging that EC members were requested to take photographs of the marked ballot papers inside the voting compartments on the polling day of the CE Election. It was deemed necessary to remind the public and EC members that voting is secret and there were adequate legislative provisions and established effective electoral measures in place to safeguard the secrecy of the ballot. In this connection, the REO issued a statement on 2 March 2017 stating that in accordance with the EP (CEE) Reg, EC members are not allowed to film, take photographs or make any audio or video recording inside the main polling station. The above Regulation also stipulates that no person should communicate to another person any information obtained at the main polling station as to which candidate an EC member is about to vote for or has voted for. Besides, no person should directly or indirectly induce an EC

member to display a ballot paper marked by him/her so as to make known to any person any information as to which candidate the EC member has voted for. In accordance with the above Regulation, EC members are not allowed to communicate with others, or use a mobile phone or any other communication device to communicate with any other person inside the main polling station. To assist the PRO in enforcing the relevant regulation, the REO would request the EC members to switch off their mobile phones and put them away properly before entering the main polling station. All parties concerned were required to strictly abide by the electoral legislation and guidelines. Sufficient staff and security guards would be deployed at the main polling station to maintain order. In the event that there was any disruption or a breach of the law, the RO or the PRO might stop the behaviour having regard to the circumstances and order the person concerned to leave the main polling station immediately, or seek assistance from police officers in situ. Referral would also be made by the REO to the LEA for stern follow-up action.

14.20 Besides, in response to a media commentary that ballot papers would be delivered to the Mainland on completion of the CE Election for fingerprint examination to check the choice on the ballot papers by individual EC members, the REO made a firm statement on 3 March 2017 that in accordance with sections 56 to 59 of the above Regulation, after declaring the result of the election (or terminating the proceedings for the election), the RO as required under the electoral law, shall immediately seal the ballot papers in packets. Candidates, election agents or counting agents would be invited to observe the process of wrapping, sealing and endorsing the packets by the RO. The sealed and endorsed packets, together with other election documents, would be kept in safe custody by the CEO according to the law. The CEO shall not

permit any person to inspect any ballot paper other than under an order made by a court in proceedings relating to an election petition or other legal proceedings. The Regulation stipulates that the CEO shall retain in his custody the ballot papers and election documents for 6 months. Unless otherwise directed by an order of the court in proceedings relating to an election petition or other legal proceedings, the CEO shall destroy all the ballot papers and relevant documents immediately after the expiry of 6 months. Moreover, at the briefing session for candidates conducted on 5 March 2017, the EAC Chairman emphasised that the EAC attaches great importance to voting secrecy. No numbers would be printed on the ballot papers and the polling staff were prohibited from recording which particular ballot paper was issued to an elector. After being issued with a ballot paper, the EC member was required to enter the voting compartment alone to mark the ballot paper, fold the ballot paper inward and put it into the ballot box. Ballot papers with writing or a mark whereby an EC member could possibly be identified would liable to be determined as invalid in the counting of votes.

14.21 On the polling day of the 2017 CE Election, the RO, after completion of counting of votes and declaration of the result of the election, immediately made up the counted ballot papers, the counterfoils of the ballot paper that have been issued, the ballot papers that have not been issued, and the ballot papers that were not valid into separate sealed packets. The RO also endorsed on each sealed packet with a description of its content, the polling date and the first round of voting. The RO invited the candidates, election agents/counting agents and EAC Members to observe the above process. The sealed and endorsed packets, together with other election documents, were then sent to the CEO for safe custody according to the law.

14.22 The SCMA had also reiterated at the LegCo meetings held respectively on 1 March and 23 March 2017 that the Government, EAC and LEAs had all along been discharging their duties strictly in accordance with the provisions of the Basic Law and the relevant electoral legislation, regulation and guidelines. To ensure that the CE Election would be conducted smoothly in accordance with the law, the SCMA specifically requested the REO to enhance secrecy and security measures with a view to conducting the election in compliance with the principles of openness, fairness, justice and honesty. On the other hand, there are provisions under the ECICO prohibiting corrupt and illegal conduct in the CE Election and, inter alia, the use of force or duress to influence a person's voting preference. Any complaint about the breach of the above ordinance received would be handled by the LEAs in accordance with the law.

14.23 In consultation with the EAC and CMAB, the REO implemented a series of measures to allay the public concern expressed over the secrecy of votes. The measures, ranging from the layout of the polling station, security, polling procedures to the design of the voting compartments, etc. are as follows:

- (a) 10 days before the poll, the REO had issued a letter to EC members reminding them that in accordance with the relevant electoral legislation, it would be an offence to communicate with others, to film, take photographs and to make audio or video recording inside the polling station, or to remove a ballot paper from the polling station. Notices were also prominently put up at the waiting area outside the main polling station, at ballot paper issuing desks and inside

the voting compartments to remind EC members of such requirements;

