

BOUNDARY AND ELECTION COMMISSION

REPORT ON THE 1995 LEGISLATIVE COUNCIL GENERAL ELECTION

Submitted to
the Governor of Hong Kong
15th December 1995

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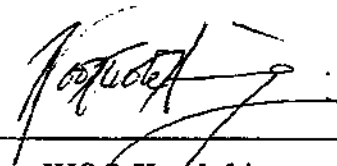
15 December 1995

The Right Honourable Christopher Patten
Governor of Hong Kong
Government House
Hong Kong

Dear Mr Patten,

Pursuant to section 8(1) of the Boundary and Election Commission
Ordinance, we have the pleasure in submitting to you the enclosed report on the general
election of the Legislative Council held on 17 September 1995.

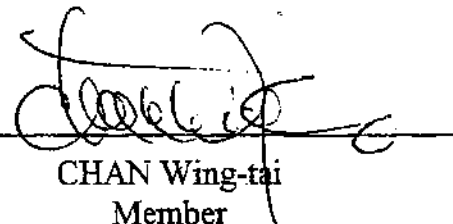
Yours sincerely,



WOO Kwok-hing
Chairman



Norman LEUNG Nai-pang
Member



CHAN Wing-tai
Member

ADA-9310
B.B. FEB. 1936

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ABBREVIATIONS

| | |
|-------------------|---|
| APRO | assistant presiding officer |
| APROs | plural of APRO |
| BEC | Boundary and Election Commission |
| BEC(EP)(FC&ECC)R | BEC (Electoral Procedure) (Functional Constituencies and Election Committee Constituency) Regulation |
| BEC(EP)(GC)R | BEC (Electoral Procedure) (Geographical Constituencies) Regulation |
| BEC(ROE)(FC&ECC)R | BEC (Registration of Electors) (Functional Constituencies and Election Committee Constituency) Regulation |
| BEC(ROE)(GC)R | BEC (Registration of Electors) (Geographical Constituencies) Regulation |
| CC | the Complaints Committee established by the BEC |
| CEO | Chief Electoral Officer |
| the Commission | the Boundary and Election Commission |
| CIPO | Corrupt and Illegal Practices Ordinance (Cap. 288) |
| CS | counting supervisor |
| CSs | plural of CS |
| DB | District Board |
| DBs | plural of DB |
| EA | election advertisement |
| EAs | plural of EA |

| | |
|----------------------|--|
| ECC | election committee constituency |
| FC | functional constituency |
| FCs | plural of FC |
| FR | final register |
| FRs | plural of FR |
| GC | geographical constituency |
| GCs | plural of GC |
| HD | Housing Department |
| ICAC | Independent Commission Against Corruption |
| ICACO | Independent Commission Against Corruption Ordinance (Cap. 204) |
| LegCo | Legislative Council |
| the LegCo Guidelines | the Guidelines on Election-related Activities in respect of the Legislative Council Elections published on 7 July 1995 |
| MAC | mutual aid committee |
| MACs | plural of MAC |
| MC | Municipal Council |
| MCs | plural of MC |
| NAC | Nominations Advisory Committee |
| NCA | No Canvassing Area |
| NCAs | plural of NCA |
| NFC | new functional constituency |
| NFCs | plural of NFC |

| | |
|---------------|---|
| OMR | optical mark recognition |
| the Ordinance | the Boundary and Election Commission Ordinance (Cap. 432) |
| PHAMSO | Public Health and Municipal Services Ordinance (Cap. 132) |
| POBO | Prevention of Bribery Ordinance (Cap. 201) |
| PR | provisional register |
| PRs | plural of PR |
| PRO | presiding officer |
| PROs | plural of PRO |
| Q papers | questionable ballot papers |
| RC | Regional Council |
| REO | Registration and Electoral Office |
| RO | returning officer |
| ROs | plural of RO |
| RTHK | Radio Television Hong Kong |
| s. | section |
| ss. | sections |
| s.77 | section 77 of the BEC(EP)(GC)R |
| s. 79 | section 79 of the BEC(EP)(FC & ECC)R |
| s.104A | section 104A of the PHAMSO |
| STV | single transferable vote |
| UC | Urban Council |

CHAPTER 1

INTRODUCTION

1.1 The general election of the Legislative Council (“LegCo”) was held on Sunday 17 September 1995. The election was for returning 60 members to LegCo from the following constituencies:

- (a) 20 members from the geographical constituencies (“GCs”);
- (b) 30 members from the 29 functional constituencies (“FCs”);
and
- (c) 10 members from the election committee constituency (“ECC”).

1.2 This was the first occasion where the entire membership of LegCo was to be elected, by virtue of an amendment to the Legislative Council (Electoral Provisions) Ordinance (Cap. 381) passed in June 1994. The number of members returned from the GC elections which was 18 in the last LegCo elections in 1991 had been increased to 20. The 29 FCs consisted of nine new ones (“NFCs”) and 20 old ones (with the Labour FC returning two members) the franchise of some of which had been expanded. The ECC which was to return 10 members was also a new creation.

1.3 By Notices of Election published in the Gazette on 1 August 1995, the nomination period for the elections in the GCs, FCs and ECC was announced to be between 1 and 14 August 1995. The election period

therefore commenced on 1 August, when electoral arrangements started to operate.

1.4 After the ordinary elections of the District Boards (“DBs”) held on 18 September 1994 and of the Municipal Councils (“MCs”) on 5 March 1995, having taken into account matters arising in those elections and the views and suggestions from various quarters and the public, a number of revisions had been made to the electoral arrangements for application to the LegCo general election. The LegCo general election was also very different from those two earlier elections in that apart from GCs which were the only constituencies in those elections, it also included elections in respect of FCs and the ECC.

1.5 The polling day, or the election day as it is sometimes called, was announced by the Governor to be on Sunday 17 September 1995 for all the elections in respect of the GCs, FCs and the ECC. In the 1991 LegCo elections, while the GC elections took place on a Sunday, the elections of the 20 old FCs were conducted on the immediately preceding Thursday. The Boundary and Election Commission (“the Commission” or the “BEC”) welcomed the appointment of a single polling day for all the elections for a number of reasons. If the elections were to be held on two separate days, the results of the elections held on the first day would be known on the second polling day. It was thought to be undesirable for the results of some of the elections to be known before the polling day for the rest of the elections, because such knowledge might, with or without other factors such as alteration of electioneering strategy, affect voter behaviour. The suggestions to keep the results of the first part confidential until the results of the second part is obtained or alternatively the count of the ballot papers collected on the first day is to be deferred till all the votes are

cast on the second day were not accepted, for there might be problems, logistical, human or otherwise, in keeping secret the results or to keep the ballot papers secured for a few days, giving rise to unnecessary doubts on the credibility and integrity of the electoral system. More importantly, to hold the elections on the same day would provide electors with greater convenience.

1.6 Sunday 17 September 1995 was indeed an auspicious day when, in this typhoon-prone and rainy season, the weather was fine.

CHAPTER 2

SCOPE OF THE REPORT

2.1 The Commission is required under the law to submit to the Governor a report in respect of the LegCo general election within three months of the date of the election [s. 8(1)(a) of the Boundary and Election Commission Ordinance (Cap. 432) (“the Ordinance”)], i.e., by 16 December 1995. Such report is to be on matters relating to the election in respect of which the Commission has any function under the Ordinance or any other enactment and is to include a report on any complaint made to the Commission in connection with the election [s. 8(1)(i) and (ii) of the Ordinance].

2.2 The functions of the Commission as enunciated in the Ordinance are that it is responsible for the conduct and supervision of the election, including the supervision of the registration of electors and promotional activity relating to such registration, regulating the procedure for the election, making other electoral arrangements and taking such steps as it considers appropriate for the purpose of **ensuring that the election is conducted openly, fairly and honestly** [s. 4(b) of the Ordinance].

2.3 The Commission is also obliged to keep under review all the matters concerning elections set out in the preceding paragraph [s. 4(c) of the Ordinance], for the obvious purposes that defects and flaws, if any, in the electoral procedure or arrangements are to be rectified and

improvements are to be considered and put in place, wherever possible. All these are for accomplishing the aim and spirit of the Ordinance that elections are to be conducted openly, fairly and honestly.

2.4 In this report, the Commission sets out the preparatory work it did for the purpose of the LegCo general election. The work relates to various aspects of the election including registration of electors, electoral procedural matters and arrangements, guidelines and complaints. The report also examines how the preparatory work had fared, how the Commission dealt with the complaints received, and how the Commission has reviewed all these matters together with the work it did or will do and its recommendations in view of the events that had taken place during the whole course of the election.

CHAPTER 3

PREPARATION FOR THE ELECTION

3.1 The LegCo general election on 17 September 1995 was held only six and a half months after the MC ordinary elections on 5 March 1995 and just a year after the DB ordinary elections on 18 September 1994. Various aspects of the work done and arrangements made for the MC and DB elections were applicable to the LegCo election. For instance, the following regulations made by the BEC in preparation for the earlier elections were similarly applicable to the LegCo election in respect of GCs, namely, the BEC (Registration of Electors) (Geographical Constituencies) Regulation (“BEC(ROE)(GC)R”) and the bulk of the BEC (Electoral Procedure) (Geographical Constituencies) Regulation (“BEC(EP)(GC)R”). Further, the Complaints Committee of the BEC as well as the procedure for the making and processing of complaints were retained for the LegCo election. However, regulations relating to FCs and the ECC had to be made to cater for the different situations and requirements of those constituencies, and as a result, the BEC (Registration of Electors) (Functional Constituencies and Election Committee Constituency) Regulation (“BEC(ROE)(FC&ECC)R”) and the BEC (Electoral Procedure) (Functional Constituencies and Election Committee Constituency) Regulation (“BEC(EP)(FC&ECC)R”) had been made. Corresponding changes to the BEC(EP)(GC)R had also been made to allow for combined polling and centralised counting arrangements for the GCs and some FCs.

3.2 There were, moreover, a number of steps taken by the Commission to improve the arrangements for the conduct of the LegCo election, having taken into account the matters arising from the DB and MC elections that had been reviewed. Action had also been taken to provide for the elections in respect of the three different kinds of constituencies, namely, the GCs, FCs and ECC. While the details will be shown in the following chapters, briefly the measures adopted were in the following aspects:

- (a) a substantial vetting exercise was conducted to improve the accuracy of the voter register for the GCs;
- (b) an extensive voter registration drive was carried out to register electors for the GCs and the FCs with particular emphasis on the nine NFCs;
- (c) the BEC Guidelines on Election-related Activities in respect of Geographical Constituency Elections were revised to become the BEC Guidelines on Election-related Activities in respect of the Legislative Council Elections (“the LegCo Guidelines”) containing improvements of the guidelines applicable to the earlier DB and MC elections and catering for the special circumstances arising from the FCs and ECC;
- (d) various revised electoral arrangements were made, which were stated in the LegCo Guidelines; and
- (e) the training of polling and counting staff was intensified.

3.3 Efforts were made to disclose to the public all the preparatory work done by the Commission, giving effect to the statutory intention of **openness** and providing the public with opportunities to make comments and suggestions. The matters reviewed and steps for improvement had

been alluded to in the Commission's report on the MC ordinary elections which was made public by the Governor on 14 July 1995. The LegCo Guidelines, containing references to various electoral procedure and arrangements applicable to the LegCo election, were published on 7 July 1995 after public consultation between 1 and 30 April 1995, before the nomination period for the election commenced on 1 August 1995. The details of other efforts to enhance transparency and openness can be found in Section 11 of Chapter 5.

CHAPTER 4

ELECTORS ON THE REGISTERS

Section 1 : The Regulations and the Registers

Section 2 : The Registration Drive

Section 3 : The Vetting Exercise

Section 4 : The Appeals

Section 5 : The Numbers of Electors

Section 1 : The Regulations and the Registers

4.1 The BEC(ROE)(GC)R and the BEC(ROE)(FC&ECC)R were made to regulate the registration of electors for the GCs, FCs and ECC in respect of the LegCo general election. There were three different registers to contain the names, identity card numbers and other particulars of electors of the GCs, FCs and ECC. The final registers ("FRs") of electors in respect of all the constituencies were published on 1 August 1995 after the provisional registers ("PRs") had been published on 21 June 1995.

4.2 Registration of electors is an annual exercise comprising the publication of a PR before 22 June and the publication of an FR before 8 August. An FR contains all the names and particulars of persons who are entitled to vote in an election. Those who are not in the FR are not entitled to vote. The obvious purpose is to achieve **certainty** and avoid arguments. The FR remains in force until the publication of the succeeding FR, i.e., the FR published in the following year. The PR

contains the information from the existing FR with additions and a list of proposed omissions. The additions are derived from new applications for registration. The list of proposed omissions contains the names and particulars of electors on the existing FR that are proposed to be omitted from the FR to be published. The legislative scheme is that the PR is published for public inspection so that anyone who has any objection to any of its entries can lodge an objection and anyone who has any claim regarding his own entry or the absence of an entry on him may raise a claim. The objection or claim will be lodged with the revising officer (a judicial or legal officer) who will, within a short period before the publication of the FR to be published, make a determination. His determination will be reflected faithfully in that FR.

Section 2 : The Registration Drive

4.3 There were two kinds of new constituencies for the 1995 LegCo general election, namely, the ECC and the nine NFCs. The electorate of the ECC consisted of all the DB members who had been elected in the 1994 DB ordinary elections, save that those who were also entitled to be electors in the Urban Council ("UC"), Regional Council ("RC") and Rural FCs were excluded. There was therefore no difficulty in ascertaining the ECC electorate, and all those who were entitled, i.e., 283 electors, were registered.

4.4 The 1994 FC register of electors did not contain any voter for the nine NFCs for they were a new creation. All persons who were engaged in economic activities in Hong Kong (for brief, all working persons) and who were registered in the GC register or entitled to be so

registered had a right to become an elector in one of the nine NFCs. Whether they belonged to one or the other of the NFCs depended on the nature of the principal business carried on by their employers or themselves if they were self-employed. A person who became a registered voter of an NFC was entitled to another vote in addition to his vote as a GC voter. It follows that an NFC elector must also be a GC elector but not vice versa.

4.5 The working population of Hong Kong in 1995 was estimated to be about 2.9 million. It was estimated that about 300,000 of these persons did not satisfy the residential requirement to qualify as a GC elector and they would therefore not qualify for registration as voters for the NFCs. Another 100,000 was estimated to be qualified to be registered in one of the 20 old FCs. The target for registration for the nine NFCs was therefore the remaining 2.5 million working persons.

4.6 A great majority of these 2.5 million people were employees working in various businesses in Hong Kong. A simple process was therefore devised to facilitate and convenience these people for them to be registered. Information was obtained from various government departments, including the Census and Statistics Department, the Business Registration Office and others, as to the identity and address of employers throughout Hong Kong. A letter was sent to each of the known employers to request it to provide the names and identity card numbers of all working persons in the organization, including directors, partners, managers and all other staff. The information obtained was then matched against the 1994 FRs of electors to identify those who were already GC electors but who were not registered in any of the 20 old FCs. A notification was sent to

the persons so identified, notifying them that according to their employers' return, they were entitled to be registered in a relevant NFC, and they were invited to be so registered. If they did not raise any objection or choose to be registered in another FC, old or new, they would be registered in the NFC. Those who did not respond were registered in the NFC according to the information on the notification. Cases of response were followed up in accordance with the wish expressed in the response.

4.7 The simple notification process was merely additional to the normal application procedure. Those working persons included in their employers' returns but whose names did not appear in the GC register were sent a composite application form for registration, the completion and return of which would enable them to be registered as an elector of both a GC encompassing his principal place of residence and a relevant NFC.

4.8 Conventional methods, such as having the composite application forms distributed at over 1,500 outlets throughout the territory and offering assistance to people in the filling out of the form through home visits, visits to work places and mobile registration counters, were also used. The Home Affairs Department and its District Offices contributed significantly in this respect.

4.9 Registration in the 20 old FCs by application was also promoted. In 10 of these FCs, corporate voters were replaced by "relevant persons" of eligible organizations. Starting from late 1994, appeal letters were sent to umbrella organizations and 14,000 eligible establishments to

inform them of the changes in the qualification requirements and the registration procedure. Information on the relevant persons in these establishments was sought. Each potential elector was then sent a letter and an application form inviting him to register in the relevant FC. In the other 10 FCs, electors were registered on the basis of their individual qualifications and membership of eligible organizations. Appeal letters and application forms were sent to relevant organizations and potential electors direct on the basis of membership information.

4.10 All these measures were carried out at the same time while extensive and intensive publicity was employed.

4.11 A large-scale publicity drive was adopted to attract people to become voters of the nine NFCs. The exercise started at the beginning of the year in a small way, for fear that it might cause confusion to the public who were also receiving promotional messages to attend the poll of the MC elections held on 5 March 1995. Very soon after those elections, the registration publicity went full-steam ahead. Explanations were given as to who were entitled to be registered as electors in the nine NFCs and what businesses and economic activities each of the nine NFCs comprised. Elaboration was provided on the replacement of corporate electors by individual ones for the old FCs. The notification process was also given publicity. At the same time, people were reminded to get registered in the GCs and report their change of address or particulars to the Registration and Electoral Office ("REO"). Television and radio Announcements of Public Interest, newspaper advertisements and posters were extensively used. Various promotional activities were organized and attended by

celebrities, entertainment personalities, senior government officials and members of the BEC to attract public attention.

Section 3 : The Vetting Exercise

4.12 [Paragraphs 4.12 - 4.19 obliterated for publication pending determination of election petitions.]

4.13

[Paragraphs 4.12 - 4.19 obliterated for publication pending determination of election petitions.]

4.14

4.15

[Paragraphs 4.12 - 4.19 obliterated for publication pending determination of election petitions.]

4.16

4.17 [Paragraphs 4.12 - 4.19 obliterated for publication pending
determination of election petitions.]

4.18

4.19

Section 4 : The Appeals

4.20 As mentioned before, the Regulations provide that objections and claims regarding entries in the PRs can be made between the date of their publication and 5 July 1995. For the first time in the history of Hong Kong, there were objections and claims lodged. They can be classified into the following types:

- (a) the deemed claim cases where registration forms were received from electors whose names had been included in the list of proposed omissions in the GC PR;
- (b) cases claiming that the claimants had been entered in the wrong FC in the FC PR;
- (c) cases claiming that the claimants should be included in an NFC; and
- (d) cases objecting to the correctness of certain entries in the FC PR.

4.21 The Registrar of the Supreme Court was the revising officer of all the cases of claims and objections. He decided in favour of all but four appellants. As a result of the determinations in favour of the appellants, 64 electors under item (a), the deemed claim cases, were reinstated in the 1995 GC FR, 182 electors had their FC altered, one elector was included in an NFC and two electors subject to successful objections were not entered in the 1995 FC FR.

Section 5 : The Numbers of Electors

4.22 As a result of the registration drive in conjunction with the wide publicity, a large number of electors were registered. There were over 1 million electors registered for the NFCs, while the numbers of electors of both the GCs and the old FCs had also improved, despite the weeding of about 111,000 entries. The positions of the 1995 FRs in respect of the three kinds of constituencies are as follows:

- (a) the GC FR contains about 2.57 million electors (increased from 2.45 million in the 1994 FR);
- (b) the FC FR records about 1.15 million electors comprising 82,000 electors for the 20 old FCs (increased from the former 71,000) and 1,065,000 electors for the nine NFCs; and
- (c) the ECC FR shows 283 electors.

ANNEX to CHAPTER 4

[Annex to Chapter 4 obliterated for publication pending determination of election petitions.]

CHAPTER 5

ELECTORAL PROCEDURE AND ARRANGEMENTS

Section 1 : The Procedure Regulations and Electoral Arrangements

Section 2 : The Nominations Advisory Committee

Section 3 : Nomination Papers

Section 4 : Spots for Display of Election Advertisements

Section 5 : Polling Stations, their Number and Locations

Section 6 : The No Canvassing Area

Section 7 : Introductory Leaflets, Audio Tapes and Poll Cards

Section 8 : The Polling Arrangements

Section 9 : Electronically Assisted Polling for the ECC

Section 10 : The Counting Arrangements

Section 11 : Openness and Transparency

Section 1 : The Procedure Regulations and Electoral Arrangements

5.1 As detailed in Chapter 4, after the extensive vetting exercise on 1.4 million entries in the 1994 GC FR had been completed, the GC FR published on 1 August 1995 had become more accurate.

5.2 The procedure regulations and electoral arrangements made in respect of the 1994 DB ordinary elections and the March 1995 MC ordinary elections were to a large extent applicable to the LegCo general election in September 1995. While the DB and MC ordinary elections

were in respect of only GCs, the LegCo election covered not only GCs but also FCs and the ECC. As was alluded to in the BEC report on the MC elections, certain improvements had been made on various aspects of the electoral arrangements, and other measures had to be adopted to cater for the particular situation of the LegCo election with 20 GCs, 29 FCs and the ECC. A number of these arrangements and measures were included in the regulations made by the BEC in preparation, namely, the BEC(EP)(GC)R as amended and the BEC(EP)(FC&ECC)R. The significant points are mentioned in the rest of this chapter.