- (b) all surveillance cameras inside the main polling station were removed before the election;
- (c) a venue security search was conducted by the Police at the Grand Hall on Level 3 (main polling station) and Halls F and G on Level 5 (CCS) of the HKCEC, on the evening prior to the polling day;
- (d) only EC members and designated persons (including staff members, candidates and their election/polling agents) with a name badge issued to them by the REO were allowed to enter the main polling station;
- (e) additional polling staff were arranged by the REO to perform ushering duties inside the main polling station and to monitor the voting procedure to ensure strict compliance with the requirements set out in paragraph (a) above. As a precautionary measure, polling staff manning the main polling station requested EC members to switch off their mobile phones (and any other mobile devices with audio, video recording or communication functions) and put them away properly before entering the main polling station, so as to ensure that no person was allowed to use mobile phones or any other communication devices for communication, filming, photo-taking or audio or video recording purposes inside the main polling station. All polling staff had

undergone vigorous training organised by the REO and several large-scale rehearsals were conducted before the election to familiarise them with the relevant procedures and the appropriate actions to be taken in the event of a breach of the requirements;

- (f) before being admitted to the main polling station, EC members would be requested by reception staff stationed outside the main polling station to deposit their backpacks, handbags, etc. in the cloakroom;
- (g) each voting compartment at the polling station was separate and with a top cover;
- (h) at the close of poll, the PRO would lock the ballot boxes and sealed them under the witness of the candidate(s) and his/her/their agent(s) present. The sealed ballot boxes and the relevant election documents would be delivered to the CCS under police escort and accompanied by candidate(s) and his/her/their agent(s) if they so wished. Arrangements were made by the REO to broadcast live the entire delivery process inside the CCS to ensure the delivery was conducted under the supervision of all parties concerned; and
- (i) before counting, all the ballot papers would be mixed together in a random manner by the counting staff to ensure that no one could possibly identify the EC members who

cast the ballots based on the location where the ballot papers were collected.

14.24 On the morning of 25 March 2017 (i.e. the day before the poll), the EAC Chairman met the media and stressed that the EAC had attached great importance to voting secrecy, and the ballot was secret and conducted in a confidential manner same as in all other elections. He again appealed to EC members to pay special attention to the statutory requirements set out in paragraph 14.23(a) above, and assured that sufficient manpower would be deployed to maintain order and handle any breach of the law in ensuring voting secrecy. Moreover, he reminded members of the public not to be misled by the rumour that the ballot papers would be delivered to the Mainland for fingerprint examination.

14.25 **Recommendation:** The EAC is satisfied with the arrangements put in place to safeguard voting secrecy. It is of the view that measures set out in paragraph 14.23 above will effectively ensure the secrecy of voting and allay the public concern and recommends that they should be adopted again in future elections.

(B) Delivery Arrangements for Polling Notices and Election Documents

14.26 As in the CE Election in 2012, this Election continued to make use of the courier service provided by the Hongkong Post for delivery of polling notices and the relevant election documents to EC members. To ensure the more effective and accurate delivery of the relevant mail items, a special night delivery services was arranged by the HongKong Post for this election. Moreover, the REO has invited beforehand the EC members to provide, on a

voluntary basis, an office address for receiving the aforesaid mail items during the day time. These improvement measures are considered satisfactory and effective in enhancing the efficiency of the mail delivery.

14.27 **Recommendation:** The arrangement set out in paragraph 14.26 above has facilitated the smooth delivery of polling notices and election documents to EC members and should continue to be adopted in the CE Elections in the future.

(C) Polling Hours

14.28 As mentioned in paragraphs 8.4 and 8.5 above, the first round of voting in a contested election was scheduled to be held from 9:00 am to 11:00 am in the main polling station and the DPS set up at the police station, while the second and third rounds of voting would be held from 2:00 pm to 3:00 pm and from 7:00 pm to 8:00 pm respectively on the same day. With regard to the DPSs set up at penal institutions, the first round of voting would be held from 9:00 am to 10:00 am, and the second and third rounds of voting were to be held at the same time as those in the main polling station. At the end of each round of poll, the ballot boxes were to be delivered immediately to the CCS for the counting of votes.

14.29 On the polling day of this election, following the completion of the first round of voting at 11:00 am, the counting of votes commenced from 12:00 noon and ended at round 1:10 pm. Since one of the candidates was duly elected with more than 600 valid votes, the RO officially announced the election result at 1:25 pm. In the event that no candidate obtaining more than 600 valid

votes in the first round of voting in the election, it would be necessary to conduct a second round of voting with the polling hours from 2:00 pm to 3:00 pm. The RO and other electoral staff would be required to return to the main polling station or DPSs before 2:00 pm to complete the preparation for the second round of voting. All EC members, after being notified of the need to conduct the second round of voting, would also be required to return to the main polling station during polling hours to complete the voting procedures. Taking into account that the result of the election was not officially announced until 1:25 pm on the polling day, in case the second round of voting, which was supposed to start from 2:00 pm, was required, the time for preparation would be very tight, and this arrangement of polling hours was considered not ideal.

14.30 **Recommendation:** The EAC considers that it may not be possible to ensure sufficient time for electoral staff to prepare for the second round of voting after the completion of the count in the first round of voting as the time between the two rounds is merely 3 hours. Therefore, it is proposed that the commencement of the polling hours in the second round of voting be delayed, so as to allow sufficient time for electoral staff and EC members to get ready should there be a need to conduct the second round of voting, in order to ensure the second round of voting will be conducted in a smooth manner. The REO should carefully assess the delayed commencement time for the second round of voting and its impact on the time for the third round of voting, and draw up a work plan containing the details of operation during the intervening time between individual rounds of voting to catering for any contingent situations, such as an unanticipated longer period of time in the counting process, such that there is satisfactory preparation for the entire election.