Section 2 : The Nominations Advisory Committee

5.3 Although there was insufficient time to put in place the Nominations Advisory Committee (“NAC”) as proposed in the review on the DB elections for use in the MC elections, the BEC (Nominations Advisory Committee) Regulation, Cap. 432 had come into force for application to the LegCo general election. Mr. Lawrence Y. K. LOK, Q.C. was appointed by the BEC as the single-person NAC. It provided advice to both intended candidates and returning officers (“ROs”) on candidates’ qualifications upon request. Intended candidates were allowed to seek such advice between 17 March and 17 July 1995 whereas ROs could do so between 1 and 15 August 1995, one day longer than the nomination period. The NAC received a total of 20 applications for advice, 17 from intended candidates and 3 from ROs. Of the 17 cases from intended candidates, the NAC tendered advice in 14 of them as two cases were subsequently withdrawn and the applicant in the remaining one declined to provide sufficient information.

Section 3 : Nomination Papers

5.4 The form of the nomination paper used for the MC elections had been adapted for the LegCo GC elections, similarly with a space provided for the candidate to fill in his political affiliation, if he wished to, for release to the media. New nomination papers were prepared for the FCs and ECC. In order to convenience candidates who needed to obtain a large number of subscriptions to their nomination, loose-leaf additional sheets for subscribers' names, particulars and signatures were also made available.

Section 4 : Spots for Display of Election Advertisements

5.5 Spots in public places at which candidates were to be allowed to display election advertisements ("EAs") were identified by the ROs for the GCs who were District Officers in all the Districts throughout Hong Kong. By its nature, an NFC would have its electors scattered all over Hong Kong, and candidates might need to display their EAs in every GC area. The spots in each GC area were made available to candidates of various constituencies, at the ratio of about one-third for the candidates of the NFCs and two-thirds for those of the GC. The quantity of spots divided in this manner ensured that about an equal number of spots would be provided to each constituency, be it a GC or NFC, for allocation to its candidates.

5.6 Special arrangements were made for the display of EAs by candidates of old FCs and the ECC because the location of the electors of these constituencies, unlike that of the GC and NFCs which was spread all over Hong Kong, was more concentrated at certain places. Comments and

suggestions were sought from organizations relevant to each individual old FC and District Offices for identifying such spots.

5.7 After the BEC's briefing to candidates held on 15 August 1995, allocation of batches of display spots to candidates of various constituencies was made by the drawing of lots. The necessary authorizations were also granted to the candidates at the same time.

Section 5 : Polling Stations, their Number and Locations

5.8 The 1991 LegCo general election was held on two separate days, a Sunday and the preceding Thursday, the former for the GCs and the latter for the FCs, at different polling stations. The polling for each FC was either held at a single polling station or a number of polling stations at locations close to the electorate's work place or at association premises that the electorate used to have meetings. The Thursday, being a working day, accorded convenience to FC electors to attend such a polling station near their work place. In the 1995 LegCo election, all these had changed.

5.9 Having taken into account the BEC's view, the Governor appointed 17 September 1995 as the polling day for all constituencies in the LegCo election. A decision was required as to whether FC electors should attend a single polling station or a limited number of polling stations as in the 1991 election, or they should be allowed to use the polling stations throughout the territory used for the GC elections. Under the law, an FC elector must also be a GC elector, and if he is required to go to two different polling stations to cast his GC vote and his additional FC vote, he would need to travel to two places. The GC polling stations were designated on a geographical basis, in such a way as to cater for the

electors living in the vicinity. Coupled with the fact that 17 September 1995 was a Sunday, on which most electors would not need to go to his work place to perform job duties, requiring an FC elector to travel farther than the GC polling station in his locality would cause him added inconvenience and time. The BEC therefore came to the conclusion that elections for all FCs (save those with a very small number of voters, viz., the UC FC, RC FC and Rural FC) and the GC should be held at the same polling stations. This arrangement enabled the elector to attend only one polling station to cast both his GC and FC votes, and the purpose of providing the utmost convenience to electors was achieved.

5.10 Having taken into account representations from members of the public including councillors, the BEC also increased the number of GC polling stations, so as to ensure that electors did not have to travel too far from their homes. Altogether 493 polling stations were designated for all the GCs, as compared with 440 for the March 1995 MC elections, and electors of 26 FCs (other than the UC, RC and Rural FCs) were assigned to one of these stations close to their homes. There was only a single candidate in nine FCs including seven out of the 26, and as a result, electors of only 19 FCs used the 493 territory-based polling stations. The polling arrangements for the 19 FCs and the GCs were combined in these polling stations.

5.11 These 493 polling stations included three temporary structures to provide for the situation where there was no building suitable for use as a polling station. These temporary structures were a combination of cargo containers, the electors' acceptability of which had been tested by their use in the MC elections.

5.12 Out of the 493 polling stations used, 204 were accessible to the physically disabled. 32 were designated as specified polling stations, at least one in each of the 20 GCs. Electors with physical disability who belonged to those polling stations that were not accessible to them were able to apply to the Chief Electoral Officer (“CEO”) at least five days before the polling day for relocation to one of the specified polling stations. A total of 81 electors made such an application and they were reassigned to 11 specified polling stations.

Section 6 : The No Canvassing Area

5.13 There were a couple of fighting incidents in the MC elections in March 1995, based on which suggestions were made to the BEC to ban all campaigning on the polling day of the LegCo election. The BEC viewed that it was not yet the right time to impose a total ban on electioneering on the polling day which might destroy election atmosphere. On the other hand, some measures were thought necessary so that physical conflicts between canvassers of opposing candidates might be avoided, and electors would not be harassed on their way to polling stations. The BEC decided that a No Canvassing Area (“NCA”) should be established surrounding each polling station. Any form of electioneering, except authorized static display of EAs, on polling day was disallowed within an NCA. If too many canvassers gathered at the boundary of the NCA, the RO was empowered to alter the boundary, and delegate such power to the presiding officer (“PRO”) of the polling station concerned on polling day. A small area at the entrance of each polling station was also demarcated as a No Staying Area within which no one was allowed to stay or loiter. The two measures were designed to prevent conflicts amongst canvassers and provide smooth and safe passage to electors. Any breach

of the prohibition in an NCA or No Staying Area was made a criminal offence.

5.14 A total ban of all campaigning activities on polling day without any limitation as to area would not only seriously dampen election atmosphere, but would also have enormous enforcement problems. When the prohibition against electioneering was restricted to a defined area within the NCA, enforcement was more manageable. Some polling staff were doing rounds in the NCA every now and then to prevent and deal with breaches, with police officers patrolling the area also providing assistance whenever needed. The establishment of NCAs made redundant “canvassing agents” that were required to operate within the former “restricted canvassing areas” outside polling stations.

5.15 The size of the NCA depended very much on the local topography and circumstances. An NCA usually covered several blocks of streets surrounding the polling station so that the goals for its imposition to avoid conflicts between canvassers and provide safe and smooth passage to electors could be achieved. Normally, an NCA was only made operative in the public places within its boundaries. The boundaries were drawn so that anything inside the entrance to a private building was not included. That means, home-visits by canvassers were not in any way hampered, although no electioneering was allowed on the pavements outside the building. Some NCAs necessarily covered private premises because the polling stations concerned were in private properties. Where a polling station was situated on the upper floor of a building, the NCA would invariably cover the lift hall of that floor as well as any staircase leading to and from the polling station that was visible from that floor. On the ground floor level, sometimes an open ground, garden or

carparking space within the building line was included in the NCA as circumstances required.

5.16 Persons conducting exit poll interviews were allowed to operate within NCAs, but not the No Staying Area. Organizers of such activities were required to provide latest seven days before the polling day the names and particulars of the interviewers to be employed, together with the name and telephone number of the person in charge. This was for better control of the conduct of exit polls.

Section 7 : Introductory Leaflets, Audio Tapes and Poll Cards

5.17 As in previous elections, official introductory leaflets were prepared by the REO and sent to electors for the purpose of enabling the candidates to introduce themselves and their platforms. The front page of the introductory leaflet was printed in the same colour pattern as the ballot paper for the relevant FC and bore both its alphabet code and Chinese character code (see paragraph 5.20 below) in order to give the elector an early taste and feel of the colour pattern and the codes. As stated in the MC election report, the LegCo candidates were allowed to write in whatever language they wished on the grid paper provided them for inclusion in the official introductory leaflet. Many candidates used Chinese only with the consequence that the electors who did not read the language were inconvenienced, disappointed or even annoyed. Yet that was the freedom of the candidates' choice.

5.18 Following the practice in the MC elections, audio tapes recording the information contained in the official introductory leaflets were provided to voluntary agencies for use by electors who were visually

impaired or could not read. In addition, such information was produced in braille and made available at voluntary agencies and District Offices. A hot-line was also set up at the REO whereby people could obtain recorded information about candidates through a voice interacted system.

5.19 Ten days before the polling day, poll cards were sent to the electors of each constituency, informing them about the polling day and the polling station at which they could cast their vote. This time round, the poll card was contained in a window envelope which showed the name and address of the elector while concealing his identity card number. The invisibility of the identity card number to the stranger would prevent any misuse of it and to some extent better protect privacy. Included in the envelope was also a sketch map showing the location of the relevant polling station. The poll card for a GC elector who did not have an FC vote was printed in black on white card paper. Where an elector was entitled to vote in both the GC and an FC, the back of the poll card was printed in the colour pattern identical to that used for the relevant FC ballot paper with the relevant alphabet and Chinese character codes (see the following paragraph), with a notice that he had an FC vote in addition to his GC vote.

Section 8 : The Polling Arrangements

5.20 As polling for the FCs was to be carried out at the GC polling stations simultaneously as the polling for the relevant GC, various methods had been considered to avoid confusion and irregularity in polling and counting. The ballot paper for the GC was black print on white paper, and that for each of the 26 FCs (other than the UC, RC and Rural FCs) was printed in a different colour pattern so that it would be

easily identifiable and distinguished for subsequent sorting during the count. In addition, each of the 26 FCs was assigned both an alphabet code and a Chinese character code. The relevant codes were printed on the front of the ballot paper but only the alphabet code appeared on the back. On the other hand, the Commission decided that only two kinds of ballot boxes would be used at each polling station, one white in colour for receipt of the GC ballot papers and another red in colour for receipt of those in respect of all 26 FCs, for using a separate set of ballot boxes for each of the 26 FCs would probably cause confusion and operational hazards. If, however, the elector made a mistake in putting his ballot paper into the wrong ballot box, his vote would not be invalidated, because during the sorting at the count, the wrongly placed ballot paper would simply be returned to the proper constituency.

5.21 During the mock polling sessions for prospective ROs, PROs, members of the three tiers of representative government and political organisations, the BEC's attention was drawn to the possibility that an elector who was issued with a GC ballot paper and an FC one might leave the polling station with one of them, intentionally or inadvertently. This, if allowed to happen, would facilitate vote-buying. As a result, the BEC decided that the elector who was issued one ballot paper should be given a white cardboard and he who was issued with two ballot papers be given a red cardboard. The cardboards were of F4 size to make them difficult to keep in a jacket pocket or hand-bag, and the elector was required to return his cardboard to the polling staff manning the ballot boxes who would be able to notice with ease which elector should insert one ballot paper or two into respectively the white and red ballot boxes. This arrangement avoided the possibility of electors complaining that strongly-adhesive stickers (another method considered) would either ruin clothing or cause

itches to the body. It also evaded operational and supervision problems that would otherwise be caused by having to set up and control different channels or sections in the polling station for electors issued with one or two ballot papers.

5.22 As the polling for each FC was carried out in 493 polling stations throughout the territory, there were occasions when only a few electors of an FC which had a small electorate were entitled to attend a certain polling station. This posed a risk that the secrecy of the vote of such electors might be broken because it would not be difficult in such circumstances to identify a particular elector against the small number of ballot papers of his FC returned from the polling station during the counting of their quantity when the ballot papers from the polling station were poured out from the ballot box at the beginning of the count. A red wafer was therefore used. Half of the wafer was stuck onto one end of the back of the relevant FC ballot paper with the other half to be adhered to the other end when the paper was folded after the vote had been marked. In this way, the elector's vote would be securely concealed. The risk of the vote being inadvertently exposed during the counting of the number of ballot papers would be avoided. During the count, after a sufficient number of ballot papers with wafers stuck on them had been collected and mixed, the wafers would be split for the counting of the votes recorded on the ballot papers being proceeded with.

5.23 A committee room in the Regional Council Building was used as the single polling station of the contested election of the RC FC. A single polling station each for the elections of the UC and Rural FCs had also been arranged, but eventually they were not required since the only nominated candidate in each was returned uncontested. Similarly,

the ECC polling was conducted in a room in the International Trademart in Kowloon Bay. The convenience provided to the ordinary elector of both a GC and an FC by requiring him to visit only one polling station to cast both of his votes was thus not made available to the electors of the RC FC and the ECC. As these constituencies had only a small electorate consisting respectively of 39 and 283 persons, only a small number of persons were affected. The main reason for the decision to centralise polling for these constituencies was to facilitate vote counting because the voting systems applicable to them, unlike that for the GCs and 26 FCs which was a simple majority, involved more complex counting procedures (for details, see paragraphs 5.28 and 5.34 below). Moreover, these electors were respectively RC members and DB members serving the people of Hong Kong. The BEC was of the view that these councillors would appreciate and accept gracefully why they were not accorded the same convenience as the ordinary voter. The polling for the ECC is described more fully under Section 9 below.

5.24 The polling hours for all GCs and FCs were decided to be the same 7:30 am to 10:30 pm as in all former GC elections. However, because of representations made by some ECC electors, the close of poll for the ECC election was extended to midnight of the polling day. That was done as a compensation for the fact that they were not accorded the convenience of casting their ballot in the ECC at a GC polling station close to their homes and most of them were busily engaged either as candidates or as persons assisting candidates on the polling day in their own localities.

5.25 Inside polling stations, candidates and their election and polling agents were allowed to stay within a designated area. The set up

of the designated area was such that the occupants could have a relatively close observation of the activities at the counters issuing ballot papers to electors as well as the special desk where polling staff provided assistance to electors who claimed to be illiterate or visually impaired. Either the candidate himself, his election agent or one of his polling agents was allowed entry into the designated area at any one time. However, not all persons who wished to enter would be admitted because of space limitation. The disappointed persons would be subject to a serial-numbered admission ticket system. Candidates and their agents were told the number of unissued ballot papers in the PRO's possession at the beginning and close of the poll. They were also allowed to stay in the polling station until the arrival of the police escort for the delivery of the ballot boxes to the counting station. Two of them were then allowed to join the PRO and the police escort in delivering the ballot boxes to the counting station. If more than two such persons were interested, the decision would be made by ballot. All these steps were taken for enhancing transparency and confidence in the electoral arrangements.

5.26 A fixed set of questions were used by polling staff to ask an elector who required assistance and for one in respect of whose name an application for a ballot paper had been previously made. Two versions of templates made with cardboard paper were available for use of the visually impaired electors, one for the GC ballot paper and the other for the FC ballot paper which were slightly different in size. The left top corner of the template was cut which coincided with the cutting on the left top corner of the ballot paper, and the holes on the template matched the circles on the ballot paper against each candidate's name and number, which number was shown correspondingly on the template by braille. The design of the templates was made in consultation with a couple of

organizations for the blind. The general response to this measure was satisfactory.

5.27 A total of over 10,000 civil servants were employed for the polling exercise in the 493 polling stations and the two individual polling stations for the RC FC and ECC. Training was provided to all polling staff, while the training programme for the key personnel (the PROs and the assistant presiding officers (“APROs”)) was more intensive, with operations in a mock polling station and some hands-on exercises, to introduce and explain to them the polling procedures and applicable rules. Members of the media were also invited to some mock polling sessions.

Section 9 : Electronically Assisted Polling for the ECC

5.28 While the voting system for the small old FCs (the UC, RC and Rural FCs) was the “preferential elimination” system and that for the GC and the other FCs was “first past the post”, the system for the ECC election was the “single transferable vote” system, or STV in short. An ECC elector was required to record his preferences for the candidates, and the number of preferences must not be less than the number of vacancies available. As the ECC election was to return 10 LegCo members, an elector had to make at least his first 10 preferences out of the 18 candidates running in the election, although it was perfectly in order for him to assign a preference to each of them. The vote count was thus a complex and time-consuming exercise if performed manually. As a result, the Commission decided that a computerised programme should be used for the count.

5.29 The recording of at least the first 10 preferences was considered to be prone to mistakes, and it was decided that a “mark sense” ballot paper be introduced to assist the electors in checking whether the markings on the ballot paper reflected their actual choices. On the mark sense ballot paper, all the names of the 18 candidates were set out with their candidate’s numbers ranged from 1 to 18 against their respective names. Inside the voting compartment all by himself, the elector was required to fill two circles showing his preference in dark ink, by ball-point pen or pencil, against the candidates of his choice, for not less than 10 candidates. He was provided with a large envelope to contain the marked ballot paper for concealing his markings. He then entered another booth where an optical mark recognition (“OMR”) device was located. He put his marked ballot paper through this machine which would indicate on a monitor the numbers and order of the preferences he had made. If the markings contained a mistake which would make the ballot paper invalid, such as marking less than the first 10 preferences or the first 10 preferences not being consecutive, the monitor would display a box in red colour with a warning that the markings were invalid. If the ballot paper was validly marked but contained some mistakes which did not invalidate the ballot paper, such as a break in sequence of the preferences marked but the break appeared after the first 10 required preferences, the monitor would display a box in amber colour informing the elector of the nature of the mistake. A ballot paper marked in full compliance with the legal requirement would be represented on the monitor by a box in green colour, at the same time showing the elector what preferences he had marked. Those who discovered mistakes on their ballot papers could apply for a replacement after returning the unwanted one to the PRO who would cancel the unwanted ballot paper by stamping on its front the word “SPOILT”. When the elector was satisfied with the markings on his ballot

paper, he concealed his markings with the envelope provided and inserted the ballot paper enclosed in the envelope into the ballot box.

5.30 To introduce and explain the mark sense ballot paper and the use of the OMR machines as well as the computerised counting for the ECC (detailed in paragraph 5.34 below), sessions of mock polling and counting were held for the ECC electors, i.e., DB members, providing them with an opportunity to make comments and suggestions. The ECC RO, PRO and counting supervisor ("CS"), District Officers and members of political organisations, as well as members of the media were also invited to the sessions. The participants were allowed to have hands-on practice with sample ballot papers. Sample ballot papers and soft copies of the computer programme for the counting were also provided to candidates and electors of the ECC who were interested, so that well before the polling day they could use the sample papers for practice purposes to prevent mistakes in voting and test the integrity and accuracy of the programme.

Section 10 : The Counting Arrangements

5.31 Since the GC polling stations scattered all over the territory were used for both the GC and FC elections (save the RC FC), special procedures and arrangements had to be made for the counting of ballot papers and votes on them. Ballot papers collected in the ballot boxes in each polling station must first be sorted to divide the GC ballot papers from the FC ballot papers and to divide the ballot papers for each of the FCs. The sorted ballot papers belonging to each FC from various polling stations would have to be collected together before the actual counting of votes began. Using the traditional counting station for each GC (therefore

20 counting stations for 20 GCs) for the FC count would create problems, in that the sorted FC ballot papers would have to be gathered from 20 different GC counting stations, giving rise to further security and logistic problems on transit and delay. The BEC therefore decided that there should be one central counting station for all the 20 GCs and the FCs. The central counting station was situated in the International Trademart, Kowloon Bay.

5.32 All ballot boxes from the 493 polling stations throughout Hong Kong were delivered by the respective PROs to the central counting station, the counting tables in which were placed in 20 counting zones, each responsible for dealing with the ballot boxes returned from all the polling stations for one of the 20 GCs. The ballot papers from each GC area would then be sorted so as to obtain the ballot papers for the GC and each of the FCs in separate lots. After counting the numbers of ballot papers for the GC and the FCs from each polling station and verifying the numbers against those set out in the ballot paper accounts prepared by the PRO, the ballot papers of the GC would be kept together and the ballot papers of each of the FCs would be delivered to the RO responsible for it. The FC ROs were positioned at the ends of each of these 20 counting zones, to ensure that delivery of ballot papers to them were within the same counting station and at a relatively short distance. A Chief RO was appointed to be in overall charge of the central counting station.

5.33 The counting station of the RC FC as well as that of the ECC were also situated inside the International Trademart, although each in a room separate from the central counting station for all the GCs and other FCs. The candidates of various constituencies and their agents, members of political organizations, the media and the public enjoyed the

convenience to attend the same building to observe the count in respect of the elections of all the constituencies.