(D) Admission and Security Arrangements

(i) Main Polling Station

14.31 The REO has followed the practice adopted in the 2012 CE Election of issuing a name badge together with the polling notice to all EC members prior to the polling day. A barcode was printed on each name badge. When entering or leaving the venue, EC members were required to have their name badges scanned at one of the access control points set up at the venue for identification purpose before gaining access. Nevertheless, whether that EC member who had entered the main polling station and/or had obtained the ballot paper would not be recorded during the scan. Each name badge was affixed with a hologram sticker to prevent forgery. EC members who had not brought along their name badges to the venue on the polling day would be issued with replacement badges at the name badge replacement counter after verification of their identities.

14.32 In addition, after conducting a detailed estimation of the throughput of the main polling station and taking into account past operational experience, the REO has increased the number of ballot paper issuing desks inside the main polling station from 33 to 38, to be distributed in 8 zones marked by different colours. Additional polling staff were also deployed for ushering and assisting each EC member to cast their vote. To facilitate the ushering of an EC member by the polling staff to the right ballot paper issuing desk efficiently, both the code of the ballot paper issuing desk allocated to the EC member as well as the corresponding colour were printed at the lower part of the name badge. Furthermore, members of the CAS and police officers were deployed inside the main polling station to assist in maintaining order.

Members of the FSD and AMS were also on standby in the vicinity of the main polling station to readily respond to any possible emergencies or special incidents.

14.33 The first round of voting started at 9:00 am on the polling day. In the letter sent to EC members together with the polling notice, the REO has appealed to EC members to arrive early at the main polling station to vote in order to avoid possible bunching towards the end of the poll. In this connection, a waiting area was set up by the REO outside the main polling station and open for EC members at 8:00 am. However, since some EC members had already arrived at the HKCEC at about 7:00 am that day waiting to cast their vote, polling staff opened the waiting area earlier for use by EC members at 7:30 am.

(ii) Central Counting Station

14.34 There was a designated area inside the CCS for candidates, their agents and electioneering personnel, and EC members to observe the count. A working area for the press and a public gallery with a capacity for 1 000 persons were also set up inside the CCS to facilitate media coverage and observation of the count by the public.

14.35 Owing to the limited capacity of the public gallery inside the CCS, admission of the public was on a "first-come-first-served" basis starting from 10:00 am on the polling day. Wristbands were provided to the public upon admission for identification purpose. The public gallery was filled up to capacity at about 10:45 am, and a public announcement made accordingly by the

REO through press release, the CE Election website and a broadcasting system at the venue, appealing to members of the public not to go to the CCS.

14.36 As in the past, in order to ensure the smooth conduct of vote counting, the REO followed the security measures adopted at the CCS in the 2012 CE Election whereby all media and members of the public were requested to go through a bag search before being arranged to enter the CCS on Level 5. In addition, new security measures were implemented. Besides conducting the same bag search on the candidates, their agents, electioneering personnel and EC members, the media and members of the public were requested to go through a metal detector scan at the suggestion of the Police. In case bulky items or items that might interfere with the count were found, staff would ask the person concerned to deposit the items in the cloakroom. All those who left the CCS were required to go through the relevant security check before re-entering the CCS again. Police were deployed at the venue to provide support. On the whole, admission was orderly and security check was also conducted smoothly.

14.37 **Recommendation:** The EAC is satisfied with the aforementioned access control and bag search arrangements, and the smooth operation of the new metal detector scan. Therefore, similar arrangements may be considered to be adopted again in future elections. Furthermore, deploying additional staff at the main polling station to assist in ushering greatly expedited the flow of EC members to the correct ballot paper issuing desks, smoothening the voting process and shortening the time required for voting. The EAC considers that the same arrangement should continue to be adopted in future elections.

14.38 The EAC would like to thank the HKPF for their staunch support in this election and is of the view that the REO should continue to maintain close liaison and co-operation with the HKPF in future elections to facilitate the smooth conduct of the poll and the count.

(E) Suspected Theft of Notebook Computers Containing Voter Registration Particulars

14.39 On 27 March 2017, i.e. the day following the 2017 CE Election, REO staff arrived at the fallback venue at the AWE for packing and taking stock of materials. At around noon, the staff discovered that two notebook computers stored in a store room were suspected to have been stolen. The REO reported the incident to the Police in the same afternoon. The Police classified the case as theft. As at the date of the publication of this report, criminal investigation of the case is still ongoing and progress has not been made known to the public.

14.40 Of the two notebook computers suspected to have been stolen, one contained the names of EC members without any other personal particulars. As the relevant names had already been promulgated through public platforms, there was no risk of data leakage. The other computer contained information of about 3.78 million GC electors in the 2016 FR, including their names, addresses, Hong Kong Identity Card numbers, and the constituencies the electors were registered in. All the information has been subject to multiple encryptions to prevent unauthorised access (see paragraphs 14.46 and 14.48 below for details). No telephone numbers of electors were stored in these two computers.