5.34 The counting of ballot papers and votes in accordance with the preferential elimination system in respect of the RC FC election was conducted manually at its own counting station. For the counting of the ECC votes applying the STV system in its individualised counting station, the ballot papers were counted with the assistance of OMR machines linked to computers. All the mark sense ballot papers were fed into OMR machines which read the preferences marked on them and at the same time printed a serial number on the side of each ballot paper that had gone through it. The votes so read were recorded in computers whereas the serial numbers so printed enabled the quantity of ballot papers read to be easily ascertained. The ballot papers that had gone through the OMR machines were then viewed by a counting officer who manually keyed into a computer the printed serial number and the preferences on each of them. The data entered by the counting officer and the data recorded by the OMR machines would then be compared in order to detect discrepancy. If a discrepancy was found, then the relevant ballot paper would be retrieved for the RO to examine and resolve the discrepancy. After the discrepancies, if any, had been resolved, the RO would decide on the validity of the ballot papers which, either through the computerised programmes or by his own eyes, were found to be of questionable validity. It was only after all these steps had been completed that the RO would press a button to activate the computer programme counting the votes recorded in accordance with the STV system. In this way, the complex counting procedure was carried out very quickly and satisfactorily with no mistake. Soft copies of the computer programme had been provided to the

ECC candidates who made a request for it, so that well before the polling day they could test its integrity and accuracy.

5.35 The election agent and two counting agents of a GC candidate and himself were allowed in the passages surrounding the counting tables in the relevant GC counting zone in the central counting station to observe the count at close distance. The FC candidate, his election agent and five counting agents were admitted into the passages of the 20 counting zones for the same purpose. A portion at the centre of the central counting station was designated as a public area with sections to accommodate candidates and their agents, members of the media and the public, who might observe the count over there. A section each of the RC FC and ECC counting stations was also designated as a public area where candidates, their agents, the public and the media were allowed to stay to observe the count. These arrangements were to make the counting process open for public scrutiny. The public areas were set at such a distance from the counting tables as to ensure that the actual votes marked on the ballot papers could not be read.

Section 11 : Openness and Transparency

5.36 The provision of the computer programmes to be used for the ECC polling and counting to the candidates and electors prior to the polling day, the invitation of members of the media to the mock polling and counting sessions, and the provision of the LegCo Guidelines to the media and all candidates were done with a view to giving effect to the statutory intention of **openness**, to make the work of the Commission transparent, and to provide opportunities for the public to make comments

and suggestions. Moreover, video tapes showing the polling and counting procedures were provided to each of the candidates.

5.37 The proposed guidelines containing various significant aspects of the electoral procedure and arrangements referred to in the earlier sections of this chapter were published for a period of 30 days of public consultation between 1 and 30 April 1995. After having carefully considered the public representations, the LegCo Guidelines were finalised and published on 7 July 1995, well before the commencement of the nomination period for the LegCo election on 1 August 1995.

5.38 Moreover, press conferences and press statements were used wherever appropriate to announce the Commission's views and steps taken and to be taken relating to all aspects of electoral matters so as to enhance public awareness and make what was done or to be done by the Commission explicit and transparent, including the following :-

- (a) the Commission held a press conference on 31 March 1995 to announce the commencement of the consultation period for the proposed guidelines, at which the Commission also explained its proposal to use the same polling stations to conduct polling for both the GC and 26 FCs, showing samples of ballot papers with different colour patterns;
- (b) the Commission held another press conference on 6 July 1995 to explain the LegCo Guidelines as finalised upon publication and to answer queries;
- (c) the Chairman of the BEC met with the media in the evening of 14 August 1995 after the close of the nomination period;

- (d) the Commission held a briefing with candidates and their agents on 15 August 1995 on the arrangements relating to the LegCo election, drawing their attention to the major changes made after the March 1995 MC elections;
- (e) the Chairman met with members of the media immediately after the briefing at (d) above to answer their queries;
- (f) the Chairman met with Mr. TAM Yiu-chung on 19 September 1995, to hear his complaint on a mistake in the counting record sheet relating to the count of the Kowloon Southeast GC, and met with Mr. WONG Sing-chi on 25 September 1995 to deal with complaints relating to persons not being able to vote in the New Territories North GC, both held in the presence of the media;
- (g) the Chairman had a meeting with Mr. CHEUNG Man-kwong on 21 September 1995 to listen to his views on the counting procedure, in the presence of the media;
- (h) a press conference was held on 12 October 1995 to announce the results of investigation of the deletion of former electors' names from the voter register and to explain the relevant procedures;
- (i) the Chairman held a press conference to announce the Commission's censure against three broadcasters on 16 October 1995, to explain the reasons in detail and to answer queries; and
- (j) the Chairman met with Mr. TAM Yiu-chung on 3 November 1995, again in the presence of the media, to listen to his views on the counting procedure.

5.39 The Chairman also attended numerous television and radio sessions at every opportune moment to introduce and explain electoral procedures and arrangements to the public and to answer questions from the programme hosts and callers on election-related matters.

5.40 In the same spirit, although not specifically provided for in the Ordinance, the Commission **recommends that this report be made public** by the Governor at such time as he may think fit, so that the public will be apprised of what the Commission had done regarding the LegCo election, and in particular, how various matters have been reviewed as well as how the complaints have been handled and disposed of. Owing to the fact that three election petitions relating to the election have been presented to the High Court and the hearings are still pending, parts of the report which deal with matters raised in the petitions have become *sub judice*. Publication of those parts of the report should therefore not be made until after the final determination of the petitions. For ease of reference, the affected parts to be obliterated for the report to be published for public consumption in the interim are identified below :

- (a) the whole of section 3 of Chapter 4 and the Annex to Chapter 4;
- (b) paragraphs 7.18 to 7.21 inclusive and paragraphs 7.26 to 7.29 inclusive of Chapter 7;
- (c) the whole of items (A) and (B) under section 4 of Chapter 8, and entries Nos. (16), (17) and (21) and Note 8 in **Appendix IV(B)**;

- (d) paragraphs 9.12 to 9.19 inclusive, paragraphs 9.44, 9.66 to 9.75 inclusive and paragraph 9.83(4), (5), (6), (7), (22) and (23) of Chapter 9;
- (e) paragraph 10.2 of Chapter 10; and
- (f) **Appendix VIII(A), (B) and (C).**

App. VIII
(A), (B) & (C)

CHAPTER 6

THE LEGCO GUIDELINES

Section 1 : The LegCo Guidelines and the Purposes for Issue

Section 2 : The Contents of the LegCo Guidelines

Section 3 : The Quality, Efficacy and Effectiveness of the LegCo Guidelines

Section 4 : Review of the LegCo Guidelines

Section 1 : The LegCo Guidelines and the Purposes for Issue

6.1 The BEC is empowered by s. 6 of the Ordinance to issue guidelines relating to the conduct or supervision of, and procedure at, an election. The guidelines may cover the activities of candidates, their agents and others in connection with an election, matters regarding election expenses and the display of publicity materials, and complaints procedures. The power to issue guidelines is in addition to that granted by s. 7 of the Ordinance to the BEC to make regulations on various aspects relating to the registration of electors and the conduct and supervision of elections of the three tiers of representative government in Hong Kong.

6.2 The LegCo Guidelines were published on 7 July 1995. The BEC's main purposes in issuing the LegCo Guidelines were as follows :

- (a) to incorporate all significant information on the electoral law and procedure concerning electors, candidates and their agents relating to the elections in the GCs, FCs and ECC in one volume;

- (b) to paraphrase and explain various aspects of the electoral law, procedure and arrangements to the public, and candidates in particular, in simple language in both English and Chinese;
- (c) to provide guidance on matters concerning electioneering so that candidates and their agents would know what could or could not be done by themselves and their adversaries in a contested election;
- (d) to impose rules on matters concerning the election campaign where there was generally no statutory provision so that electioneering activities would be conducted in a more orderly, open and honest manner; and
- (e) to apprise candidates and the public of the complaint procedure and to notify them that in appropriate cases of non-compliance, the BEC may issue public censures.

6.3 The BEC had first issued guidelines applicable to the September 1994 DB ordinary elections. Those guidelines were revised to apply to the March 1995 MC ordinary elections. These former elections were only in respect of GCs. The LegCo general election held on 17 September 1995 encompassed, on the other hand, 20 GCs, 29 FCs and the ECC. The former guidelines had therefore to be substantially revised with a number of new additions to cater for the LegCo election. A lot of experience had been gained from the DB and MC elections and valuable suggestions and comments had been received from members of the public and various quarters.

6.4 The major proposals to be contained in the LegCo Guidelines were included in the proposed guidelines published on 1 April 1995 for

public consultation for a period of 30 days between 1 and 30 April 1995. After having fully taken into account the representations received during the period, the Commission issued the LegCo Guidelines on 7 July 1995. Copies of the LegCo Guidelines were promptly sent to members of the three tiers of representative government and various organizations and made available to the public at District Offices and the REO. The Commission felt that the time of publication and distribution was such that any interested party would have sufficient notice of the LegCo Guidelines well before 1 August 1995, the commencement date of the nomination period, and the polling day of 17 September 1995 for the LegCo general election.

Section 2 : The Contents of the LegCo Guidelines

6.5 The format of the LegCo Guidelines comprising 16 chapters followed closely that of the guidelines issued for the DB and MC elections. However, various revisions to those guidelines had been effected and many new additions had been introduced to cater for the different kinds of constituencies in the LegCo election. All the electoral procedure and arrangements that were newly adopted, set out in some detail in Chapter 5 of this report, were incorporated. The main revisions and additions included the following matters :

- (a) The qualifications for registration as electors of the GC, 29 FCs and ECC as well as the qualifications for candidature in the constituencies.

- (b) The availability of the NAC to provide advice on candidates' qualifications in all the constituencies (see Section 2 of Chapter 5).
- (c) Display spots in public places for EAs made available to candidates of all kinds of constituencies, with the display spots in every GC area divided in proper proportions for allocation to the GC and the NFCs (for details see Section 4 of Chapter 5).
- (d) The revised polling arrangements in that polling for all the LegCo constituencies would be held on one single day, and polling for the GCs and 26 FCs would be held at the same polling stations in order to provide utmost convenience to electors (see paragraph 5.9).
- (e) Replacement of the former restricted canvassing area outside polling stations with a sizable NCA surrounding each polling station, and abolition of the appointment of "canvassing agents" (see Section 6 of Chapter 5).
- (f) The requirement, for the first time, for exit poll organizations to provide REO with identification of interviewers to facilitate better control of exit poll activities (see paragraph 5.16).
- (g) That ballot papers for FCs were to be printed in different colour patterns and to bear the relevant alphabet and Chinese character codes, in order to distinguish them from each other and from the GC ballot paper which was printed in black and white (see paragraph 5.20). Relevant poll cards and official introductory leaflets also bore the same colour pattern and

codes to enable electors to get used to it (see paragraphs 5.17 and 5.19).

- (h) Mailing of the poll card in a window envelope so as to conceal the elector's identity card number printed on it (see paragraph 5.19).
- (i) The use of a white and a red ballot box in polling stations, for receipt of respectively the GC and the FC ballot paper (see paragraph 5.20). Electors who obtained two ballot papers would be issued with a red cardboard whereas a white cardboard would be issued to those who obtained one ballot paper, in order to prevent ballot papers from being taken out of the polling station (see paragraph 5.21).
- (j) The arrangements which allowed candidates, election agents and polling agents to be admitted to a designated area inside polling stations, close to the issuing counters and the special desk at which polling staff provided assistance to electors who needed it, for them to observe the poll, subject to an admission ticket system if there were too many applicants for admission (see paragraph 5.25).
- (k) The arrangements for up to two candidates or agents to escort the delivery of ballot boxes from the polling station to the counting station (see paragraph 5.25).
- (l) The possibility of using computers to assist polling and counting for the ECC (see Section 9 of Chapter 5 and also paragraph 5.34).
- (m) The conduct of the count for the 20 GCs and 26 FCs at a single central counting station (see paragraphs 5.31 and 5.32).

- (n) The number of counting agents that each candidate could appoint as specified by the Commission, i.e., two counting agents per GC, UC FC, RC FC, Rural FC, or ECC candidate and five counting agents per candidate for the other FCs, to be allowed inside the counting zones of the central counting station to observe the count at close distance (see paragraph 5.35).

Section 3 : The Quality, Efficacy and Effectiveness of the LegCo Guidelines

6.6 After the LegCo election, comments and suggestions were sought from candidates, ROs, PROs and CSs on various matters concerning the election and the electoral arrangements, including the LegCo Guidelines. A few candidates who responded opined that the LegCo Guidelines had too many details or were difficult to digest. The Commission suspects that the inability to digest might have been caused by candidates and their agents not spending sufficient time on the LegCo Guidelines. In order to be comprehensive, the LegCo Guidelines needed to contain quite a lot of details on various aspects, and the 16 chapters were designed for the purpose of enabling the reader to have an overall view of all significant provisions in the electoral law, rules, procedure and arrangements. The Commission is of the view that for such purposes, the size of the LegCo Guidelines should be acceptable and accepted.

6.7 There was a view from a single candidate that the Commission had made elections too regulation-oriented, placing candidates under threat of criminal sanction for the contravention of the

regulations. This criticism is unjustified. The aim of the BEC in making regulations and issuing guidelines relating to electioneering activities is to ensure that such activities will be conducted in an open, fair and honest manner. The promulgation of the rules and guidelines is to let the candidates and intended candidates know what they are expected of their campaign conducts. They will also thereby appreciate whether anything done by other candidates are permissible or not. The provisions are for consistent and equal application to all candidates, in order to achieve fairness. With criminal sanction and the BEC censure against breach, it is hoped that at least certain redress can be achieved for well-behaved candidates against the unfair advantage obtained by those in breach. There is a certain truth in what the cynical lawyer would say: rules are made for those who misbehave, and in an ideal world where everybody is honest and fair, no law is required. The BEC, however, feels that the regulations and guidelines are required even for the subjectively honest and fair, because where the rules reflect their beliefs they can be sure that their idea of honesty and fairness is accepted as the norm for all.

6.8 The general consensus of the feedback from various quarters, including candidates, the ROs and the media was that the LegCo Guidelines were informative, comprehensive, and useful.

6.9 In its DB and MC election reports, the Commission had recommended that it be given a power to impose criminal sanction for breach of the guidelines relating to the fair and equal treatment of candidates in electioneering activities inside the common parts of private premises. The Commission no longer holds that view. First, much fewer complaints had been received in the LegCo elections about unfairness in

decisions of private buildings regarding candidates' electioneering inside their premises and in the application of those decisions. Secondly, the public censure that the BEC would issue as a consequence of an appropriate substantiated complaint against the person complained of appears to be respected by the public and feared by him. The BEC therefore views that its public censure may in many circumstances be an effective deterrent.

Section 4 : Review of the LegCo Guidelines

6.10 The LegCo Guidelines have been reviewed with the experience gathered from the LegCo election and the public's comments and suggestions. They may need to be revised to incorporate improvements to be implemented and any new and acceptable ideas that can be derived from the report to be submitted by the consultants on the viability of computerised polling and counting. The report will only be made available early next year. This topic of review is included in Chapter 9.

CHAPTER 7

THE LEGISLATIVE COUNCIL GENERAL ELECTION

- Section 1 : The Constituencies and Seats
- Section 2 : The Publicity for the Elections
- Section 3 : The Electorates
- Section 4 : The Nominations
- Section 5 : The Polling
- Section 6 : The Counting
- Section 7 : The Results

Section 1 : The Constituencies and Seats

7.1 The LegCo general election held on Sunday 17 September 1995 was for returning 60 members to LegCo from the following constituencies :

- (a) 20 members, one from each of the 20 GCs;
- (b) 30 members from the 29 FCs; and
- (c) 10 members from the ECC.

7.2 The GCs, by their names, were geographically based, and the whole of Hong Kong was divided into 20 GCs. The ECC was a constituency by itself with an electorate consisting of all members of the DBs who were not otherwise entitled to be registered as electors in the first three old FCs mentioned in paragraph 7.3 below.

7.3 The 29 FCs consisted of 20 old FCs and nine NFCs. All the old FCs, except the Labour FC, should return one member. The Labour FC was to return two members. The 20 old FCs are set out below :

- (1) Urban Council ("UC"),
- (2) Regional Council ("RC"),
- (3) Rural,
- (4) Education,
- (5) Legal,
- (6) Accountancy,
- (7) Medical,
- (8) Health Services,
- (9) Engineering,
- (10) Architectural, Surveying and Planning,
- (11) Labour,
- (12) Social Welfare,
- (13) Real Estate and Construction,
- (14) Tourism,
- (15) Commercial (First),
- (16) Commercial (Second),
- (17) Industrial (First),
- (18) Industrial (Second),
- (19) Finance, and
- (20) Financial Services.

7.4 The nine NFCs comprised the following, each to return one member to LegCo :

- (1) Primary Production, Power and Construction,
- (2) Textiles and Garments,
- (3) Manufacturing,
- (4) Import and Export,
- (5) Wholesale and Retail,
- (6) Hotels and Catering,
- (7) Transport and Communication,
- (8) Financing, Insurance, Real Estate and Business Services, and
- (9) Community, Social and Personal Services.

Section 2 : The Publicity for the Elections

7.5 During the stage of registration of electors for the 20 GCs, 29 FCs and ECC in the period between early March and July 1995, there were media reports and comments that electors did not have a clear idea about the distinctions between the various kinds of constituencies and that some did not know to which FC they belonged. There were views that the voter attendance would be adversely affected. The BEC, REO and the Administration took every opportunity to offer explanation. The Chairman of the BEC also emphasized that what an elector needed to concern with was in which FC election he was entitled to vote and if he was clear of that, the differences between each FC would be a matter for those who were interested, such as politicians, election academics and lawyers.

7.6 As for the September 1994 DB elections and the March 1995 MC elections, various government departments under the leadership of the Constitutional Affairs Branch contributed towards the publicity exercise

for the LegCo election, encouraging people to go to the poll. The Commission did not participate in any such promotional activity so as to prevent any possible public misconception that the Commission was other than an independent and apolitical body.

7.7 Election fora were organized by Radio Television Hong Kong (“RTHK”) for candidates to present their platforms and enter into debates, which were broadcast on various television channels and in RTHK radio programmes, starting from early August 1995. Cable Television and Commercial Radio also broadcast election addresses and debates of candidates.

7.8 The Commission kept a watchful eye on how the Administration conducted the publicity drive. There was nothing to arouse any suspicion that the promotional activities carried out accorded any unfair advantage to any candidate or were in any other way not impartial. Although there were some complaints about the political inclination and action of a couple of programme hosts, the election fora were generally satisfactory.

7.9 Despite some fear reported in the press that the publicity was insufficient and that voter attendance would be low, the record turnout in the end demonstrated that this was an over-worry.

Section 3 : The Electorates

7.10 The numbers of electors in the three FRs published on 1 August 1995 applicable to the LegCo elections for respectively the GCs, FCs and ECC were as follows :

- (a) about 2.57 million electors registered for the GCs (as compared with 2.45 million in the 1994 FR);
- (b) about 1.15 million electors comprising 82,000 for the 20 old FCs (increased from the former 71,000) and 1,065,000 for the nine NFCs; and
- (c) 283 electors (all those who were entitled) registered for the ECC.

Section 4 : The Nominations

7.11 In the nomination period between 1 and 14 August 1995, a total of 138 nominations were received by the ROs of all the constituencies. Not a single nomination was withdrawn. All the nominations were found by the ROs to be valid. This bore proof that the NAC (see Section 2 of Chapter 5) was useful and that intended candidates were more conversant with the law concerning candidates' qualifications and disqualifications. The names of the candidates and the constituencies for which they were nominated can be found in **Appendix I** (see paragraphs 7.12 and 7.32 below).

Section 5 : The Polling

7.12 Initially, it was planned that for each of the ECC, the UC, RC and Rural FCs, there was to be a single polling station, and that the other 26 FCs would share the same polling stations with the GCs situated throughout the territory. As there was only one candidate nominated each for the UC FC and Rural FC, no polling was required for these two constituencies.

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There were also seven other FCs which were uncontested (see **Appendix I**). Polling was only required for the ECC, 20 FCs including the RC FC, and 20 GCs.

7.13 After some slight changes consequent upon representations made to the REO, 493 polling stations all over the territory including three temporary structures of cargo containers were designated for the elections of the 20 GCs and 19 FCs. The number was increased from the 440 polling stations designated for the March 1995 MC elections, to provide greater convenience to electors. The fact that nine FCs being uncontested did not reduce the number of polling stations. The sole polling station designated for the RC FC was at the Regional Council Building whereas that for the ECC was situated in a room in the International Trademart. Notices of the designated polling stations were published in the Gazette on 9 June 1995. Subsequent replacements were gazetted on 21 July and 25 August 1995.

7.14 As a result of the increase of polling stations for the GCs and FCs, many electors were assigned to one that they had not used before in the preceding DB and MC elections. Each elector was notified of the address of the polling station by the poll card, and a location map was

included in the poll card envelope to give him a fair idea how to reach the polling station. The REO also provided a hot-line service well before the polling day to answer enquiries relating to electors and polling stations. However, despite all these efforts, there were still a number of incidents that electors went to the wrong polling station. That hot-line service and a similar one for polling staff both operated throughout the polling day reduced the impact considerably by providing correct information, although there were still complaints subsequently received on this account.

7.15 Out of the 493 polling stations used, 204 were accessible to the physically disabled, with 32 of them being designated as specified stations so that any elector who claimed to be physically disabled was permitted to apply to substitute a specified polling station in his District for the polling station to which he was assigned. A total of 81 such applications were received and allowed.

7.16 On the polling day of 17 September 1995, members of the BEC visited altogether 32 polling stations in different Districts to observe the conduct of the poll. The enforcement of the NCA arrangement was seen to be effectively carried out, for BEC members noticed at least one police officer either inside each of the polling stations they visited or outside in the NCA. Only two dispute or fighting incidents were reported. These do not detract from the view the BEC takes that the NCA and polling arrangements were operating satisfactorily, for the disputes are considered to be isolated incidents that are almost inevitable while people, especially those with conflicting interests to serve, gather in the streets.

7.17 The provision of an NCA around each polling station was reported by the media to be very well received by an overwhelming majority of electors, although there were a few comments that some electors who did not know the way to the polling stations were not, as they were used to be in former elections, able to rely on the hustling activities of the canvassing agents to get to know the locations of polling stations.

7.18 [Paragraphs 7.18 - 7.21 obliterated for publication pending determination of election petitions.]

7.19

7.20

[Paragraphs 7.18 - 7.21 obliterated for publication pending determination of election petitions.]

7.21

7.22 Polling at polling station P0801 was also suspended. There was a temporary suspension of electricity supply at the polling station in Tai Po from 7:00 to 7:10 pm on the polling day due to electricity overloading. During the period, polling was suspended and voters waiting outside the polling station were not allowed to enter and those inside were not allowed to leave. Police officers were present to maintain order. No serious incident of discontent was reported. An agent of candidate Mr. Allen LEE Peng-fei at one time asked for an extension of the polling time. The PRO, after discussion with senior REO staff, decided not to do so. The reason, which is proper and correct, was that the suspension of polling to maintain order until electricity supply resumed took place over three hours before the close of poll and the backlog of electors after the resumption of polling at 7:10 pm was not so large as to reasonably require any extension.

7.23 Altogether 920,567 voters turned up for the 20 GCs, 460,690 for the 20 FCs and 282 for the ECC. This was the occasion when the

largest number of people had ever voted in Hong Kong's history. The turnout rate of the GCs was 35.8% of all the registered voters, the FC turnout rate was 40.4% and the ECC turnout rate was 99.7%.

7.24 Everything went smoothly regarding ballot boxes and the delivery of them to the central counting station for the 20 GCs and 19 FCs, the RC FC counting station and the ECC counting station, all situated in the International Trademart, Kowloon Bay, save that the traffic leading to the building was congested during the period between about 11:30 pm and 1 am caused by vehicles delivering the ballot boxes queuing to get into the carpark.

Section 6 : The Counting

7.25 Counting commenced at the central counting station and the RC FC counting station after the ballot boxes in the polling stations arrived under the escort of PROs, police officers, candidates and their agents. The ECC count commenced after the poll for that constituency closed at midnight, when the ballot box situated at the polling station just next door was moved to the counting station. Counting of all the votes for all constituencies was completed by 1:15 pm on 18 September 1995, over 13 hours after the commencement of the count.

7.26 [Paragraphs 7.26 - 7.29 obliterated for publication pending determination of election petitions.]

[Paragraphs 7.26 - 7.29 obliterated for publication pending determination of election petitions.]

7.27

[Paragraphs 7.26 - 7.29 obliterated for publication pending determination of election petitions.]

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7.30 Many people, candidates, members of the public and the media, as well as officers participating in the count alike, also expressed dissatisfaction with the food and the sanitary services provided at the

International Trademart. Doubtless, these factors exasperated all who had been without sleep since daybreak on 17 September 1995.

7.31 While the BEC acknowledges that not everyone was satisfied and happy, it feels that in the circumstances of the counting being centralised, which was for the convenience of all concerned, the count was conducted satisfactorily. The idea of centralised counting was new to Hong Kong, the building available for use as the central counting station was newly constructed and the management was also new. Despite the large size of the area, over 7,000 square metres inside the central counting station alone, its space capacity seemed over-stretched. The food provided by the caterer specified by the management of the building was of low standard, and the staff servicing the sanitary provisions were apparently unable to cope for long hours in the middle of the night. Although a lot of time, effort and care had been used by the REO in the planning of the event, some of these minor details were not foreseeable. The BEC is, however, confident that when more thought is applied to the planning, centralised counting should be retained for future elections. Centralised arrangements not only provide convenience to all concerned save the REO and the officers responsible for administration and control, they also have the effect of creating public interest in the festivity involved, enhancing awareness in elections.

Section 7 : The Results

7.32 The results of the LegCo elections containing all the valid votes cast for each of the candidates in all the 41 contested constituencies and the names of the candidates of the nine uncontested constituencies are

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shown in **Appendix I** to this report. The election results after the count regarding each of the contested constituencies were announced through the Public Announcement Systems in the central counting station and the individual counting station for the ECC. Notices of the results of the uncontested constituencies were given by the respective ROs in the Gazette on 25 August 1995 and notices of the election results of the contested constituencies were published in the Gazette on 22 September 1995.

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App. III

7.33 Altogether, 29,969 ballot papers were rejected by the ROs as invalid. An analysis of the reasons for the rejection and the numbers involved under each reason are set out in **Appendix II**. An analysis at **Appendix III** has also been made of the ballot papers which had been issued to but unused by electors.

CHAPTER 8

THE COMPLAINTS COMMITTEE AND THE COMPLAINTS

Section 1 : Complaints and the Complaints Committee

Section 2 : The Complaints, their Nature and Categories

Section 3 : The Handling of the Complaints

Section 4 : The Outcome of the Complaints Handled by the BEC including:

(A) The Miscalculation in the Counting Record Sheet and the Discrepancies

(B) The Complaints relating to Voter Registration

(C) The Early Publication of Exit Poll Results

(D) Unfair Reporting by the Media

Section 5 : The Effect of the Complaints

Section 1 : Complaints and the Complaints Committee

8.1 The BEC has always been of the opinion that availability of a user-friendly and effective complaint system is a linchpin for the success of an electoral system, such as the one in Hong Kong, which relies heavily on mutual policing amongst members of the public and in particular candidates. Complaints reflect the extent of such mutual policing and, when properly dealt with, will not only allow grievances to be aired and disputes to be resolved, but will also effectuate efficient supervision and control over electioneering activities. Disposal of complaints in a reasonable and judicious manner is also necessary to promote or enhance the public's confidence in the integrity and credibility of the electoral system.

8.2 There are four entities to which election-related complaints can be addressed, namely, the Police, the Independent Commission Against Corruption ("ICAC"), the ROs and the BEC or its Complaints Committee ("CC") with the REO as its executive arm.

8.3 The complaints procedure adopted by the Commission was included in the LegCo Guidelines published on 7 July 1995, so that the public in general and the electorate and candidates in particular were, before the commencement of the nomination period of the LegCo election on 1 August 1995, able to apprise themselves of the availability of the various avenues, the procedure for lodging complaints and how they were processed.

8.4 The CC was first established by the Commission shortly before the DB elections in September 1994. It continued to operate during the March 1995 MC elections and was retained to deal with election-related complaints in the LegCo election. The CC consisted of the three members of the Commission and Her Honour Judge Betty Kwan. Dedicated and conscientious support was received from Ms. Elizabeth Wu of the Legal Policy Division of the Attorney General's Chambers, the CEO and other officers of the REO.

8.5 The REO complaints unit had four divisions, each belonging to one vetting group operated under the auspices of one of the four members of the CC. The complaints received on Mondays, Wednesdays and Saturdays were given to the Chairman's vetting group, whereas those received on Tuesdays, Thursdays and Fridays were respectively vetted by

the groups headed by the other three members. Having gathered valuable experience from the DB and MC elections, the complaints unit became very conversant with dealing with complaints and they produced summaries of the complaints received with observations and proposed recommendations of a very high standard, which alleviated the burden on the CC members. The complaints vetted with proposed recommendations were then passed to the CC for consideration. The CC normally met once every week during the election period and beyond to dispose of the complaints. In this manner, the complaints were handled very efficiently and expeditiously.

Section 2 : The Complaints, their Nature and Categories

8.6 As at 1 November 1995, the closing day for complaints to be entertained regarding the LegCo general election, altogether 1,615 election-related complaints had been received by the ROs and the CC. In addition, 316 complaints were received by the Police and 129 by the ICAC.

8.7 The complaints can be generally classified by their nature as follows:

Category I

Complaints within the exclusive jurisdiction of the BEC not covered by any statutory provisions imposing criminal penalty, complaints against breaches of s. 77 of the BEC(EP)(GC)R ("s. 77") and s. 79 of the BEC(EP)(FC&ECC)R ("s. 79"), complaints relating to breaches of s. 104A of the Public Health and Municipal Services

Ordinance, Cap. 132 (“PHAMSO”), and complaints against breaches of ss. 25 and 26 of the BEC(EP)(GC)R and the BEC(EP)(FC&ECC)R relating to the NCA and No Staying Area arrangements; and such complaints were dealt with by the ROs and the CC.

Category II

Complaints that might involve criminal liability including those breaches mentioned in Category I above but not breaches of the provisions of the Corrupt and Illegal Practices Ordinance, Cap. 288 (“CIPO”), the Prevention of Bribery Ordinance, Cap. 201 (“POBO”) and the Independent Commission Against Corruption Ordinance, Cap. 204 (“ICACO”); and such complaints have been dealt with by the Police.

Category III

Complaints that relate to breaches of various provisions of the CIPO, POBO and ICACO which have been exclusively handled by the ICAC.

8.8 There were complaints that raised matters within all the three categories. Although matters involving the CIPO, POBO and ICACO would be investigated by the ICAC, not infrequently the complaints contained other matters outside the three Ordinances and they were referred by the ICAC to the CC. There was also overlapping of handling of categories I and II cases by the ROs, the CC and the Police.

8.9 Section 77 and s. 79 make similar provisions regarding certain requirements to be complied with by candidates in the use of EAs, although s. 77 deals with GCs and s. 79 deals with FCs and the ECC.

Briefly, the sections provide that before EAs are used,

- (a) candidates shall make and deposit with the RO a declaration in a specified form of their EAs stating the quantity of each type, the serial numbers, the date of publication and the intended places of display;
- (b) EAs used, with a few exceptions, shall bear a serial number starting from one for each type of EA;
- (c) copies of each type of EA shall be deposited with the RO; and
- (d) authorisations and permissions for display shall be deposited with the RO.

8.10 By reason of the fact that candidates' declarations on EAs and copies of EAs were required to be deposited with the RO, he could readily make a decision on a complaint relating to EAs. For example, he could easily check if a spot on which an EA was displayed was covered by an authorization or permission, or whether the spot had been declared, or whether a copy of the EA had been deposited. Any display without the necessary authorization from the relevant government department or the written permission of the owner or occupier of private premises would also amount to a breach of s. 104A of the PHAMSO ("s. 104A"). Any EA which did not comply with the requirements of s. 77/s. 79 or s. 104A could simply be removed. The BEC had delegated the authority to deal with complaints of this nature to the ROs who very often disposed of them swiftly and satisfactorily. These complaints were usually made by

candidates and their agents to the RO direct. When, however, they were made to the CC, the CC would refer them to the relevant RO for handling.

8.11 Moreover, a breach of s. 77/s. 79 or s. 104A amounts to a criminal offence. In the last DB and MC elections, in most cases of this nature not involving recalcitrant and contumacious behaviour on the part of the person complained of, the CC did not refer the complaints to the Police. The reason was that the CC thought that in view of the new use of these provisions by the BEC over electioneering, it was excusable for candidates not to be too familiar with them, and the complainees were given the benefit of the doubt that the contravention arose out of inadvertence or oversight, in the same spirit as the provisions of s. 26 and s. 29(7), (7A) and (8) of the CIPO. In the LegCo general election, however, the BEC took the view that candidates and those who took an interest in running for election should since the promulgation of s. 77 and the guidelines of the BEC in 1994 have been fully apprised of the criminal nature of such breaches. As a result, complaints received by the CC in respect of the LegCo election relating to breaches of s. 77/s. 79 and s. 104A were invariably referred to the Police.

8.12 Amongst the 1,313 complaints received by the ROs, a great number, i.e., 390 cases, involved allegations relating to the display of EAs. Some EAs were distributed or displayed without the required authorization or permission; others were published without the declaration requirement under the s. 77/s. 79 having been complied with beforehand. 47 complaints were about electioneering in private premises. Some of these complaints involved the question whether the private building concerned accorded candidates of the same constituency equal and fair treatment regarding

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IV(A)
& (B)

electioneering in the common parts of the building. There were a few complaints about discrepancies in the count and a number of complaints that electors who were able to vote in the former elections were not allowed to do so this time. The general classification of these complaints as well as their quantities are shown in the tables at **Appendix IV (A) and (B)**, respectively concerning complaints received by the ROs and the CC or REO.

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8.13 The complaints handled by the Police were mainly in relation to noise nuisance caused by publicity broadcasts, criminal damage to EAs and breaches of s. 77/s. 79 and s. 104A which involved criminal liability. These complaints are classified together with their quantities in **Appendix V**.

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8.14 The ICAC has exclusive jurisdiction to handle matters relating to the CIPO, POBO and ICACO. A number of complaints concerned misrepresentations and namedropping in EAs in breach of ss. 16 and 17 of the CIPO. Some involved the lack of printing details required on printed publicity materials, contravening s. 19 of the CIPO. There were also complaints of bribery and treating. In all cases where investigation has completed, the ICAC has not found a single case of corruption substantiated. The complaints dealt with by the ICAC are set out in **Appendix VI** together with the number of each type.

Section 3 : The Handling of the Complaints

8.15 As can be seen from the classification of complaints, there was a division of labour amongst the four entities, the ROs, the CC and

the REO, the Police and the ICAC. The ROs were delegated by the BEC the power to deal with a vast number of cases, some relatively minor in nature and some more serious but well within their local knowledge and expertise to handle. The ROs bore the brunt of the complaints because they were the persons with whom the candidates had the most contact, and they received the lion share of the complaints. The number of complaints received by the CC was more than those in the last DB and MC elections, perhaps caused by the public's increased awareness of its existence. For complaints that were outside their terms of reference, the ROs referred them to the CC. When the matters apparently involved contravention of the provisions of the CIPPO or POBO, the CC referred them to the ICAC. It also referred other cases involving criminal liability to the Police for investigation and action, including cases of alleged breaches of s. 77/s. 79 or s. 104A. On the other hand, reports made to the Police and ICAC which did not come within their respective ambits were transmitted to the CC. In these ways, no matter to whom a complaint was lodged, it would by one channel or another reach the proper authority.

8.16 All the 1,313 complaints received by the ROs have been completely disposed of. Most of these complaints were resolved by necessary remedial actions having been taken, such as removal of the unauthorized display complained of, either by the complainee himself within a grace period granted him by the RO, or by the Urban Services Department and Regional Services Department under the direction of the RO. Others, such as failure to make a declaration under s. 77/s. 79 or to deposit permissions for display of EAs, were disposed of by the candidates involved making declarations to remedy the situation or promptly lodging the required permissions. In most of these cases,

pursuant to the instructions from the BEC, the ROs issued warnings to the candidates concerned against further breach. Numerous such warnings had been issued as a result. All in all, the ROs were extremely efficient and successful in dealing with the complaints.

8.17 The CC has dealt with altogether 584 complaints, out of which 282 were referred to it by the ROs, 12 by the ICAC and 1 by the Police. Handling of all such complaints has completed.

8.18 In dealing with the complaints, the main difficulty encountered was that neither the CC nor the Commission had sufficient manpower and expertise enjoyed by the Police and the ICAC in making investigations, resulting in the CC often not being able to determine which of the versions given by the opposing parties was true. There were inevitably many cases where the CC decided that there was insufficient evidence to substantiate the complaint, because it adopted the approach of the criminal courts that no one should be convicted unless the case against him is proven beyond a reasonable doubt. The BEC has all along considered this approach a proper one because the criminal standard of proof should apply to such an important matter as involving elections and such a high standard poses as a bulwark against any abuse of power by the BEC itself which enjoys immunity from liability for the performance of its functions as conferred by s. 14 of the Ordinance.

8.19 There were a large number of cases involving breaches of s. 77/s. 79 and s. 104A. After prompt remedial steps having been taken, the RO, upon the instructions of the BEC, would give a warning to the candidate complained of against future breach. Pending or after such

handling of these complaints, the CC referred those with a prima facie case to the Police for investigation and consideration of prosecution. The outcome of the criminal aspect of these cases is still pending.

8.20 In this respect, it is pertinent to note that regarding the September 1994 DB elections, the Police had recently completed the handling of the cases referred to them by the CC. Two cases were found substantiated. The culprit involved in one of the cases was convicted on 22 August 1995 by a magistrate of “procuring a person to vote at an election who has made a false statement” contrary to s. 14(1)(aa) of the CIPD. He was sentenced to three months imprisonment, suspended for two years. The Attorney General’s Chambers, however, decided not to bring prosecution in the other substantiated complaint case which involved breaches of s. 77, on the ground that they were of a trivial nature.

8.21 The BEC feels that an unequivocal statement of its stance on breaches of the BEC Regulations governing electioneering activities is called for :

- (a) The BEC does not consider that contraventions of s. 77/s. 79 or any other of the BEC Regulations are trivial. The penalty provided in the BEC Regulations is limited to imprisonment of six months and a fine of \$5,000, which is the maximum that the BEC can impose as a subsidiary rule-making body. The scale of the penalty alone should not be taken as a yardstick to determine that the offence is trivial. For many people, putting up an unauthorized display of EA or failing to

include an item of it in the candidate's declaration might look negligible, but in the election context, fairness and equality amongst candidates must be maintained, so that a candidate who offends or keeps offending the rules should be appropriately distinguished from a regulation-abiding candidate and properly and firmly handled. Moreover, the imposition of s. 77 and s. 79 is for the purpose of keeping track of candidates' election expenses, a ceiling of which is imposed by the law to minimize unfairness and inequality between candidates with different monetary resources. The non-compliance with certain parts of s. 77/s. 79 would cause difficulty in controlling and keeping track of the ceiling of election expenses that each candidate is allowed to incur.

- (b) All cases where a breach is found to be substantiated should be prosecuted, or else the Regulations are not enforced. A law not enforced is worse than no law at all. The failure to enforce will lead the public to view the law, and even other laws, as dead letters, lowering their trust in the electoral processes and elections. Those who commit offences will be encouraged to offend again. What is most unacceptable is that the law-abiding candidates will harbour a justifiable grievance that they did not behave in the same way as the culprits who are effectively allowed to have an undue advantage over them without any liability. All these will not only result in the law being undermined, but will also generate doubts in the credibility and integrity of our electoral system.

App. V

8.22 As at 25 November 1995, the Police has received altogether 316 reports on election-related matters (**Appendix V**). The Police has successfully prosecuted a case of criminal damage and the defendant was bound over for one year. A summons was also issued for vehicle obstruction on the polling day. Warnings were administered in five cases, one in relation to EAs and the other four relating to the emission of noise. The Police is still investigating other cases as shown in the Appendix.

8.23 Despite the number of complaints received by the ICAC, in respect of cases where investigation has completed, it has not found one involving corruption, bribery or illegal treating substantiated. The bulk of the cases reported to the ICAC related to false statements, either concerning the complainee candidate or his opponents. Some of the complaints have been found to be unsubstantiated whilst others are still being investigated.

App. VII

8.24 How the Attorney General's Chambers dealt with those complaint files referred to them can be seen from the letter annexed to this report as **Appendix VII**.

8.25 There were a couple of complaints received by the CC that were suspected to have been made for ulterior motives, to attack the opposing candidate, causing him trouble and inconvenience in having to answer questions from the CC or for other political profiteering purposes. The complainants were contumelious in their communications with the CC, the evidence provided by them was weak and sometimes inconsistent,

and the arguments raised by them were specious and even incoherent. Notwithstanding, the criminal standard of proof being applied, the CC was unable to find sufficient evidence to justify invoking the provision of the BEC Regulations regarding false declaration made in support of a complaint.

Section 4 : The Outcome of the Complaints Handled by the BEC

App.
IV(B)

8.26 A breakdown by nature of the complaints handled by the CC is set out in **Appendix IV(B)**. Many complaints related to EAs and the display of them. The CC directed them to the relevant RO to handle who took prompt remedial action wherever appropriate. The CC also referred those with a prima facie case of breach of s. 77/s. 79 or s. 104A to the Police. All other cases of complaint received by the CC have been fully disposed of, few with any significant consequence. There are, however, four matters which ought to be specifically mentioned.