14.41 After the incident, the SCMA announced the establishment of an inter-departmental Task Force to conduct a thorough review of the causes and circumstances of the incident, and propose improvement measures on operational matters, including the handling of personal data, information technology (IT) security, overall venue security arrangements as well as the REO's internal supervisory structure and procedures, etc. The Task Force is led by the Deputy Secretary for Constitutional and Mainland Affairs and consisted of Government IT and security experts. The EAC Chairman has attended all the meetings of the Task Force as an observer.

14.42 On 27 March 2017, the REO reported the incident to the PCPD, which had launched a formal investigation on the incident.

14.43 The EAC was very concerned about the incident and issued a press release on 28 March 2017. It stated that the EAC had instructed the REO to fully assist in the police investigation of the incident and launch a comprehensive review on the arrangements in handling of VR information in the CE Election. In the press release issued on 11 April 2017, the EAC stated that after studying the preliminary information on the incident, it considered the arrangement of storing notebook computers containing VR particulars at the fallback venue in advance, and to load the particulars of more than 3 million electors onto the computers was highly undesirable as the security risk entailed was too high. The REO should learn its lesson from the case, seriously follow up the incident and explore improvement measures.

14.44 The REO briefed the LegCo Panel on Constitutional Affairs at its special meeting held on 11 April 2017 about the details of the notebook computer theft incident, the preliminary direction of review and improvement measures. The REO indicated that improvement measures would be explored

on three aspects, including the use of electors' information at the CE Election, security arrangement at the fallback venue, and IT security measures.

14.45 After the incident, the REO, in accordance with the guideline and suggestion of the PCPD, has informed all GC electors of the particulars of the incident via email or letters in order to increase their awareness and mitigate potential losses. The letter has also been uploaded onto the REO website (www.reo.gov.hk). Besides, the REO has sent letters to government departments and organisations of various sectors, including finance, insurance, telecommunications, retail, estate agents, information technology, etc., informing them of the incident and call upon them to adopt appropriate measures to protect their own interests and the interests of the data subjects. Furthermore, the REO has reminded its staff to watch out for any unusual or suspicious situations in processing new applications for VR and applications for change of VR particulars, and to enhance the scrutiny of doubtful cases. Applicants may be required to provide further information (e.g. date of birth) for enhanced verification of personal identities, if necessary. In addition, the EAC has considered making amendments to its subsidiary legislations and recommend the introduction of address proof requirements for applications for change of VR particulars. The proposal can strengthen the precautions against the impersonation of the electors in applications for change of VR particulars. The proposal was submitted to the LegCo Panel on Constitutional Affairs for discussion on 19 April 2017.

14.46 The PCPD completed the investigation of the incident and published its report on 12 June 2017. The PCPD considered that the REO had failed to take all reasonably practicable steps in consideration of the actual circumstances and needs to ensure that the personal data of about 3.78 million electors were protected from accidental loss, thereby contravening Data Protection Principle 4(1) (Data Security Principle) of the PDPO. As regards

the IT security measures, the PCPD considers that the REO had adopted technology of reasonable standard to encrypt electors' data, the relevant programme and the system. Furthermore, the PCPD noted that the REO did not follow the password requirements in REO's internal and the Government's "IT Security Guidelines". Nevertheless, the materials showed that the passwords adopted were not simple nor easy to crack. Upon an erroneous login, there would be a time delay for another login under the system. The PCPD was satisfied that the encryption technology and the system setup adopted by the REO would make it enormously difficult and time-consuming for unauthorised persons to access all the electors' data.

14.47 In respect of the investigation results, the PCPD decided to serve an enforcement notice on the REO, directing the REO to prohibit the download or use of GC electors' personal data (except their names and addresses) for the purpose of handling enquiries in the CE elections and to issue notice to staff on a regular basis (to be completed within 7 days from the issue of notice), and to promulgate internal guidelines of effective measures on the handling of personal data, and to ensure compliance by staff, to be completed within 90 days from the issue of notice. Besides, the PCPD has also made recommendations as summarised below :

- (a) to ensure only "necessary" personal data are used in different elections in compliance with the "least-privileged rights" principle;
- (b) to strictly review, approve and monitor the download and copying of systems containing electors' personal data in order to strictly evaluate the necessity of each use of electors' personal data, and to ensure the record of all activity logs in the systems is maintained, and to install the monitoring and warning mechanism;

- (c) unless absolutely necessary, personal data should not be stored in mobile devices. If it is necessary to store the electors' personal data in mobile devices, more effective security measures should be adopted;
- (d) to formulate, systematically review and update personal data security policy, to ensure that the relevant policies are up-to-date, with clear means for all staff to access the relevant information promptly. Also, to install a checking mechanism to ensure that the policy is complied with;
- (e) to conduct a Privacy Impact Assessment before the carrying out of any task in order to ensure that adequate security measures are adopted to address the potential privacy risks; and
- (f) to implement the Privacy Management Programme ("PMP"), and to embrace the programme as part of the corporate governance responsibilities.

14.48 The Task Force completed the review of the incident and published its report on 13 June 2017. The Task Force noted that the passwords policy for the computer concerned did not fully follow the Government's "IT Security Guidelines". But in view of the use of multiple encryptions and the time delay mechanism for each unsuccessful login, the Task Force, considered that adequate overall protection has been provided for the personal data stored in order to prevent unauthorised access.

14.49 The Task Force considered that the REO had, in respect of the electoral arrangements, the following inadequacies :

Handling of Personal Data

- (a) there is no detailed guidelines or training on the handling of personal data in REO during public elections, and the knowledge of Elections Division staff on compliance with the PDPO could be in question;
- (b) data transmission for use at public elections has been driven solely by the request of a user team without the need for clear justification and formal approval by a competent authority within the department. Close monitoring on the compliance with the relevant DPP was therefore not possible;

IT Security

- (c) the relevant part of the Government's "IT Security Guidelines" regarding storage of classified information to mobile devices was not strictly adhered to;
- (d) the current REO circular concerning the use of computer and other IT facilities does not cover all topics in the relevant Government IT security policy and guidelines, and the REO has not revised its relevant policy and guidelines in recent years;

- (e) REO staff primarily followed past practices for the use of personal data and the arrangements for venue security in previous elections, without critical assessment of the changing circumstances and possible loopholes;

General Security in Election Venues

- (f) the storage of the two notebook computers did not comply with the requirements on storage of restricted documents stipulated in the Security Regulation;
- (g) the responsibilities for the venue set-up for the fallback site and the main site were taken up by different divisions, giving rise to coordination problems;
- (h) it was doubtful whether the REO senior management could have a holistic view on the adequacy of the security measures for different aspects of the venues and give instructions on the compliance with security requirements in a timely manner;
- (i) there is no inventory count for relevant equipment at the beginning and close of a working day in the venue. Visitors were not logged which could give rise to security loopholes;

The Institutional Aspect

- (j) at present, the REO maintains only a skeleton establishment during non-election years and the elections

divisions were only gradually staffed and strengthened in the run-up to the elections. Staff in the elections divisions could not familiarise themselves with, and critically review, past practices before they make plans for coming elections, this inevitably undermined the officers' ability to spot potential inadequacies in previous practices;

- (k) there is no systematic review on whether the REO's work procedure could keep up with the prevailing versions of the relevant guidelines;
- (l) the REO does not have a comprehensive system of knowledge management to transfer past experiences for new post-holders to draw reference, this seriously undermines the REO's ability to introduce improvements and rectifications to the prevailing practices; and
- (m) the REO has widely used the "user" concept among its internal parties in the handling of personal data and coordination of venue security, giving rise to a potential problem of lack of clearly delineated accountability.

14.50 In view of the inadequacies mentioned in paragraph 14.49 above, the Task Force has recommended the following improvement measures on the handling of personal data, IT security and venue security management :

Handling of Personal Data

- (a) the REO should develop detailed guidelines and provide proper training to staff on the handling of personal data for organisation of public elections;

- (b) the departmental Controlling Officer for Personal Data should be consulted on the transfer of personal data among divisions and preparation of computer systems involving loading of personal data;
- (c) the REO should develop a comprehensive PMP to enhance accountability for personal data protection;

IT Security

- (d) the REO should formulate as soon as possible a complete set of departmental IT security policy, procedures and guidelines, which should also be reviewed regularly and kept up-to-date;
- (e) ITMU should ensure that the systems of the REO comply with the departmental IT security policy, procedures and guidelines;
- (f) ITMU should advise the user divisions on the appropriate measures to protect the integrity of the data stored in the computer systems;
- (g) approval by divisional head (at Chief Executive Officer level) must be sought before requests for personal data to be brought outside of the REO are made. Relevant details, including measures to be put in place to ensure physical security, must be set out in the application for approval;

- (h) ITMU should play a gatekeeping role in assessing whether a request for storage of personal data in mobile devices is commensurate with the operational need;
- (i) the Electors Information Enquiry System should not be used in public elections for the purpose of verifying the identity of electors;

General Security for Election Venues

- (j) the REO should establish formal procedures for endorsing overall venue security plan and seek comments from the Police, clear the plan with the CEO, and submit it to the EAC for information and comments;
- (k) security measures should be strengthened for restricted information and/or personal data stored in mobile devices and stored in election venues. Storage of any personal data in fallback sites before actual activation should be avoided;
- (l) REO should conduct inventory check at the end of each day, and venue set-up of main and fallback sites should ideally be taken up by the same division;
- (m) a fresh, proper and comprehensive planning for the use of personal data and security arrangements for major election venues should be carried out for every election;

Staff Establishment

- (n) the post of the Principal Electoral Officer should be made permanent to assist the CEO to review the preparation and organisation of public elections after the election cycle, and help preserve “institutional memory”;
- (o) certain core members in the Elections Division and key ITMU staff should be retained in non-election years to consolidate the electoral experience and introduce improvement measures.
- (p) civil servants occupying permanent posts in the REO should as far as possible be assigned to take up key planning and supervisory duties;
- (q) familiarisation programmes should be organised for staff of time-limited posts; and
- (r) the responsibilities between “users” and coordinating teams must be clearly defined.

14.51 **Recommendation:** The EAC welcomes the forming of the Task Force, which members include IT and security experts, in conducting the follow-up and review in a more independent, objective and professional manner. The Task Force has found the facts and causes of the incident in great details. The EAC very much agrees with the observations and suggestions of the Task Force, which will not be repeated in this report. The EAC would like to express its gratitude to the Task Force for its work.