(A) The Miscalculation in the Counting Record Sheet and the Discrepancies

8.27 [Paragraphs 8.27 - 8.33 obliterated for publication pending determination of election petitions.]

[Paragraphs 8.27 - 8.33 obliterated for publication pending determination of election petitions.]

8.28

[Paragraphs 8.27 - 8.33 obliterated for publication pending determination of election petitions.]

[Paragraphs 8.27 - 8.33 obliterated for publication pending determination of election petitions.]

[Paragraphs 8.27 - 8.33 obliterated for publication pending determination of election petitions.]

8.29

8.30

8.31

[Paragraphs 8.27 - 8.33 obliterated for publication pending
determination of election petitions.]

(B) The Complaints relating to Voter Registration

8.32

8.33

[Paragraphs 8.27 - 8.33 obliterated for publication pending determination of election petitions.]

(C) The Early Publication of Exit Poll Results

8.34 The BEC had since the first publication of its guidelines on 15 July 1994 in preparation for the September 1994 DB elections appealed, with a warning of censure, against publication of exit poll results before the close of poll. The same appeal and warning were repeated twice in both the revised Guidelines for the MC elections and the LegCo Guidelines, after fully taken into consideration the public representations received during the three periods of public consultations preceding the actual publication of the finalised Guidelines. While not a single representation on the topic had been received from members of the media during all the consultation periods or at all, some members of the electronic media and an organizer of exit polls met with the BEC to request permission to publish exit poll results after 10:30 pm on the polling day but before the ECC poll closed at midnight. A questionnaire survey was then conducted by the BEC with the electors and candidates of the ECC who were considered to be the most affected persons regarding the issue. Having fully taken into consideration the views expressed by

those present at the meeting and the result of the survey, the BEC maintained that exit poll results should not be published until all the polls relating to all constituencies in the LegCo general election had been completed.

8.35 Despite notification of the BEC's decision to all members of the electronic media, three organizations which participated in the meeting, namely, Asia Television Limited, Wharf Cable Limited and RTHK, published exit poll results shortly after 10:30 pm on the polling day. As a result, the BEC issued a public censure against the three broadcasters. The censure and a paper containing the reasons for the censure and details of the incident, copies of which had been distributed to members of the press when the censure was issued, are at **Appendix IX(A) and (B)**.

App. IX

8.36 There were various criticisms reported in the media or contained in editorials against the BEC for the censure, which a number of Legislative Councillors echoed. There seems to be no dispute as to the principle involved that there should not be any publication of exit poll results before the close of poll. However, because the polling hours for the ECC were longer than those for the GCs and FCs, till midnight on the polling day, the three broadcasters broke the Guidelines by announcing the GC exit poll results shortly after 10:30 pm on that day, the closing time for the GC and FC polls. The comments from members of the electronic and print media were generally against the censure, for understandably they had their vested interests and powers to serve. The censured organizations as well as other members of the media harped on the freedom of expression, the freedom and interest of the public to know

the exit poll results as soon as possible, and press freedom. All these are well appreciated by the BEC, but no reasonable justification has ever been proffered why priority should not have been given to avoid any possible undue effect on voter behaviour and consequently the ECC election result by announcing the GC exit poll results only one and a half hours later. The restriction on those freedoms was marginal and the delay in satisfying the public's right and interest to know the GC exit poll results and predictions based on such results was minor. With the benefit of further reflection, the BEC maintains its view that publication of exit poll results before the close of poll should not be allowed and that the censure against the three broadcasters was correct and proper.

(D) Unfair Reporting by the Media

8.37 The BEC received two complaints concerning unfair reporting by the media. In one case, the complaint was directed at a Chinese newspaper which was claimed to have repeatedly reported negatively on candidates of certain political inclination. The complainant alleged that the newspaper had breached the LegCo Guidelines that equal coverage should be accorded to the candidates. Having examined the evidence adduced by the complainant, the BEC found that the reports in question were editorials and commentaries by reporters. In Chapter 8 of the LegCo Guidelines, we have made it clear that "... editorial line or the personal opinions of the writer on each of the candidates can be freely expressed, insofar as they are fair comments and based on true facts. Any newspaper is at full liberty to express its support for or disapproval of a candidate. The guidelines do not seek to impose any shackle on the expression of such ideas.". The complaint was not substantiated as the

evidence provided by the complainant did not support the allegation that the LegCo Guidelines had been breached.

8.38 In the other case, the complainant alleged that a television station had offered candidates of a political organization appearing in a television programme with unfair advantages over candidates of other political background. After investigation, the Commission found insufficient evidence to substantiate the complaint.

8.39 The parties concerned in both cases had been duly informed of the outcome. A few LegCo Members were under the wrong impression that the BEC had taken no action on cases of unfair reporting by the media, but this is not so. The BEC remains of the view that the LegCo Guidelines relating to election broadcasting and media reporting are appropriate, on which basis any complaint of breaches will continue to be dealt with in future elections.

Section 5 : The Effect of the Complaints

8.40 The availability to the candidates, electors and members of the public of the four avenues through which to make their complaints about election-related matters has achieved the aims stated in the first paragraph of this chapter. All cases involving criminality and corruption were dealt with respectively by the Police and the ICAC, while the ROs and the CC handled the other election-related complaints. The prompt and efficient removal actions taken by the ROs against unauthorised EAs had maintained fairness and equality amongst candidates as far as humanly possible. When deciding on a complaint, the CC always took the

opportunity to inform the complainant and the complainee of the reasons and explanations for the decision, with the intended effect of increasing their awareness and understanding of the electoral rules and procedures as well as enabling them to appreciate the reasoning or proffer arguments against it. The awareness will doubtless help the maintenance of openness, honesty and fairness in future elections.

8.41 The complaints procedure enabled the complainants to air their grievances and share their concerns, which in turn widened the horizon of the BEC members and REO officers and sharpened their perception as to what loophole there might be and what betterment there should be. The complaints and their underlying factors therefore serve well as bases for review. Considerations have as a result been made with a view to remedying defects and making improvements.

CHAPTER 9

REVIEW AND RECOMMENDATIONS

Section 1 : The Scope of Review and Improvements

Section 2 : Matters Reviewed:

- (A) Registration of Electors
- (B) The BEC Guidelines
- (C) Nomination and the NAC
- (D) Election Advertisements
- (E) Electioneering in Private Premises and Public Housing Estates
- (F) Official Introductory Leaflet, Poll Card and Location Plan
- (G) Canvassing Activities and the NCA
- (H) Polling Stations
- (I) Ballot Papers
- (J) Polling Arrangements inside Polling Stations
- (K) Measures for Electors with Disability
- (L) Enquiry Unit
- (M) Statistics Unit
- (N) Observation of the Poll
- (O) Delivery of Ballot Boxes
- (P) Counting Arrangements
- (Q) Human Errors
- (R) Thoughts on Computerisation
- (S) Mock Polling and Counting
- (T) Exit Poll and Publication of Exit Poll Results
- (U) Complaints Procedure

Section 3 : Summary of the Commission's Review and Recommendations

Section 1 : The Scope of Review and Improvements

9.1 After the LegCo general election, at the request of the Commission, the Chief RO and the ROs offered their observations, assessments and suggestions regarding the electoral procedures and arrangements. The REO also sent questionnaires to the candidates, PROs and CSs to seek their views and comments on every aspect of the electoral arrangements. The rates of response to these questionnaires are 23% from candidates, 84% from PROs and 80% from CSs. The LegCo Panel on Constitutional Affairs held a special meeting on 28 November 1995 to discuss the 1995 LegCo elections, and its views and comments, including those of the Democratic Party, Liberal Party, Democratic Alliance for the Betterment of Hong Kong and Hon. Emily LAU were conveyed to the Commission.

9.2 These views, comments and suggestions are particularly useful in view of the fact that different from any other previous elections in Hong Kong, the LegCo general election on 17 September 1995 was the first time a number of new polling and counting arrangements had been used, namely,

- (a) combined polling for a GC and 19 FCs;
- (b) centralized counting for 20 GCs and 19 FCs;
- (c) electronically assisted polling for the ECC; and
- (d) computerised counting for the ECC.

9.3 Although most of the electoral arrangements and procedures adopted for the LegCo general election were found to be satisfactory, the

Commission has not reduced its efforts in its review with the intention of making improvements. A number of election-related matters that have been and are being reviewed will have to be reflected in having the guidelines and regulations made by the BEC revised.

9.4 A firm of consultants have been retained for the purpose of studying the viability of computerised voting and counting as well as making recommendations in that respect. Some of the consultants visited the polling and counting stations on 17 and 18 September 1995 during the LegCo election in order to observe the electoral arrangements and how they fared. Although the final reports from these consultants will only be ready by early next year, the BEC and REO have formed some ideas for development from the intermediate draft reports so far furnished. Some of these ideas will be mentioned in respect of various arrangements and procedures dealt with in this chapter.

Section 2 : Matters Reviewed

9.5 The matters reviewed cover a wide scope encompassing all the actual procedures and arrangements adopted for the conduct of the LegCo general election. Administrative arrangements are also reviewed. As there will not be any general or ordinary election of any of the three tiers of representative government in Hong Kong in the near future, the BEC's proposals for improvement will not be implemented straightaway and the ideas and proposals expressed in this report may need to be revised in future to take into account further developments. Account will also have to be taken of the acceptable recommendations made by the consultants on computerised voting and counting. The significant points

reviewed and proposed are set out below in the order of steps that are necessary in preparation for an election.

(A) Registration of Electors

9.6 A number of measures had been used during the voter registration drive from the end of 1994 till June 1995 in order to enable qualified persons to get registered as electors. The most novel and significant one was the notification procedure adopted for the registration of electors of the nine NFCs which were a new creation, with not a single elector in the 1994 FR. The procedure consisted of several steps:

- (a) to seek information from government departments, such as the Census and Statistics Department and the Business Registration Office, concerning the identity and address of employers in Hong Kong;
- (b) to seek from the employers so identified information on their principal business, and the identity card numbers and names of their employees;
- (c) to match the employees returned from (b) against the FRs to find out whether they were or were not registered GC voters and old FC voters;
- (d) to send a notification to the employee, who was a registered GC voter but not a registered old FC voter, to notify him that according to the information obtained from his employer, he was entitled to be registered in an NFC in accordance with his employer's principal business, and that if he did not object, he would be registered as an elector of the NFC; and

- (e) to send through the employer to the employee who was not a registered elector of any GC a composite application form for registration as an elector for both a GC and an NFC.

9.7 The notification procedure enabled the REO to identify a large number of potential NFC voters, and to know to which one of the nine NFCs they should belong. A targeted approach of writing to the potential elector was made possible, whereby the awareness of the NFCs and the election was enhanced. The most important of all, however, is that the procedure provided great convenience to the potential voters who did not have to undergo the conventional way of registration to get an application form, complete it and send it to the REO.

9.8 A similar procedure of notification was used for registering electors of the ECC and certain old FCs, namely, the UC, RC and Rural FCs, whose potential electors could be identified. The notification procedure should be adopted wherever appropriate for future registration of electors of all old FCs.

9.9 From some of the complaints received by the ROs and the REO, it appears that some people did not quite understand how the notification procedure worked, although quite a lot of publicity was employed to introduce and explain it. If the notification procedure is used in future, it is suggested a more intensive and extensive publicity strategy be designed and implemented.

9.10 While conventional registration methods may continue to be used, widening the network for distributing voter registration forms

should be considered, e.g., by mailing to households together with utility bills.

9.11 The LegCo Panel on Constitutional Affairs has suggested automatic registration for all permanent residents aged 18 years or above. This is very different from the notification procedure. The BEC will study its implications and viability.

9.12 [Paragraphs 9.12 - 9.19 obliterated for publication pending determination of election petitions.]

[Paragraphs 9.12 - 9.19 obliterated for publication pending determination of election petitions.]

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[Paragraphs 9.12 - 9.19 obliterated for publication pending determination of election petitions.]

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[Paragraphs 9.12 - 9.19 obliterated for publication pending determination of election petitions.]

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[Paragraphs 9.12 - 9.19 obliterated for publication pending determination of election petitions.]

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[Paragraphs 9.12 - 9.19 obliterated for publication pending determination of election petitions.]

(B) The BEC Guidelines

9.20 The Guidelines proposed to cater for the LegCo general election were published on 1 April 1995 for public consultation during the whole of April, and the LegCo Guidelines as finalized after fully considering all representations were published on 7 July 1995, three weeks before the commencement of the nomination period on 1 August and over two months before the polling day of 17 September. Yet there were still a few who suggested that the Guidelines should be prepared much earlier so that candidates and their agents as well as the officers appointed by the Commission to conduct elections would have advance notice of what the rules were long before they were required to be carried out and complied with. The LegCo Guidelines represent substantially all the significant electoral rules, procedures and arrangements that had been tested through the three previous elections of the DBs, MCs and LegCo. Intended candidates and interested persons can safely consult them for reference, but minor improvements are to be expected. There may be substantial changes if drastic procedural alterations are introduced in future, e.g., computerised polling and counting. Copies can be obtained from the REO.

9.21 For the reasons stated in paragraphs 6.6, 6.7 and 6.8, the BEC is of the view that the BEC guidelines are necessary and should be issued for future elections.

(C) Nomination and the NAC

9.22 The introduction of loose-leaf forms for candidates to obtain subscriptions was well received, especially in cases where a large number of subscribers were required to nominate a candidate. The practice should be adopted for future elections wherever appropriate.

9.23 The NAC established pursuant to the BEC (Nominations Advisory Committee) Regulation was available to assist intended candidates and the ROs on qualifications of candidature of various constituencies in the LegCo general election. It was found to be useful though not too many applications had been made to seek its advice. It should be retained for future elections.

(D) Election Advertisements

9.24 Candidates' EAs formed a large number of complaint cases in the course of the LegCo election. After remedial steps had been taken by the ROs, all the cases relating to s. 77/s. 79 and s. 104A were referred to the Police for investigation and consideration for prosecution.

9.25 Joint EAs in the sense of two or more candidates having their EAs contained in one document or poster or hoarding were allowed, whether they ran in the same constituency or different constituencies, insofar as the joint EAs were displayed at authorized spots allocated to either candidate. The election expenses involved were to be shared between the concerned candidates in equal proportions. Representations were received by the BEC after the LegCo election that joint EAs would

facilitate fraudulent use of election expenses. Take the example of two candidates belonging to the same or different constituencies who use joint EAs. One is seriously running whilst the other joins the election purely for the purpose of enabling the former to use his share of the election expenses. Moreover, the two candidates will also have two shares of public spots allocated to them, and the seriously running candidate can have the benefit of using the spots assigned to the other candidate. Allowing joint EAs will therefore give an unfair advantage to those who have friends that can afford the time and money over those who do not. The BEC accepts the representations, and proposes that no joint EAs should be allowed in future elections.

9.26 There were comments that the requirement for candidates to declare each of their EAs prior to its intended display was too cumbersome and took up too much of their resources. The requirement is primarily for the purposes of keeping track of candidates' election expenses and facilitating control of unauthorized display of EAs. The BEC feels that such a requirement should be retained, but procedural improvements can be considered to allow candidates more flexibility in submitting the declarations and deposit of the EAs, e.g., accepting a declaration by fax in the first instance, to be followed by the dispatch of copies of the EAs with suitable cross referencing, and setting up deposit boxes for collecting such declarations outside office hours, etc.

(E) Electioneering in Private Premises and Public Housing Estates

9.27 Despite the BEC's caution and reservation stated in its MC election report (paragraph 9.15 thereof), the BEC extended the principle of

fair and equal treatment to candidates of the same constituency in electioneering in the common parts of private premises applicable to domestic buildings to cover office and factory buildings, for it was persuaded that there was not a real distinction between the different kinds of buildings, and that electors of the nine NFCs were very often approachable at their places of work.

9.28 There were fewer complaints about unfairness in decisions on electioneering in private premises, including offices and factories. This was perhaps because the principle of fair and equal treatment being required to be accorded by private buildings to candidates for electioneering in the common parts had been well understood, if not appreciated, by the public. Complaints relating to the conduct of mutual aid committees (“MACs”), their members and the notice boards or places under their control had also decreased. The BEC had given notice in the LegCo Guidelines that notice boards and places under the control of an MAC where the public or occupiers of the building had access were treated as common parts, to which the fair and equal treatment principle applied. The BEC feels that the same rules governing equal and fair treatment to candidates should continue.

9.29 The representations proposing that electioneering should be allowed in private offices and factories, over and above the common parts, persisted, despite the BEC’s rejection of the idea for the LegCo election. The BEC still maintains its view, for the resolution of the conflict between private property rights on the one hand and electioneering rights and rights to impart and receive election information on the other is not properly within the BEC’s purview.

9.30 The BEC no longer retains its recommendation that breach of the Guideline on equal and fair treatment of candidates in the common parts of private premises should be criminalised. The reasons are set out in paragraph 6.9 of Chapter 6.

9.31 The BEC also agrees to the suggestion that more publicity should be given to encourage owners incorporations or building managements to provide District Officers with information regarding their decisions as to whether access by candidates for electioneering would be allowed. In this manner, candidates will be able to obtain relevant information more readily for planning their election campaign.

9.32 There was also a suggestion to waive the requirement to obtain prior approval from the Housing Manager concerned for conducting electioneering in public housing estates as approval was invariably given. This requirement was introduced at the request of the HD for better regulation of electioneering activities within public housing estates and enabling tenants to be informed of such activities. The BEC agrees that the arrangements can be further reviewed in consultation with the HD.

(F) Official Introductory Leaflet, Poll Card and Location Plan

9.33 A grid paper was provided to each candidate for him to fill in for faithful reproduction into the official introductory leaflet sent by the REO to electors to introduce the candidates and their platforms. In former elections, candidates could use one half of the grid paper in Chinese and

the other half in English. For the LegCo election, the arrangement was improved: candidates were allowed to use the entire grid paper in whatever manner they liked. A few electors who did not read Chinese were annoyed with the fact that the introductory leaflet received by them was only in that language. The Commission feels that candidates should know best the material and the language they should put on the grid paper, and their freedom of choice should not be restricted.

9.34 There was a suggestion that to improve the attendance rate at election fora, information about the election fora to be held in districts should be included in the official introductory leaflets mailed to electors. The BEC supports the implementation of the suggestion for future elections.

9.35 The poll card for the GC elector was printed on white card paper in black ink. The back of the poll card for an elector who was registered for both a GC and an FC was printed in the colour pattern identical to that used for the FC ballot paper, showing also the FC's alphabet code and Chinese character code. The front page of the introductory leaflet relating to the FC also repeated the same colour pattern and codes. The device was to enable the FC elector to notice that he had a vote in the FC in addition to his GC vote, and to get used to the colour pattern and codes of the FC ballot paper. The BEC firmly believes the device did prevent confusion and enhance electors' awareness. Where appropriate, the same practice should be adopted for future elections.

9.36 The inclusion of a sketch plan in the envelope containing the poll card giving some idea of the location of the polling station also served

well, albeit there were some complaints that the sketch plan should be on a larger scale for easier reading. There is a limit to the size of the location plan because much more time and resources would have to be incurred to produce a larger copy. The BEC, however, will look into the matter again for future elections.

9.37 The poll card and sketch plan were contained in a window envelope with only the name and address of the elector shown. This prevented the identity card number of the elector also printed on the poll card from being seen by strangers. Privacy and the secret of the identity card number were thereby preserved. The complaints against the lack of protection of the personal data of the elector that were heard over the previous elections no longer recurred. This measure must be retained for future use.

(G) Canvassing Activities and the NCA

9.38 The imposition of the NCA prohibits any canvassing activity within its boundaries (except for authorized static displays), with criminal sanction for breach. In the earlier part of the polling day, however, there were some who failed to heed the prohibition and canvassed within the NCA. With the intervention of the polling staff and police officers, these people left the NCA, perhaps to find that home visits paid to electors would be more law-abiding and rewarding. The presence of the Police in or in the vicinity of the NCA had made the enforcement of the prohibition effective.

9.39 The comments from electors who experienced the effect of the NCA, as reported by the electronic media on the polling day and feedbacks from other sources, were overwhelmingly favourable because most voters preferred not to be harassed on their way to the polling station. The only disadvantages mentioned by electors, candidates and canvassers were that the NCA dampened election atmosphere in that there was no longer any election fervour surrounding polling stations and electors did not have the benefit of that fervour to attract or direct them to the polling stations. However, the main purpose of imposing the NCA for providing safe and uninterrupted passage into polling stations was achieved. With the participation of the Police in enforcement, the operation of the NCA was a success. There was no prohibition of electioneering outside the NCA and canvassing, especially by home visits, was not hampered in any way. The BEC feels that the NCA arrangements should continue.