14.52 In this report, the EAC will focus mainly on the way forward, in order that future electoral arrangements may be more refined. In addition, the EAC will set forth recommendations on the current organisation structure. The EAC would like to state clearly that it is not vested with any statutory power and duties to institute criminal or disciplinary investigation against any individuals, whereas such investigations must be conducted in accordance with established procedures. The EAC is mindful that the relevant authorities might, in respect of the personal responsibilities of relevant individuals, conduct further investigations. This report is without prejudice to any relevant investigations and the legal rights of any persons subject to the investigation.

14.53 In light of the relevant materials, the EAC considers the incident was caused by compound factors, and makes the observations and conclusion as follows :

- (a) apart from problems of IT security and venue security, the incident also highlighted problems in the staffing structure for electoral arrangement, and the division of labour, cooperation, coordination and monitoring;
- (b) notwithstanding that the practice of storing registration particulars of all electors in notebook computers has been adopted for DPSs set up at police stations on the polling day for electors detained by LEAs, the wholesale application of such practice to the CE Election without detailed consideration was not appropriate, and it should not be used in future CE elections;
- (c) the Elections Division responsible for the voting arrangement required the particulars of no more than 1 200 EC members for the verification of admission arrangements,

but the ITMU responsible for support unnecessarily prepared the particulars of more than 3 million electors, which was not in compliance with the principle of least-privileged rights. There was a lack of understanding and communication between these two parties, and the staff members handling the matter were at relatively junior level, and the procedure for handling the data had not been elevated to the senior level for vetting;

- (d) although notebook computers were kept in the AWE during the 2012 CE Election and 2016 LegCo General Election, in the case of the former, they were not kept in the same room involved in this incident; and in the latter, the AWE was not used as a fallback venue. Therefore, the overall security requirements differed from those of this election. The arrangement on computer storage was not carefully thought out in terms of security risk assessment in the special circumstances this time;
- (e) according to the Government's "Security Regulation", the relevant security level for the information stored in the computer concerned requires that the computer must be kept in a locked room or a locked cabinet. The room concerned has no locked cabinet, and has a number of doors. Although the doors were all locked, but apart from keys possessed by REO's staff, staff of the venue management and their authorised persons could also enter the room. And the REO did not have a full record of the access into the room. On the contrary, the room storing ballot papers was under tight security, with specially provided security guards, and staff of venue management or others were not

allowed to enter the room. In other words, the REO had no exclusive possession of the room storing the computers. Strictly speaking, the room storing the computers could not be regarded as locked, hence, not in compliance with the relevant requirements of the "Security Regulation". The REO should not have effectively entrusted the important task of venue security to the management of the venue;

- (f) in view that the computer concerned had an enormous amount of electors' information with widespread implications, the REO instead of merely following the relevant security requirements, should also have adopted, as far as practicable, a higher level of security measures in order to further safeguard the personal privacy of the electors; and
- (g) according to IT security principles, computer devices carrying encrypted data are required to have login records for an audit trail. But, the login records of a portable computer are stored in the device itself, and the loss of the computer means the loss of login records as well. Unauthorised logins, if any, are unable to be traced. It is extremely undesirable in terms of IT security. Unless it is absolutely necessary, the use of portable computers should be avoided so as to strictly comply with the Government "IT Security Guidelines".

14.54 The EAC enjoins the REO to strictly follow up on and implement the improvement measures proposed by the Task Force and the PCPD. Elections do rely heavily on the use of borrowed premises and the security considerations may differ among different venues. When it is necessary to

store high security risk documents or materials in the borrowed premises, the use of steel cabinets with latch bars and padlocks will be more secure. Besides, when more than one person is in possession of the same document or materials (including the use of common passwords), it will be difficult to delineate the responsibilities when problems occur. Therefore, it is necessary to clearly define the division of labour and responsibilities of individual staff members. Regarding IT and venue security arrangements, the REO should formulate the relevant guidelines and ensure all the staff do strictly observe them.

14.55 As regards the protection of personal privacy, the REO has all along adopted necessary protection measures for personal data in various electoral procedures (e.g. public inspection of the candidates' nomination forms and other electoral documents). In view of the recommendations of the Task Force and the PCPD, the REO should conduct a comprehensive review of the entire electoral procedures and actively introduce the PMP.

14.56 An election is a colossal task requiring division of labour among different divisions. Good division of labour requires close coordination among "users" of different divisions. And effective coordination requires comprehensive planning in advance, proper organisation and supervision, in order to avoid any miscommunication or ambiguities in delineation of authorities and responsibilities, such that overall operation be smooth.

14.57 The incident revealed inadequate communication between the Elections Division responsible for electoral arrangements and the ITMU, resulting in discrepancies in their understanding of the "user" requirements and the provision of IT service. As IT is a professional subject, the professionals concerned should continuously develop their professional knowledge, and fully comply with the Government's policies and guidelines on IT security. While the staff of Elections Division are not IT professionals, it is understandable that

they have to rely on the professional support of ITMU. The ITMU should be conscious that the staff of Elections Division may not have appropriate knowledge on IT matters and therefore should proactively provide advice to enhance effectiveness. In the end, the management level needs to undertake more effective coordination and supervision, and to elevate the important matters to the EAC for discussions.

14.58 On a macro level, the EAC considers that the current staffing structure of the REO has outlived its currency in coping with the ever growing complexities in electoral arrangements. Due to resource consideration, the REO has a permanent establishment of about 200 staff members, and will only be provided with additional manpower during an election cycle in order to prepare for the various major elections in that cycle. The Elections Division of the REO are responsible for formulation and implementation of the electoral arrangements. All posts in the Elections Division, including the officer-in-charge, Principal Electoral Officer, are time-limited and are only created in the election cycle. All posts in the Elections Division do not exist (possibly for over 1 year) in between two election cycles. Taking the 2015-17 election cycle as an example, the staff count increased substantially from around 200 to over 1 500 during the peak period, with the vast majority of them non-civil service contract (NCSC) staff.

14.59 Furthermore, the civil servant staff of the REO are general grade staff who are subject to posting to other government bureaux and departments. Upon completion of the election cycle, the vast majority of the staff experienced in electoral work will be posted out and a new batch of staff will only be available at the next election cycle. Even though some of the new staff members might have worked in the REO before, after all they constitute only a very small portion. Further, most staff members engaged in the electoral cycles are NCSC staff. The present staffing structure is very inconducive to

the accumulation and the passing on of knowledge and experience. Since the new staff are mostly inexperienced in the preparation of elections, even with the Knowledge Management System, which is not so comprehensive, they still have to face a very steep learning curve, and not as effective as on the job training by officers with practical experience.

14.60 Moreover, there were bound to be some breathing space at the beginning of each election cycle in the past, and the staff could familiarise themselves with and review the various electoral arrangements. But with the ever increasing demand in electoral work, staff of the REO have to handle onerous workload (such as verification/inquiry measures in relation to registration of electors, amendments of electoral laws, delineation of constituency boundaries and by-elections, etc.) even in a non-election year. Since the staff are already fully stretched in coping with their workload before the election cycle, they may not be able to conduct more comprehensive reviews and to propose improvement measures for elections in the future. Due to time constraint, the new staff tend to adopt the past practices in areas not encountering any problem, hence losing sight of possible potential risks.

14.61 The EAC agrees with the recommendations of the Task Force and considers that at the end of an election cycle, the REO should retain part of the core staff who have experience in organising elections, in particular, the head of Elections Division, Principal Electoral Officer, should be changed to permanent establishment. On the one hand, this will enable a detailed review of the electoral arrangements and the exploration of feasible improvement measures, and on the other hand, best use may be made of the staff with electoral experience, so that electoral work will be better organised in the next election cycle and the newly joined staff be trained. In order that the electoral arrangements be more adequately planned and thoroughly reviewed, it is necessary to increase the permanent staffing of the REO. The costs may

outweigh the benefit if simply to look at it from a resource angle. Insofar as circumstances permit, it is also considered desirable that some of the new staff posted to the REO at each election cycle should have a certain amount of experience in electoral matters in order to facilitate a more effective arrangement of elections at the various levels.

14.62 Furthermore, the EAC has also reviewed its functions and the working relationship with the REO. The EACO stipulates that the EAC is responsible for the conduct and supervision of elections. The EACO also provides that the EAC shall perform its functions through the CEO (i.e. the department head of the REO). To ensure that elections are conducted in an open, fair and honest manner is the mission of the EAC and the expectation of the public. In past elections, the EAC, with the support of the REO, has used its best endeavours to accomplish this mission. At present, apart from the assistance of the EAC Secretariat in compiling the Guidelines on Election-related Activities, handling election-related complaints, and preparing reports, other election-related arrangements are dependent upon the support of the REO.

14.63 Apart from electoral arrangements, the CEO as department head of the REO also oversees other practical work such as registration of electors, amendments of electoral guidelines and election regulations, delineation of constituency boundaries, etc. Besides, he is also required to assist the EAC in supervising the conduct of elections. Not to mention workload, by virtually combining the practical operation and supervisory roles in one person, the process of supervision may tend to be too subjective at times, and hence, the two roles should be separated.

14.64 Hence, in response to the above-mentioned changes and given the unique nature of electoral work, the EAC is of the view that besides the

officers currently responsible for arranging elections, a designated officer should be added to assist the EAC in monitoring the electoral work in a more objective and critical manner, so as to prevent similar incident from re-occurring.

14.65 Moreover, developments over the years require each electoral procedure be planned earlier, in more details with more comprehensive considerations. When considering amendment of any subsidiary legislation, apart from the operational aspects, the EAC needs to consider the macro perspective. The EAC also needs to review the existing electoral procedures and arrangements from time to time in response to the aspirations of different sectors of the community. Given the ever growing complexity and politicisation of issues arising from election-related activities, the EAC needs to respond quickly. The post to be created could also be effective in providing support to the EAC in such aspects.

14.66 The REO should fully implement the improvement measures raised by the Task Force and the PCPD, and complete the directions in the PCPD's enforcement notice, and submit a report to the EAC within 3 months to set out the divers review and improvement measures.