9.40 In order to regain some of the election fervour and atmosphere around polling stations, the BEC suggests that in future elections, the District Offices should organise some broadcasting vans to go round the Districts to broadcast messages to urge people to go to the poll. The outside of the polling stations should also be decorated with flags, banners, high-flying balloons etc. to attract the attention of electors. More conspicuous directional signs should be put up at strategic positions to direct electors to the polling stations.

9.41 There were, however, a couple of complaints relating to the NCA which included within its boundaries certain parts of private premises, in one case a private garden or open space and in the other a

private road and pavement, both close to a polling station. The crux of the complaints was that such was an intrusion into private property rights and that the owners had not been consulted or notified of the imposition.

There was no intrusion upon or deprivation of private property rights. The places concerned were all common parts of the private buildings, and the imposition of the NCA only made canvassing activities illegal within it. The prohibition was against a certain kind of activities within the places, not against the places. There is no difference between the prohibition and any other law against criminal activities, where breach of either would attract criminal liability. This was explained to the complainants. The BEC feels that the true grievance of the complainants was that they were not consulted or informed. The time constraint under which the REO and the ROs were operating, pending the LegCo election, did not allow them to consult each and every owner organisations relating to the NCAs designated for all the 495 polling stations used in the election. It is not expected that consultation in this respect will be undertaken in future elections either. On the other hand, the BEC opines that it would be reasonable to inform the owner organisations of the NCA if it includes part of their private premises in its scope. This would certainly be conducive to better public relations and enhance the awareness of the NCA on the part of the affected persons.

9.42 While the LegCo Panel on Constitutional Affairs acknowledges that the NCA arrangements have generally succeeded, it maintains its view that there should be a "No Canvassing Day" on the polling day. The Panel considers that the electorate in Hong Kong is progressing in political maturity and most electors would have decided on their choice of candidates before the polling day. Lack of election

atmosphere and low voter turnout should not be causes for concern if the Government could step up publicity to arouse public awareness and encourage electors to vote. The BEC has no objection in principle to the idea of a "No Canvassing Day", but the enforcement implications would need to be addressed in detail and the public fully consulted before a decision should be taken.

(H) Polling Stations

9.43 Altogether 495 polling stations were designated for the elections on 17 September 1995, as follows:

- (a) a polling station at the International Trademart for the ECC;
- (b) a polling station at the Regional Council Building for the RC FC; and
- (c) 493 polling stations throughout the territory for combined polling in respect of the 20 GCs, 10 old FCs and the nine NFCs.

9.44 [Paragraph 9.44 obliterated for publication pending determination of election petitions.]

9.45 The number of polling stations for the whole territory, being 495 in all, was about right. On average, each polling station was catering for about 5,000 voters on the 1995 FR. About the same number should be used for future elections.

9.46 During the course of the LegCo election, the BEC received proposals to cater for electors who could not attend polling stations on the polling day. The Commission is against absentee voting for that would enhance the risk of vote buying, and therefore it is firmly of the view that proxy voting and voting by mail should not be allowed. On the other hand, there are merits to introduce two kinds of arrangements in order to cater for and convenience electors who for physical or other reasons cannot attend the polling station on polling day.

9.47 One of the ideas is to use mobile polling stations, in the form of a motor-van, to provide for inmates of hospitals or old people's homes on polling day. Electors who require the service of the van will need to register with the REO, say, not later than seven days before polling day. The period is needed to delete their names from the voter register used by the normal polling stations to which they are originally assigned and to make schedules of visits by each van. The schedule of the visits will be made according to the number of places a van is required to attend to, and the REO will inform the affected electors. The bedridden and inmates of hospitals will therefore be able to vote by just getting to the carpark where the van is parked at the scheduled time.

9.48 There may be electors who need to be absent from Hong Kong on polling day. If a large and strong sealed ballot box is established

at the REO, such electors who wish to cast their votes can attend the office to do so, say in the period between seven days and two days before polling day. There will be time for the REO to delete the names of those who have cast their votes in this manner from the voter registers relating to the polling stations to which they are originally assigned. The ballot box will be sealed at the expiration of the period and brought to the counting station for counting of the votes after the close of poll. It is envisaged that not too many electors would require this service and, therefore, security problems could be resolved.

(I) Ballot Papers

9.49 For the GC and 19 FCs, there was combined polling at the 493 polling stations. The GC ballot paper was printed in black on white paper whereas each of the FCs' ballot paper was printed in a distinguishable colour pattern different from that for any other FC. A different alphabet code and Chinese character code were printed on the ballot paper for each FC to cater for those who were not colour-inclined. Electors also had a taste of the colour scheme and the alphabet and character codes used for his FC in the official introductory leaflet and the poll card that the REO sent to them about 10 days before the polling day. Moreover, a different series was used for candidate numbers on the ballot paper for each FC. A folder containing a sample ballot paper and an introductory leaflet in respect of each of the constituencies covered by the polling station was available in each voting compartment. All these helped reduce any possible confusion and facilitate the candidates advertising to the electorate the colour scheme of the relevant constituency together with his candidate number for voting purposes. There was

generally no complaint relating to the ballot papers or these other arrangements.

9.50 The design of the ballot paper for the RC FC election was different from those for the other FCs, for the voting system applicable was the preferential elimination system. The mark sense ballot paper of the ECC was unique for the use of the OMR machine to help electors to ensure that there was no mistake in their markings and for the computerised counting adopted for the complex STV system applicable to the ECC. These two kinds of ballot papers were satisfactory. Some discussion about the possibility and effectiveness of using computers in the electoral process can be found in item (R) Thoughts on Computerisation.

(J) Polling Arrangements inside Polling Stations

9.51 The number of polling staff employed for the LegCo general election, over 10,000 in all, appeared to be sufficient, although a number of officers had to work for a long time. In future elections, consideration will have to be given not to require polling, and for that matter counting, staff to engage in work for too long, in order to avoid human errors that will inevitably be made from inability to concentrate, monotony and fatigue.

9.52 During the combined polling for the GC and 19 FCs, two ballot papers were issued to a person who was a GC elector and also an FC elector. It was a legal requirement that when such an elector attended a polling station, he would be issued with the two ballot papers at the

same visit. He would not be allowed to get his GC ballot paper first and return later for his FC ballot paper, or vice versa. The reasons were to avoid confusion at the issuing counter and in the counting of voter turnout, and to prevent impersonation of electors. No special difficulty was encountered. The red cardboard used to identify electors who were issued with two ballot papers and the white cardboard used to identify those issued with only one also operated well.

9.53 A rule was made regarding electors who wished not to take up both of the two ballot papers issued to him. If his reason was that he did not wish to cast a vote regarding one of the two constituencies in respect of which he was issued a ballot paper each, he could simply mark his choice of candidate on one ballot paper and leave the other ballot paper blank. On the other hand, if he insisted on not accepting the ballot paper because he did not wish to cast even a blank vote, the ballot paper would be stamped with "UNUSED" by the PRO who would keep all this kind of unused ballot papers separately. Either a blank vote or an unused ballot paper would not be counted for votes for any candidate during the count. **Appendices II & III** of this report show the numbers of unmarked ballot papers and those that had been stamped "UNUSED", broken down by constituency.

App. II
& III

9.54 Various complaints relating to the operations and arrangements inside polling stations have been received. As a result, the Commission proposes to make certain improvements.

9.55 More emphasis should be made in the polling staff training sessions of the necessity of being polite to people entering the polling

station, for better public relation approaches will reduce misunderstanding, arguments and complaints.

9.56 Polling staff should also be warned that it is vital to facilitate the maintenance of secrecy of the vote. They should not even attempt to ask or see how the elector will vote or has voted. Any act or conduct that may give rise to suspicion of infringing the secrecy of the vote must be avoided. Similarly, nothing should be done to cast any doubt that a polling officer wishes to influence the elector's free choice of candidates.

9.57 The different lengths of queues of electors at the polling station may also give rise to discontent. If there is only one queue, no problem arises. If, however, there are different queues for electors with identity card numbers of different sections, a notice should be put up at appropriate places to warn electors against joining the wrong queue. In each case, it is necessary to maintain order and ensure that no one jumps the queue.

9.58 A notice should also be put up at appropriate places inside the polling station, preferably inside each polling compartment and close to the ballot boxes, to notify the elector that he should leave the polling station forthwith after he has cast his vote or votes. This is to ensure that if he wishes to wait for somebody who has not finished casting the vote he should wait outside the exit of the polling station and not inside the polling station. Clear notices will prevent misunderstanding, arguments and complaints.

9.59 A leaflet containing a summary of the important rules and information concerning electors and the conduct of polling should be sent to electors together with the poll card so that electors who wish to know will be apprised. This would help avoid misunderstanding and arguments at polling stations and might enhance the public's interest and knowledge in the electoral process.

9.60 The intensive training programme for the PROs of the LegCo elections including the ECC election was generally well received and helped build up a good rapport between the PROs and the REO staff. The briefings provided an opportunity to explain a number of points to the polling staff. They should be made more interesting with emphasis on important aspects to better capture the audience's attention. Guides for PROs and polling staff should be made available to them as early as possible so that they would have a better understanding of all the applicable rules. Hands-on practices should be more widely used as well to improve familiarization with the procedures.

(K) Measures for Electors with Disability

9.61 The measures adopted in the LegCo election to cater for electors with disability, which included the following, should continue in future elections:

- (a) making more polling stations accessible to them;
- (b) providing two different kinds of templates, one for the GC ballot paper and the other for the FC ballot paper, for the visually impaired elector to mark the ballot papers himself;

- (c) providing audio-tapes for use by those who could not read the information in candidates' introductory leaflets and making available such information in braille; and
- (d) running recorded messages contained in the introductory leaflets through a telephone hot-line on candidates' information.

(L) Enquiry Unit

9.62 45 telephone lines were mobilized and over 40,000 enquiries were handled on the polling day. Operation was generally smooth. The number of lines and staff manning the unit are to be adjusted to cope with future elections, depending on the number of polling stations used and the number of electors involved.

(M) Statistics Unit

9.63 Some difficulties were encountered in reports of voter turnouts regarding the GC and each of the FCs from polling stations where combined polling was conducted, for at times the telephone lines were all engaged, and PROs understandably took a longer time to record, compile and report about 20 sets of figures once every hour, resulting in a slight delay in publishing the hourly turnout rates. The causes have been reviewed and instructions will be given to prevent any delay from occurring in future.

(N) Observation of the Poll

9.64 The designated areas for candidates and their agents to observe the poll were made as close as practicably possible to the ballot paper issuing counters and the desk for polling staff to give assistance to electors who required it. The arrangement was well received. However, only the candidate himself, his election agent or one of his polling agents was allowed in the designated area at any time, and that was still subject to space capacity. A serially-numbered admission ticket system was applied wherever there were too many seeking admission, which worked well. These arrangements should continue in future elections, wherever appropriate.

(O) Delivery of Ballot Boxes

9.65 Two candidates or their agents were allowed to participate in the delivery of ballot boxes to the counting station so as to ensure that nothing untoward happened to them in the journey. Where too many qualified persons were interested, a determination was made by the drawing of lots. The arrangement had made this part of the electoral process more transparent, resulting in the absence of complaint or expressed suspicion regarding ballot boxes on transit. This practice should be retained for future elections.

(P) Counting Arrangements

9.66 [Paragraphs 9.66 - 9.75 obliterated for publication pending determination of election petitions.]

[Paragraphs 9.66 - 9.75 obliterated for publication pending determination of election petitions.]

9.67

[Paragraphs 9.66 - 9.75 obliterated for publication pending determination of election petitions.]

9.68

9.69

9.70 [Paragraphs 9.66 - 9.75 obliterated for publication pending
determination of election petitions.]

9.71

9.72 [Paragraphs 9.66 - 9.75 obliterated for publication pending
determination of election petitions.]

9.73

9.74

[Paragraphs 9.66 - 9.75 obliterated for publication pending determination of election petitions.]

(Q) Human Errors

9.75

(R) Thoughts on Computerisation

9.76 After the experience of the ECC polling and counting and after reading some preliminary reports in draft relating to the consultancy study on computerisation, the BEC has certain tentative ideas as to how computerisation may help to improve polling and counting processes.

Computerised polling and counting may convenience electors more and will certainly prevent mistakes that may occur through human error in the entries to be made by polling staff of the number of ballot papers issued, in counting the number of votes during a count, and in calculations. Voter turnout and election results will also be arrived at correctly and very quickly. The Commission is attracted to the idea and will deliberate further in detail when the final report of the consultancy study is ready early next year.

(S) Mock Polling and Counting

9.77 In order to test the planned procedures for the combined polling and centralized counting for the LegCo elections, and to introduce proposed measures according enhanced facilities to candidates and agents in the polling and counting processes, several mock polling and counting sessions were conducted, for the GCs and FCs on 24 and 25 April 1995, and for the ECC on 6 and 7 July 1995. ROs, PROs, CSs and other officers who were or might be involved in polling and counting as well as members of the three tiers of representative government and political organizations were invited to attend one or the other of such mock sessions. Members of the media were also invited with a view to promoting public interest and awareness in the electoral process. The attendants generously offered their comments and suggestions, many of which the Commission found extremely useful. This valuable experience provided a sound foundation for the polling and counting arrangements in respect of the LegCo elections. Mock polling and counting sessions were also held for polling and counting staff in July and August 1995 as part of the training programme for officers.

9.78 The Commission is of the view that this practice should continue for future elections. If computerised polling and counting is introduced, then mock polling and counting sessions will be indispensable, not only to enable polling and counting staff to be trained, but to enhance the awareness and understanding of everyone concerned with and interested in elections and electoral processes. More hands-on practices will also need to be provided to enable staff to be more familiar with the necessary elements of the electoral process, and to increase the understanding (and therefore acceptability) of the electoral arrangements on the part of those, be they members of the media or public or political organizations, who have participated in the practice.

(T) Exit Poll and Publication of Exit Poll Results

9.79 Organizers of exit poll activities were required to provide latest seven days before the polling day the names and particulars of the interviewers to be employed, together with the name and telephone number of the person in charge. This provided better control of the conduct of exit polls and no complaint was received on this score. The practice should continue.

9.80 There is a suggestion that only academic institutes should be allowed to conduct exit polls and that such organizations should be registered with the BEC or REO after their qualifications are examined. The Commission does not agree to the suggestion, for the following reasons :-

- (a) the BEC does not have the necessary competence to discern the qualification of exit pollsters;
- (b) it is too onerous a duty to be undertaken by the BEC to set up standards of qualifications of this sort, even if the BEC employs experts' assistance in this regard; and
- (c) there is no sufficient justification why organizations other than academic ones should not be allowed to conduct exit polls.

9.81 There was a challenge by three broadcasters against the BEC Guideline that publication of exit poll results should not be made until after the close of poll. Details as to how this was dealt with can be found under item (C) of Section 4 of Chapter 8. For the reasons stated therein, the BEC is of the view that the Guideline is proper and should similarly apply to future elections.

(U) Complaints Procedure

9.82 The complaints procedure and the CC with four vetting groups operated satisfactorily and efficiently. The CC was able to dispose of the pre-polling day complaints swiftly. Only complaints received shortly prior to, on and after the polling day were finalized after a longer time lapse. That was mainly caused by the large amount of election-related work that had to be accomplished by the Commission, whose three members were all members of the four-person CC, and the REO during that period. Nothing regarding the complaints procedure, the complaints or the handling of them has given rise to any concern, save for one matter which relates to the treatment of election-related complaints involving

criminality, details of which can be found in paragraphs 8.19 to 8.21 of Chapter 8.

Section 3 : Summary of the Commission's Review and Recommendations

9.83 Having reviewed the electoral arrangements as detailed above in this chapter, the BEC will retain the procedures which have proved to work well. A number of improvement measures will be introduced or considered for introduction in future elections. These mainly include :-

- (1) Extension of the notification procedure for registration of NFC electors to the registration of electors for the old FCs (paragraph 9.8).
- (2) A more intensive and extensive publicity strategy to publicize the notification procedure (paragraph 9.9).
- (3) Widening of the network for distributing voter registration forms, e.g., by mailing to households together with utility bills (paragraph 9.10).
- (4) [Sub-paragraphs (4), (5), (6) and (7) obliterated for publication pending determination of election petitions.]
- (5)
- (6)

- (7) [Sub-paragraphs (4), (5), (6) and (7) obliterated for publication pending determination of election petitions.]
- (8) Expansion of the hot-line service for electors (paragraph 9.19).
- (9) Prohibition of joint EAs (paragraph 9.25).
- (10) Candidates to be allowed more flexibility in the procedure for declaration and deposit of EAs (paragraph 9.26).
- (11) More publicity to encourage owners incorporations to inform District Officers of their decisions regarding access by candidates for electioneering (paragraph 9.31).
- (12) Review with HD the requirement for candidates to obtain prior approval for electioneering in public housing estates (paragraph 9.32).
- (13) Information about election fora to be included in official introductory leaflets where practicable (paragraph 9.34).
- (14) More publicity to be organized at district level on polling day, using broadcasting vans, decoration and signage at polling stations (paragraph 9.40).
- (15) Owner organizations of private premises covered by NCA to be informed of the NCA delineation (paragraph 9.41).
- (16) Further consideration of the enforcement implications and consultation of the public on the idea of a "No Canvassing Day" (paragraph 9.42).

- (17) The use of mobile polling stations for bedridden electors and inmates of hospitals or old people's homes (paragraph 9.47).
- (18) Arrangements for electors who will be absent from HK on polling day to attend the REO to cast their votes before that day (paragraph 9.48).
- (19) Qualitative and quantitative improvements to the training programmes for polling and counting staff (paragraphs 9.55 - 9.56, 9.60 and 9.78).
- (20) More information to be provided to electors through notices and leaflets to apprise them of the rules and conduct of polling (paragraphs 9.57 - 9.59).
- (21) The counting procedure to be made even more transparent (paragraphs 9.69 - 9.71).
- (22) [Sub-paragraphs (22) and (23) obliterated for publication pending determination of election petitions.]
- (23)
- (24) Deliberation of the feasibility of computerised polling and counting in detail in the light of the consultancy study report when it is ready (paragraph 9.76).

9.84 There are two other proposals which fall outside BEC's authority for implementation. Accordingly, the Commission **recommends** these to the Governor for consideration. They are summarized as follows :-

- (1) verification of registered electors' particulars should be included as one of the functions to be covered in the censuses and by-censuses undertaken by the Census and Statistics Department (paragraph 9.16 above); and
- (2) this report be made public by the Governor (see paragraph 5.40 of Chapter 5 for important details).

CHAPTER 10

CONCLUSIONS AND THE WORK AHEAD

Section 1 : The LegCo General Election

Section 2 : The Work Ahead

Section 1 : The LegCo General Election

10.1 There were a number of record breaking events in the history of Hong Kong that occurred in the LegCo general election held on 17 September 1995, including the following :-

- (a) the largest number of kinds of constituencies were involved comprising 20 GCs, 29 FCs and the ECC;
- (b) the first time that a single polling day was designated for elections in the various kinds of constituency;
- (c) the largest numbers of electors ever were registered, i.e., 2.57 million electors for the GCs and 1.15 million electors for the FCs;
- (d) the largest number of electors, i.e., 920,567, cast their votes;
- (e) the first time that combined polling was introduced (for the GCs and FCs);
- (f) the first time that centralized counting was adopted (for the GCs and FCs); and

- (g) the first time that electronically assisted polling and computerised counting were introduced and used (for the ECC election).

10.2 [Paragraph 10.2 obliterated for publication pending determination of election petitions.]

10.3 The success could not have been achieved without the dedicated efforts and unfailing assistance so readily rendered to the Commission by officers of various government departments. The Commission is indebted to the officers of the REO, and those of the District Offices in particular whose cooperation and goodwill were vital to the smooth running of all electoral arrangements. Appreciation is also due to candidates and members of the public who complied with the electoral rules, regulations and Guidelines and who scrutinized the actions of others, albeit their efforts might not be too noticeable.

Section 2 : The Work Ahead

10.4 As there is not any ordinary or general election to be held before 1 July 1997, the Commission's efforts will be directed at reviewing

electoral processes and arrangements, although by-elections that may occasionally be required will need to be conducted and supervised. What is important is the study and consideration of the prospects of computerisation of the polling and counting processes, which if introduced, will enhance efficiency and correctness in the production of the election result.