14.67 The incident is an unfortunate one. However, by consolidating the experience, identifying the inadequacies and making improvements, there are benefits to be gained. In any case, the EAC considers that the incident did not affect the conduct of the CE Election in an open, fair and honest manner.

**Major Changes in the Proposed Guidelines
on Election-related Activities in respect of the
Chief Executive Election
as Compared with the Guidelines Issued in November 2011**

Relevant Chapter	Major changes
Chapter 5 <i>Polling and counting arrangements</i>	<ul style="list-style-type: none"> ● specifying a deadline for gazetting the main polling station, the counting station and the dedicated polling station(s) (para 5.1).
Chapter 7 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i>	<ul style="list-style-type: none"> ● updating the guidelines to include the use of electronic mail as a means of delivery of certain electoral documents, such as notices of appointment and revocation of appointment of election agent, election expense agents, polling agents and counting agents (Parts V to VIII of the Chapter).
Chapter 8 <i>Election advertisements</i>	<ul style="list-style-type: none"> ● reminding any person or organisation publishing materials to appeal directly or indirectly to electors to vote or not to vote for a candidate or candidates of certain organisations to observe the legislative requirements for incurring election expenses on the behalf of candidates since the materials may be capable of being understood as referring to certain identified candidates (para. 8.3); ● reminding candidates and web surfers that the statutory definition of election advertisements (“EAs”) is very wide and encompasses anything published publicly by any means, including a message published through internet platforms for promoting the election of a candidate or prejudicing the election of other candidates (para. 8.4); ● reminding any person who intends to stand as a candidate at the election to remove all publicity materials published by him/her prior to the election period before he/she has been nominated as a candidate or has publicly declared an intention to run for the election. Otherwise, any such unremoved publicity material may be regarded as an EA (para. 8.6);

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> ● reminding candidates to follow the application guidelines issued by the Lands Department for temporary occupation of government land for holding electioneering activities (Part V of the Chapter); and ● setting out the simplified arrangements for submission of EAs for public inspection in accordance with the amendments made to section 87 of the Electoral Procedure (Chief Executive Election) Regulation (Cap 541J) (paras. 8.44 to 8.50).
<p>Chapter 9, Appendix H and I <i>Electioneering activities at premises or buildings where electors reside, work or frequent</i></p>	<ul style="list-style-type: none"> ● updating the guidelines issued by the Office of the Privacy Commissioner for Personal Data (“OPCPD”) to remind candidates to adopt security measures when transferring personal data of electors to election agents or other contractors for electioneering purpose (para. 9.12 and Appendix H); ● setting out four cases as suggested by the OPCPD to facilitate better understanding of the privacy concerns of the electors and compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) (Appendix I); ● requesting candidates to respect electors’ privacy when using their contact information for canvassing and reminding them to use the “bcc” function of email or other proven means to prevent inadvertent disclosure of the email addresses when distributing EAs to electors over email (para. 9.13); and ● reminding the office bearers of building organisations not to abuse their positions in the organisations to give unfair treatment to any candidate in the conduct of electioneering or canvassing activities in the buildings concerned, especially when the office bearers themselves are candidates in the election (para. 9.20).

Relevant Chapter	Major changes
<p>Chapter 11 <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● elaborating on the requirement of the fair and equal treatment principle in producing and conducting election-related and news reporting programmes by broadcasters licensed under the Broadcasting Ordinance (Cap 562) and the Telecommunications Ordinance (Cap 106) (paras. 11.3 to 11.5, 11.9 and 11.20); and ● reminding the print media to ensure that any news reporting or references made in their publications should not give unfair publicity to any candidate in accordance with the fair and equal treatment principle (paras. 11.17 and 11.19).
<p>Chapter 15 <i>Exit poll</i></p>	<ul style="list-style-type: none"> ● updating the administrative procedures in approving applications for the conduct of exit polls and the enhanced measures to be adopted to ensure the fairness of election (paras. 15.4, 15.5 and 15.7).
<p>Chapter 16 and Appendix R <i>Election expenses and election donations</i></p>	<ul style="list-style-type: none"> ● reminding candidates of the need of apportionment of expenses between election-related purposes and any other purposes (para. 16.6); ● revising the maximum amount of election expenses for the election in accordance with the amendment made to section 2 of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation (Cap 554A) (para. 16.9); and ● reminding candidates, or any person or organisation acting as an agent for the candidate(s), to comply with all the legislative requirements in seeking or soliciting election donations and to adopt the suggested good practice in Appendix R (para. 16.22).
<p>Chapter 18 <i>Namedropping</i></p>	<ul style="list-style-type: none"> ● setting out clearly the guidelines for giving consent of support when the office title of the supporter providing the consent and/or the name of the organisation concerned are mentioned (para. 18.4).

**Relevant documents on
Guidelines on Election-related Activities in respect of the Chief Executive
Election to be issued by the Electoral Affairs Commission and
Practical arrangements of the 2022 Chief Executive Election**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	20.6.2016 (Item II)	Agenda Minutes
	21.11.2016 (Item V)	Agenda Minutes
		Report on the 2017 Chief Executive Election submitted by the Electoral Affairs Commission to the Chief Executive

Council Business Division 4
Legislative Council Secretariat
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