LIST OF REFERENCES

Appendix I Report of the 1975 Legislative Council, 1975-1976

Appendix II Report of the 1976 Legislative Council, 1976-1977

Appendix III Report of the 1977 Legislative Council, 1977-1978

Appendix IV Report of the 1978 Legislative Council, 1978-1979

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Results of the 1995 Legislative Council Elections

Geographical Constituencies

| Constituency Code and Name | Candidate Candidate Number and Name | Number of Votes Given as Declared by RO | Result of Election |
|---------------------------------|--|---|--------------------------|
| LC1 Hong Kong Island Central | 1 Peggy LAM PEI | 14,437 | Elected |
| | 2 LOH Kung-wai, Christine | 27,199 | |
| LC2 Hong Kong Island East | 1 CHOY So-yuk | 14,119 | Elected |
| | 2 LEE Chu-ming, Martin | 37,459 | |
| LC3 Hong Kong Island South | 1 CHENG Kai-nam | 29,910 | Elected |
| | 2 YEUNG Sum | 32,875 | |
| LC4 Hong Kong Island West | 1 HUANG Chen-ya | 31,156 | Elected |
| | 2 LAM Kwok-hung, Guy | 3,979 | |
| | 3 LAM Kin-lai | 11,845 | |
| LC5 Kowloon Central | 1 TSANG Yok-sing, Jasper | 16,691 | Elected |
| | 2 LIU Sing-lee | 22,183 | |
| LC6 Kowloon North-east | 1 MAK Hoi-wah | 23,201 | Elected |
| | 2 CHAN Yuen-han | 25,922 | |
| LC7 Kowloon East | 1 Elsie TU | 23,855 | Elected |
| | 2 SZETO Wah | 29,627 | |
| LC8 Kowloon South-east | 1 TAM Yiu-chung | 29,009 | Elected |
| | 2 LI Wah-ming | 30,133 | |
| LC9 Kowloon South | 1 LAU Chin-shek | 26,827 | Elected |
| | 2 WONG Siu-yea | 11,572 | |
| LC10 Kowloon South-west | 1 CHUNG Yee-fong, Helen | 1,482 | Elected |
| | 2 TO Kun-sun, James | 17,731 | |
| | 3 SIT Ho-yin, Kingsley | 2,656 | |
| | 4 WONG Kwok-tung, Daniel | 4,929 | |
| LC11 Kowloon West | 1 WONG Yin-ping | 1,778 | Elected |
| | 2 FUNG Kin-kee, Frederick | 28,996 | |
| | 3 FU Shu-wan | 12,264 | |
| LC12 New Territories Central | 1 CHAN Wai-yip, Albert | 25,303 | Elected |
| | 2 NG Wai-kwong | 4,097 | |
| | 3 TAM Tai-on | 4,433 | |
| LC13 New Territories North-west | 1 WONG Wai-yin, Zachary | 21,527 | Elected |
| | 2 TANG Siu-tong | 21,470 | |
| LC14 New Territories North | 1 CHEUNG Hon-chung | 17,026 | Elected |
| | 2 WONG Sing-chi | 16,978 | |
| LC15 New Territories North-east | 1 LEE Peng-fei, Allen | 15,216 | Elected |
| | 2 LAW Yuk-kai | 4,723 | |
| | 3 CHEUNG Hok-ming | 12,256 | |
| | 4 CHEUNG Wing-fai | 11,507 | |

Results of the 1995 Legislative Council Elections

Geographical Constituencies

| Constituency Code and Name | Candidate Candidate Number and Name | Number of Votes Given as Declared by RO | Result of Election |
|---------------------------------|--|---|--------------------------|
| LC16 New Territories South-east | 1 WONG Wang-fat, Andrew | 23,666 | Elected |
| | 2 WAN Hon-cheung, William | 11,987 | |
| | 3 KO Ping-chung, Harold | 13,828 | |
| LC17 New Territories East | 1 LAU Kong-wah | 27,841 | Elected |
| | 2 LAU Wai-hing, Emily | 39,265 | |
| LC18 New Territories South | 1 HUI Chiu-fai | 8,179 | Elected |
| | 2 SIN Chung-kai | 26,048 | |
| | 3 LAM Chi-leung | 2,594 | |
| LC19 New Territories South-west | 1 LEE Wing-tat | 29,801 | Elected |
| | 2 TING Yin-wah | 15,798 | |
| LC20 New Territories West | 1 CHAN Wan-sang | 6,152 | Elected |
| | 2 HO Chun-yan | 25,255 | |
| | 3 YIM Tin-sang | 15,166 | |

Results of the 1995 Legislative Council Elections

Functional Constituencies

| Constituency Code and Name | Candidate Candidate Number and Name | Number of Votes Received at the Final Count as Declared by RO | Result of Election |
|---|--|---|--------------------------|
| A Primary Production, Power and Construction | 11 TSANG Kin-shing | 11,592 | Elected |
| | 12 HO Sai-chu | 5,366 | |
| | 13 POON To-chuen | 7,493 | |
| | 14 TONG Yat-chu | 3,871 | |
| B Textiles and Garments | 21 CHEN Ming-Kit | 2,638 | Elected |
| | 22 LEUNG Yiu-chung | 10,472 | |
| | 23 NG Ching-man | 2,957 | |
| | 24 CHAN Kwok-keung | 5,116 | |
| C Manufacturing | 31 CHAN Ming-yiu | 4,931 | Elected |
| | 32 LEE Cheuk-yan | 30,510 | |
| | 33 LEUNG Fu-wah | 8,535 | |
| D Import and Export | 41 TANG Ying-yen, Henry | 24,997 | Elected |
| | 42 KWAN Lim-ho | 15,539 | |
| E Wholesale and Retail | 51 CHOW LIANG Shuk-ye, Selina | 23,357 | Elected |
| | 52 WONG Kwok-hing | 10,965 | |
| F Hotels and Catering | 61 CHIANG Sai-cheong | 5,176 | Elected |
| | 62 LI Hon-shing | 3,393 | |
| | 63 CHAN Wing-chan | 5,614 | |
| | 64 CHEUNG Yu-yan, Tommy | 3,991 | |
| G Transport and Communication | 71 CHENG Kai-ming | 2,324 | Elected |
| | 72 LAU Kin-ye, Miriam | 14,233 | |
| | 73 IP Kwok-fun | 12,055 | |
| | 74 CHEUK Siu-ye | 12,617 | |
| | 75 CHEUNG Pak-chi | 2,042 | |
| H Financing, Insurance, Real Estate and Business Services | 81 NG Kam-chun | 2,348 | Elected |
| | 82 CHENG Kar-foo, Andrew | 25,658 | |
| | 83 CHAN Yuk-cheung | 10,514 | |
| | 84 CHAN Yim-kwong | 5,771 | |
| | 85 CHAN Tung-ngok, Tony | 1,699 | |
| | 86 FUNG Chi-kin | 18,674 | |
| I Community, Social and Personal Services | 91 Elizabeth WONG CHIEN Chi-lien | 40,649 | Elected |
| | 92 KWOK Yuen-hon | 14,452 | |
| | 93 KAN Brian Ping-chee | 6,290 | |
| | 94 SIU Yin-ying, Michael | 33,596 | |
| | 95 FAN Kwok-wah | 2,386 | |

Results of the 1995 Legislative Council Elections

Functional Constituencies

| Constituency Code and Name | Candidate Candidate Number and Name | Number of Votes Received at the Final Count as Declared by RO | Result of Election |
|---|---|---|----------------------|
| J Commercial (First) | 201 CHENG Ming-fun, Paul | - | Uncontested; Elected |
| K Commercial (Second) | 211 WONG Yu-hong, Philip | - | Uncontested; Elected |
| L Industrial (First) | 221 TIEN Pei-chun, James | - | Uncontested; Elected |
| M Industrial (Second) | 231 NGAI Shiu-kit | - | Uncontested; Elected |
| N Finance | 241 LI Kwok-po, David | - | Uncontested; Elected |
| O Labour (2 seats) | 251 LEE Kai-ming 252 CHENG Yiu-tong 253 LUK Woon-cheung, John 254 LEE Kwok-keung | 533 684 109 262 | Elected Elected |
| P Social Welfare | 261 LAW Chi-kwong 262 CHOW Wing-sun | 1,115 625 | Elected |
| Q Tourism | 271 HAU Suk-kei 272 Howard YOUNG | 175 413 | Elected |
| R Real Estate and Construction | 281 Ronald Joseph ARCULLI | - | Uncontested; Elected |
| S Financial Services | 291 CHEN Po-sum 292 CHIM Pui-chung | 243 363 | Elected |
| T Medical | 301 YOUNG Yau-yau, Cecilia 302 LEONG Che-hung, Edward | 135 2,371 | Elected |
| U Education | 311 LEUNG Siu-tong 312 CHEUNG Man-kwong | 4,496 19,558 | Elected |
| V Legal | 321 Margaret NG 322 Alfred Donald YAP 323 LI Wai-ip | 723 444 159 | Elected |
| W Engineering | 331 WONG Ping-wai, Samuel 332 HO Chung-tai, Raymond | 1,382 822 | Elected |
| X Health Services | 341 PONG TSO Shing-yuk, Alice 342 HO Mun-ka, Michael | 1,116 4,968 | Elected |
| Y Accountancy | 351 CHOW Kwong-fai, Edward 352 LI Ka-cheung, Eric 353 CHAN Po-fun, Peter | 477 1,376 299 | Elected |
| Z Architectural, Surveying and Planning | 361 HO Sing-tin, Edward | - | Uncontested; Elected |
| Urban Council | 1 MOK Ying-fan | - | Uncontested; Elected |
| Regional Council | 1 TAM King-wah, Alan 2 NGAN Kam-chuen | 16 21 | Elected |
| Rural | 1 LAU Wong-fat | - | Uncontested; Elected |

Results of the 1995 Legislative Council Elections

Election Committee Constituency (10 seats)

| Candidate Candidate Number and Name | Value of Votes Received at the Final Count as Declared by RO | Result of Election |
|--|---|--------------------------|
| 1 YEUNG Fuk-kwong | 0 | |
| 2 LEE York-fai | 0 | |
| 3 FUNG Kwong-chung | 0 | |
| 4 LO Suk-ching | 26 | Elected |
| 5 CHOY Kan-pui | 26 | Elected |
| 6 CHEUNG Bing-leung | 26 | Elected |
| 7 LAU Hon-chuen | 26 | Elected |
| 8 CHAN Kam-lam | 26 | Elected |
| 9 LEUNG Kwong-cheong | 0 | |
| 10 LAW Cheung-kwok | 26 | Elected |
| 11 IP Kwok-him | 26 | Elected |
| 12 TSE Wing-ling, John | 26 | Elected |
| 13 CHU Yu-lin, David | 26 | Elected |
| 14 YUEN Bun-keung | 0 | |
| 15 Mark LIN | 0 | |
| 16 LEUNG Wing-on, Louis | 0 | |
| 17 YUM Sin-ling | 26 | Elected |
| 18 CHAN Sing-kong, Paul | 0 | |

1995 LEGISLATIVE COUNCIL ELECTIONS
NUMBER OF REJECTED BALLOT PAPERS

Geographical Constituencies

| | | REASONS FOR REJECTION : # | | | | | | | | | | Total |
|-------------------------------------|----------------------------|---------------------------|-----|-----|-------|-------|-----|-----|-----|---|-------|-------|
| Code | Name of Constituency | (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | | | |
| LC1 | Hong Kong Island Central | 35 | 30 | 0 | 154 | 22 | 0 | 0 | 0 | 0 | 241 | |
| LC2 | Hong Kong Island East | 48 | 25 | 0 | 255 | 30 | 0 | 3 | 0 | 0 | 361 | |
| LC3 | Hong Kong Island South | 79 | 56 | 0 | 151 | 37 | 0 | 4 | 0 | 0 | 327 | |
| LC4 | Hong Kong Island West | 83 | 32 | 0 | 362 | 87 | 1 | 1 | 0 | 0 | 566 | |
| LC5 | Kowloon Central | 88 | 46 | 0 | 323 | 26 | 33 | 2 | 36 | 0 | 554 | |
| LC6 | Kowloon North-east | 64 | 73 | 0 | 136 | 114 | 1 | 2 | 0 | 0 | 390 | |
| LC7 | Kowloon East | 66 | 66 | 0 | 141 | 32 | 1 | 1 | 0 | 0 | 307 | |
| LC8 | Kowloon South-east | 153 | 77 | 0 | 224 | 54 | 0 | 0 | 0 | 0 | 508 | |
| LC9 | Kowloon South | 75 | 14 | 0 | 193 | 34 | 0 | 1 | 0 | 0 | 317 | |
| LC10 | Kowloon South-west | 58 | 23 | 0 | 113 | 64 | 0 | 0 | 0 | 0 | 258 | |
| LC11 | Kowloon West | 167 | 46 | 0 | 574 | 165 | 0 | 1 | 0 | 0 | 953 | |
| LC12 | New Territories Central | 93 | 7 | 0 | 295 | 56 | 1 | 0 | 0 | 0 | 452 | |
| LC13 | New Territories North-west | 73 | 28 | 0 | 132 | 33 | 0 | 1 | 0 | 0 | 267 | |
| LC14 | New Territories North | 115 | 26 | 0 | 157 | 53 | 1 | 0 | 0 | 0 | 352 | |
| LC15 | New Territories North-east | 134 | 21 | 0 | 165 | 53 | 0 | 0 | 1 | 0 | 374 | |
| LC16 | New Territories South-east | 119 | 21 | 46 | 405 | 35 | 1 | 0 | 0 | 0 | 627 | |
| LC17 | New Territories East | 94 | 59 | 0 | 192 | 32 | 0 | 0 | 24 | 0 | 401 | |
| LC18 | New Territories South | 86 | 34 | 0 | 342 | 90 | 0 | 1 | 0 | 0 | 553 | |
| LC19 | New Territories South-west | 101 | 34 | 0 | 246 | 39 | 0 | 4 | 0 | 0 | 424 | |
| LC20 | New Territories West | 82 | 29 | 0 | 153 | 47 | 0 | 1 | 0 | 0 | 312 | |
| Total No. of Rejected Ballot Papers | | 1,813 | 747 | 46 | 4,713 | 1,103 | 39 | 22 | 61 | | 8,544 | |

Note

: Reasons for Rejection :

- (a) - Giving more than one vote
- (b) - Writing or mark by which the elector can be identified
- (c) - Unused
- (d) - Unmarked
- (e) - Void for uncertainty
- (f) - Substantially mutilated
- (g) - Endorsed with the word "TENDERED" and "重複"
- (h) - Endorsed with the word "SPOILT" and "損壞"

1995 LEGISLATIVE COUNCIL ELECTIONS
NUMBER OF REJECTED BALLOT PAPERS

Functional Constituencies

REASONS FOR REJECTION : #

| | (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | Total |
|---|-------|-----|-----|--------|-------|-----|-----|-----|--------|
| A | 74 | 14 | 0 | 1,706 | 82 | 0 | 0 | 0 | 1,876 |
| B | 56 | 4 | 2 | 1,399 | 25 | 0 | 0 | 0 | 1,486 |
| C | 52 | 7 | 20 | 1,265 | 64 | 0 | 0 | 0 | 1,408 |
| D | 208 | 77 | 0 | 1,807 | 86 | 1 | 0 | 0 | 2,179 |
| E | 212 | 9 | 0 | 1,895 | 189 | 2 | 1 | 0 | 2,308 |
| F | 61 | 6 | 0 | 1,287 | 52 | 0 | 0 | 0 | 1,406 |
| G | 71 | 3 | 0 | 1,388 | 11 | 1 | 2 | 122 | 1,598 |
| H | 155 | 11 | 0 | 2,859 | 205 | 3 | 2 | 0 | 3,235 |
| I | 281 | 381 | 0 | 4,366 | 275 | 1 | 3 | 0 | 5,307 |
| J | - | - | - | - | - | - | - | - | - |
| K | - | - | - | - | - | - | - | - | - |
| L | - | - | - | - | - | - | - | - | - |
| M | - | - | - | - | - | - | - | - | - |
| N | - | - | - | - | - | - | - | - | - |
| O | 0 | 1 | 0 | 7 | 0 | 0 | 0 | 0 | 8 |
| P | 3 | 0 | 0 | 20 | 3 | 0 | 0 | 0 | 26 |
| Q | 1 | 0 | 0 | 6 | 0 | 0 | 0 | 0 | 7 |
| R | - | - | - | - | - | - | - | - | - |
| S | 0 | 0 | 0 | 5 | 1 | 0 | 0 | 0 | 6 |
| T | 4 | 2 | 3 | 35 | 3 | 0 | 0 | 0 | 47 |
| U | 0 | 0 | 0 | 212 | 48 | 0 | 0 | 0 | 260 |
| V | 2 | 0 | 0 | 14 | 3 | 0 | 0 | 0 | 19 |
| W | 2 | 0 | 0 | 32 | 0 | 4 | 0 | 0 | 38 |
| X | 13 | 1 | 0 | 122 | 9 | 0 | 0 | 0 | 145 |
| Y | 2 | 0 | 2 | 46 | 3 | 0 | 0 | 10 | 63 |
| Z | - | - | - | - | - | - | - | - | - |
| * Architectural, Surveying and Planning | - | - | - | - | - | - | - | - | - |
| * Urban Council | - | - | - | - | - | - | - | - | - |
| * Regional Council | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| * Rural | - | - | - | - | - | - | - | - | - |
| Total No. of Rejected Ballot Papers | 1,197 | 516 | 27 | 18,473 | 1,059 | 12 | 8 | 132 | 21,424 |

1995 LEGISLATIVE COUNCIL ELECTIONS
NUMBER OF REJECTED BALLOT PAPERS

Election Committee Constituency

| | | REASONS FOR REJECTION : # | | | | | | | |
|-----|-----|---------------------------|-----|-----|-----|-----|-----|-------|--|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | Total | |
| 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | |

Notes

- * : Uncontested Constituency
- # : Reasons for Rejection
 - (a) - Not marked in accordance with the statutory requirement
 - (b) - Writing or mark by which the elector can be identified
 - (c) - Unused
 - (d) - Unmarked
 - (e) - Void for uncertainty
 - (f) - Substantially mutilated
 - (g) - Endorsed with the word "TENDERED" and "重複"
 - (h) - Endorsed with the word "SPOILT" and "損壞"

1995 Legislative Council Elections
Number of "Unused" Ballot Papers

Geographical Constituencies

| Code and Name of Constituency | Number of "Unused" Ballot Papers | | |
|----------------------------------|---|------------------------------------|------------|
| | Refused by Electors at Issuing Desk | Found Within Polling Station | Total |
| LC1 Hong Kong Island Central | 21 | 0 | 21 |
| LC2 Hong Kong Island East | 34 | 3 | 37 |
| LC3 Hong Kong Island South | 22 | 5 | 27 |
| LC4 Hong Kong Island West | 46 | 4 | 50 |
| LC5 Kowloon Central | 32 | 2 | 34 |
| LC6 Kowloon North-east | 16 | 1 | 17 |
| LC7 Kowloon East | 11 | 2 | 13 |
| LC8 Kowloon South-east | 14 | 3 | 17 |
| LC9 Kowloon South | 18 | 0 | 18 |
| LC10 Kowloon South-west | 23 | 1 | 24 |
| LC11 Kowloon West | 27 | 1 | 28 |
| LC12 New Territories Central | 25 | 0 | 25 |
| LC13 New Territories North-west | 4 | 2 | 6 |
| LC14 New Territories North | 10 | 1 | 11 |
| LC15 New Territories North-east | 15 | 3 | 18 |
| LC16 New Territories South-east | 31 | 2 | 33 |
| LC17 New Territories East | 25 | 3 | 28 |
| LC18 New Territories South | 42 | 1 | 43 |
| LC19 New Territories South-west | 13 | 4 | 17 |
| LC20 New Territories West | 5 | 0 | 5 |
| Total | 434 | 38 | 472 |

Functional Constituencies

| | Code and Name of Constituency | Number of "Unused" Ballot Papers | | |
|-------|--|---|------------------------------------|-------|
| | | Refused by Electors at Issuing Desk | Found Within Polling Station | Total |
| A | Primary Production, Power and Construction | 372 | 9 | 381 |
| B | Textiles and Garments | 338 | 3 | 341 |
| C | Manufacturing | 251 | 5 | 256 |
| D | Import and Export | 499 | 5 | 504 |
| E | Wholesale and Retail | 393 | 8 | 401 |
| F | Hotels and Catering | 338 | 5 | 343 |
| G | Transport and Communication | 420 | 5 | 425 |
| H | Financing, Insurance, Real Estate and Business Services | 850 | 14 | 864 |
| I | Community, Social and Personal Services | 1,147 | 21 | 1,168 |
| J | * Commercial (First) | - | - | - |
| K | * Commercial (Second) | - | - | - |
| L | * Industrial (First) | - | - | - |
| M | * Industrial (Second) | - | - | - |
| N | * Finance | - | - | - |
| O | Labour | 2 | 0 | 2 |
| P | Social Welfare | 2 | 0 | 2 |
| Q | Tourism | 2 | 0 | 2 |
| R | * Real Estate and Construction | - | - | - |
| S | Financial Services | 1 | 0 | 1 |
| T | Medical | 2 | 0 | 2 |
| U | Education | 39 | 0 | 39 |
| V | Legal | 2 | 0 | 2 |
| W | Engineering | 2 | 0 | 2 |
| X | Health Services | 22 | 0 | 22 |
| Y | Accountancy | 5 | 0 | 5 |
| Z | * Architectural, Surveying and Planning | - | - | - |
| | * Urban Council | - | - | - |
| | Regional Council | 0 | 0 | 0 |
| | * Rural | - | - | - |
| Total | | 4,687 | 75 | 4,762 |

Election Committee Constituency

| Number of "Unused" Ballot Papers | | |
|---|------------------------------------|-------|
| Refused by Electors at Issuing Desk | Found Within Polling Station | Total |
| 0 | 0 | 0 |

Note

* : Uncontested Constituency

**1995 Legislative Council Elections
Breakdown of Complaint Cases Received by Returning Officers**

| Nature | No. of Cases (as at 25.11.95) | Referred to Complaints Committee | Progress | | Total |
|--|----------------------------------|--|---------------------|----------------------|--------------|
| | | | Action Completed | Being Followed-up | |
| (i) relating to election advertisements | 390 | 0 | 390 | 0 | 390 |
| (ii) relating to electioneering in private premises | 47 | 4 | 43 | 0 | 47 |
| (iii) relating to CIPD offences | 19 | 14 | 5 | 0 | 19 |
| (iv) others | 857 | 264 | 593 | 0 | 857 |
| Total : | 1,313 | 282 | 1,031 | 0 | 1,313 |

[LCRPR_E]

1995 Legislative Council Elections

Breakdown of Complaint Cases Handled by the Complaints Committee

| | A | B | C | D | Total |
|---|------------|------------|-----------|----------|------------|
| Number of cases (as at 25.11.95) | 289 | 282 | 12 | 1 | 584 |
| Nature *:- | | | | | |
| Election advertisements | 68 | 1 | 1 | 0 | 70 |
| Electioneering in private premises | 15 | 4 | 1 | 0 | 20 |
| Entitlement to vote | 72 | 195 | 2 | 0 | 269 |
| Allocation of polling station | 5 | 29 | 0 | 0 | 34 |
| Others | 156 | 61 | 8 | 1 | 226 |
| Total | 316 | 290 | 12 | 1 | 619 |
| Action completed | 316 | 290 | 12 | 1 | 619 |
| Outstanding | 0 | 0 | 0 | 0 | 0 |

Legend :

- A = Cases received by Registration and Electoral Office
- B = Cases referred from Returning Officers
- C = Cases referred from ICAC
- D = Cases referred from Police
- * = A case may cover complaints under several heads of nature.

1995 Legislative Council Elections
Analysis of Election-related Complaints handled by the Complaints Committee

| Nature | Outcome | | | | | | | Total |
|--|-----------|---|----------------------------|-----------------|---|---------------------------------|---|-------|
| | Withdrawn | No further action | Referred to Police/ICAC/RO | Unsubstantiated | Partly unsubstantiated/ partly substantiated [Action taken] | Substantiated [Action taken] | Others [Remarks] | |
| (1) Nominations and candidature | | | | 1 | | | | 1 |
| (2) Election advertisements | | 3 [insufficient information] | 60 (Note 1) | 7 | | | | 70 |
| (3) Electioneering in private premises | 1 | 1 [insufficient information] | 5 (Note 2) | 9 | 2 [warned] | 1 [warned] | 1 [no breach of electoral law/guidelines] | 20 |
| (4) Election expenses | | | 3 | 1 | | | 4 [reminded to report expenses] | 8 |
| (5) False statements | | 1 [complaint lodged complaint with ICAC direct] 1 [complaint refused referral to ICAC] | 19 (Note 3) | 4 | | | | 25 |
| (6) False claim of support | | | 4 | 3 | | | | 7 |
| (7) Omission of printing details | | | 2 | | | | | 2 |
| (8) Corruption/bribe/ influence/ personation | | 1 [insufficient information] 1 [complaint lodged complaint with ICAC direct] | 1 | 1 | | | | 4 |
| (9) Employment of young persons under 18 years of age for canvassing/ electioneering | | | | 3 | | | | 3 |
| (10) Exit poll | | | | | | 1 [3 broadcasters censured] | | 1 |
| (11) Against Returning Officer or his staff | | 1 [resolved] | | 8 | | | 1 [complainant advised] 1 [acted for review] | 11 |

Note 1 : 11 unsubstantiated, 12 warned, 3 reminded, 6 advised, 11 rectified and 17 no further action

Note 2 : 4 unsubstantiated and 1 warned

Note 3 : 5 unsubstantiated and 14 still under investigation

| Nature | Outcome | | | | | | | Total |
|---|-----------|------------------------------|----------------------------|-----------------|---|---------------------------------|---|-------|
| | Withdrawn | No further action | Referred to Police/ICAC/RO | Unsubstantiated | Partly unsubstantiated/ partly substantiated [Action taken] | Substantiated [Action taken] | Others [Remarks] | |
| (12) Against polling staff | 1 | 1 [insufficient information] | 15 (Note 4) | 7 | 1 [advised] 1 [instructed to rectify the position] | 2 [warned] 1 [advised] | 1 [no breach of electoral law/guidelines] 1 [misunderstanding between complainant and polling staff] | 31 |
| (13) Against Housing Department staff | | 1 [resolved] | | 1 | | | | 2 |
| (14) Disturbances to electors caused by | | | | | | | | |
| (a) loudspeakers/ broadcasting vans | | | 5 (Note 5) | 1 | | | 2 [complainees advised] | 25 |
| (b) telephone/fax canvassing | | 1 [insufficient information] | 1 (Note 6) | 1 | | | 10 [complaints/ complainees advised] 2 [no breach of electoral law/guidelines] | |
| (c) shouting electors' names | | | 1 (Note 7) | | | | 1 [no breach of electoral law/guidelines] | |
| (15) False/mass registration | | 1 [insufficient information] | 3 | 6 | | | | 10 |
| (16) # | | | | | | | | |

Note 4 : 3 advised, 1 resolved, 5 caused by misunderstanding and 6 insufficient information

Note 5 : 5 unsubstantiated

Note 6 : no breach of electoral law/guidelines

Note 7 : advised

Note 8 : #

: obliterated for publication pending determination of election petitions

[P]

| Nature | Outcome | | | | | | Total |
|--|-----------|------------------------------|---------------------------|-----------------|---|---------------------------------|--|
| | Withdrawn | No further action | Referred to Police/CAC/RO | Unsubstantiated | Partly unsubstantiated/ partly substantiated [Action taken] | Substantiated [Action taken] | |
| (17) # | 1 | | | | | | |
| (18) Polling arrangement | | 2 [insufficient information] | | 2 | | 1 [location map to be updated] | 15 [noted for review] |
| (19) No canvassing area arrangement | | | 1 (Note 9) | 1 | | | 3 [noted for review] 1 [complainant advised] |
| (20) Illegal canvassing in no canvassing area/ no staying area | | 1 [resolved] | 7 (Note 10) | 1 | | | |
| (21) # | | | | | | | |
| (22) Miscellaneous | 1 | 8 [insufficient information] | 2 (Note 11) | 14 | 1 [reminded] | 1 [rectified] | 11 [no breach of electoral law/guidelines] 2 [noted for review] 2 [complainant advised] 1 [instructions issued] |
| (23) Outside BEC purview and not considered | 7 | 24 | 129 | 319 | 13 | 32 | 81 |
| | | | | | | | 14 |
| | | | | | | | 619 |

Note 9 : substantiated (Police provided with the revised NCA plan)
 Note 10 : 4 unsubstantiated, 2 reminded and 1 rectified
 Note 11 : 1 no further action and 1 still under investigation
 # : obliterated for publication pending determination of election petitions

**1995 Legislative Council Elections
Breakdown of Complaint Cases Received by the Police**

Period : 01.08.95 to 24.11.95

| Nature | No. of Cases | Referred to | | | Investigation underway | Not substantiated | No further action required | Action completed | | | Total | |
|--|--------------|-------------|----------|----------|------------------------|-------------------|----------------------------|------------------|-----------------|------------------------------|------------|------------|
| | | RO | BEC | ICAC | | | | Record Only | Warned at scene | Arrested | | |
| | | | | | | | | | | Released | | Prosecuted |
| (i) Criminal damage | 6 | | | | | 5 | | | | 1 (bound over to keep peace) | 6 | |
| (ii) Theft/Loss of election advertisements | 2 | | | | | 2 | | | | | 2 | |
| (iii) Dispute cases | 4 | | | 1 | | 3 | | | | | 4 | |
| (iv) Complaint of nuisance | 34 | | | | | 30 | | 4 | | | 34 | |
| (v) Vehicle obstruction | 3 | | | | | 2 | | | | 1 (summoned) | 3 | |
| (vi) Forgery | 2 | | | 1 | | 1 | | | | | 2 | |
| (vii) False registration of electors | 8 | | | 3 | | 4 | | | | | 8 | |
| (viii) Breach of BEC Reg./Guidelines relating to election advertisements | 257 | | 1 | | | 256 | | 1 | | | 257 | |
| Total: | 316 | | 1 | 5 | 1 | 302 | | 5 | | 2 | 316 | |

Legend
 RO - Returning Officer
 BEC - Boundary and Election Commission
 ICAC - Independent Commission Against Corruption

[CCALC_POLR]

1995 Legislative Council Elections
Breakdown of Complaint Cases Received by ICAC

Period : 29.05.95 to 24.11.95

| Section | Nature | No. of Cases | Referred to | | | Investigation underway | Progress | | | Total |
|--|---|--------------|-------------|-----|--------|------------------------|-------------------|-------------------------|---------|-------|
| | | | RO | BEC | Police | | Not substantiated | Investigation completed | | |
| | | | | | | | | Warning | Caution | |
| (I) Offences under Corrupt and Illegal Practices Ordinance (Cap. 298) | | | | | | | | | | |
| S. 5 | Bribery (in relation to election or voting) | 19 | | | | 12 | 7 | | | 19 |
| S. 7 | Treating | 10 | | | | 5 | 5 | | | 10 |
| S. 8 | Undue influence | 2 | | 1* | | | 1 | | | 2 |
| S. 8A(1) | Bribery or intimidation in relation to standing as a candidate | 2 | | | | | 2 | | | 2 |
| S. 12 | Expenses incurred by unauthorized person | 1 | | | | 1 | | | | 1 |
| S. 14(1) | Voting offences | 3 | | | | 3 | | | | 3 |
| S. 16(1) & (1A) | False statement concerning a candidate | 28 | | | | 14 | 11 | 3 | | 28 |
| S. 17(1) & (2) | False claim of support | 9 | | | | 9 | | | | 9 |
| S. 19(1) | Omission of printing details | 8 | | | | 5 | 2 | 1 | | 8 |
| S. 19(2) | Failing to deposit copies of election campaign materials with the returning officer | 1 | | | | 1 | | | | 1 |
| S. 29 | Failing to comply with requirements in declaration of election expenses | 2 | | | | 2 | | | | 2 |

* Two cases were opened by the Complaints Committee of BEC

| Section | Nature | No. of Cases | Referred to | | | Progress | | | | Total | |
|--|--|--------------|-------------|--------|--------|------------------------|-------------------|-------------------------|---------|-------|---------|
| | | | RO | BEC | Police | Investigation underway | Not substantiated | Investigation completed | | | |
| | | | | | | | | Warning | Caution | | Pending |
| (II) Offences under Prevention of Bribery Ordinance (Cap. 201) | | | | | | | | | | | |
| S. 4 | Bribery (involving public servants) | 1 | | | | 1 | | | | | 1 |
| S. 9 | Corrupt transaction with agents | 1 | | | | | 1 | | | | 1 |
| (III) Offences under Independent Commission Against Corruption Ordinance (Cap. 204) | | | | | | | | | | | |
| S. 13C | Falsely pretending to be an ICAC officer | 1 | | | | 1 | | | | | 1 |
| (IV) Offences under Crimes Ordinance (Cap. 200) | | | | | | | | | | | |
| S. 24 | Intimidation | 1 | | | | | | 1 | | | 1 |
| S.71 | Forgery | 3 | | | 2 | | 1 | | | | 3 |
| (V) Complaints relating to BEC Reg./Guidelines | | | | | | | | | | | |
| S. 21 BEC(ROE)(GC) Reg. | False registration of electors | 12 | | (4) # | 9 | | | 3 | | | 12 |
| BEC Guidelines | Breach of BEC Guidelines | 4 | | 2 | | | | 2 | | | 4 |
| (VI) No offence alleged | | 21 | | 4 | 1 | | | 16 | | | 21 |
| Total : | | 129 | | 7 (11) | 12 | 54 | | 52 | 4 | | 129 |

Four cases were referred to both BEC and Police

Legend
 BEC(ROE)(GC) Reg. - BEC (Registration of Electors)(Geographical Constituencies) Regulation
 BEC - Boundary and Election Commission
 RO - Returning Officer

[CCVLC_ICAC]

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28 November 1995

The Hon. Mr. Justice K.H. Woo
Chairman
Boundary and Election Commission
Registration and Electoral Office
Harbour Centre 10/F
25 Harbour Road
Wanchai
Hong Kong

Dear Judge,

I refer to your letter of the 6th November 1995 requesting statistics on electoral files handled by my prosecutors. As at the 28th November 1995 I had received 26 files from the ICAC. At present 16 of these files have been advised on by my counsel and of those 16 I have recommended that no further action be taken in respect of 10 and verbal warnings be issued in respect of 6.

The statistics for these ICAC files is therefore as follows :

| <u>No. of files received from ICAC</u> | <u>No. of Advice completed</u> | <u>No further action</u> | <u>Verbal Warning</u> |
|--|--------------------------------|--------------------------|-----------------------|
| 26 | 16 | 10 | 6 |

The breakdown of these files by CIPO Section is :

| | | |
|------|---|----|
| s.5 | = | 2 |
| s.12 | = | 1 |
| s.16 | = | 12 |
| s.17 | = | 4 |
| s.19 | = | 7 |
| s.29 | = | 1 |

Total = 27

The reason why this total exceeds 26 is simply because an ICAC investigation file will occasionally reveal breaches of more than one provision of the Corrupt & Illegal Practices Ordinance.

A further breakdown of the 16 completed files showing what action was taken in respect of each CIPO offence is as follows :

| <u>AGC Recommendation</u> | <u>CIPO Section</u> | | | | | <u>Total</u> |
|---------------------------|---------------------|-------------|-------------|-------------|-------------|--------------|
| | <u>s.5</u> | <u>s.16</u> | <u>s.17</u> | <u>s.19</u> | <u>s.29</u> | |
| No further action | 1 | 6 | 1 | 1 | 1 | 10 |
| Verbal Warning | - | 3 | 1 | 4 | - | 8 |
| | | | | | | <hr/> 18 |

The reason why this total exceeds 16 is again because an ICAC investigation will occasionally reveal breaches by more than one person of a provision of the Corrupt & Illegal Practices Ordinance.

I am hopeful that the outstanding advice files will be completed very shortly. If you wish me to provide you later with updated statistics, please do not hesitate to contact me.

Yours sincerely,



(P. Nguyen, QC)
Director of Public Prosecutions

Appendix VIII(A), (B) and (C)

[Appendix VIII(A), (B) and (C) obliterated for publication pending determination of election petitions.]

**Boundary and Election Commission
Public Censure Against Asia Television Limited,
Radio Television Hong Kong and Wharf Cable Limited
for Early Announcement of Exit Poll Results**

The Boundary and Election Commission ("BEC") hereby denounces Asia Television Limited, Radio Television Hong Kong and Wharf Cable Limited for having breached Chapter 12 of its Guidelines on Election-related Activities in respect of the Legislative Council Elections ("the BEC Guidelines") in broadcasting the exit poll results of the geographical constituency ("GC") and functional constituency ("FC") elections before all the polls of the Legislative Council ("Legco") elections closed at midnight on 17 September 1995.

2. Paragraph 5 of Chapter 12 of the BEC Guidelines prohibits the publication of exit poll results until after the close of poll, in order to avoid any effect that it may have on voter behaviour or on election results. The Guidelines expressly advise that any breach of the prohibition may be visited with a public censure.

3. The polls in respect of the Legco GC and FC elections closed at 10.30 p.m. on the polling day of 17 September 1995. As some voters of the Election Committee constituency ("ECC") were either candidates or canvassers for others, who would be heavily involved in canvassing activities during the day from 7.30 a.m. to 10.30 p.m., and it was not possible to arrange for more polling stations for them, the BEC extended the polling hours for the ECC election to 12 midnight in order to facilitate the ECC voters to cast their votes. This means that there should not be any publication of exit poll results before the close of all the polls for the Legco elections at midnight on 17 September 1995.

4. Representatives of the electronic media and Mr Robert CHUNG of the University of Hong Kong met with the BEC on 29 August 1995 to discuss the implications of the extension of the polling hours for the ECC election and sought agreement to announce the GC and FC exit poll results after 10.30 p.m. but before midnight on 17 September 1995. Having taken into account their comments, the BEC consulted all the ECC voters and candidates who would be most affected by the issue. Their views on the matter were sought by way of a questionnaire which Mr Robert CHUNG kindly assisted to draw up. 153 returns were received, of which --

- (a) 58 (57 electors and 1 candidate) considered that announcement of the exit poll results could be made after 10.30 p.m.;
- (b) 76 (64 electors and 12 candidates) considered that such announcement should not be made until after midnight; and
- (c) 19 (18 electors and 1 candidate) had no opinion on the matter.

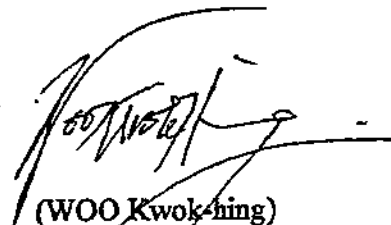
5. Having carefully considered the responses from the ECC electors and candidates, the BEC decided that the exit poll results for the GC and FC elections should not be announced until after all the polls of the Legco elections had closed at midnight for the following reasons :

- (a) Voter behaviour might be affected by any early release of the exit poll results. The ECC was to return 10 seats out of 60 in Legco. Therefore, any possible external influence on any one of the 283 ECC electors might have a significant effect. Any doubt in the credibility of the election results must be avoided.
- (b) The majority of the ECC electors and candidates who had indicated a view were in favour of the exit poll results being announced after all the polls had closed at midnight.
- (c) While the public might be interested in the exit poll results, the Commission did not see any compelling need for the public to be apprised of them one and a half hours before all the polls closed, to justify an arrangement which might affect the election results.

6. The electronic media were duly informed of the BEC's decision on 13 September 1995. The Commission also appealed to them for cooperation and support of a fair election, urging them to observe the BEC Guidelines regarding the timing of announcement of exit poll results which should not be made until after midnight on the polling day. A warning was also given that any breach would be viewed very seriously by the BEC and might very well result in a public censure.

7. The BEC is most disappointed to note that despite all the advice given above, Asia Television Limited, Radio Television Hong Kong and Wharf Cable Limited announced the exit poll results shortly after 10.30 p.m. on 17 September 1995. They blatantly flouted the BEC Guidelines and slighted the importance of maintaining a fair election. The BEC deplores the irresponsible and unreasonable behaviour of Asia Television Limited, Radio Television Hong Kong and Wharf Cable Limited and finds it appropriate to issue this public censure.

8. On the other hand, the BEC notes with pleasure that other members of the electronic media had exercised admirable self-restraint and acted most sensibly and responsibly in not adopting the same stance as that of the organisations under censure.



(WOO Kwok-hing)

Chairman

Boundary and Election Commission

16 October 1995

PUBLICATION OF EXIT POLL RESULTS

Background -- the guidelines against publication before the close of poll

1. Over 16 months ago, the Boundary and Election Commission ("BEC") proposed guidelines relating to election-related activities in preparation for the District Board ("DB") ordinary election to be held on 18/9/94. The proposed guidelines were published on 16/5/94 for public consultation during the period between 16/5/94 and 15/6/94. After having carefully considered the representations made, the BEC published the Guidelines on 15/7/94. The guidelines on Exit Poll are contained in Chapter 12, the relevant parts of which, which did not differ in any material particular from those proposed, are set out below:

Any announcement of results of exit polls or predictions, particularly in relation to individual candidates, during the polling hours may affect voter behaviour and have an impact on election results. The BEC, therefore appeals to the media and organizations concerned to refrain from announcing the results of exit polls or making specific remarks or predictions on individual candidate's performance **until after the close of poll.**

If the BEC comes to know that any broadcaster or organization has failed to heed or comply with the guidelines in this chapter, it may make a denunciation or censure in a public statement which may include the name of the broadcaster or the organization concerned.

2. Not a single representation was received from the organizations under censure, or indeed from any member of the electronic media, on the proposed guidelines during the public consultation or otherwise.

3. In order to make improvements, the Guidelines were revised to make preparation for the Municipal Council ("MC") ordinary election to be held on 5/3/95. No revision was made to the passages quoted above. The major proposals were published on 17/11/94 for public consultation for a period of 14 days until 30/11/94. Again, after fully taking into account public representations, the BEC published the revised Guidelines on 15/12/94.

4. The absence of a single representation or complaint from the organizations under censure or other broadcasters recurred. Indeed, the BEC learned of no publication of any exit poll results before the close of poll in the DB and the MC elections.

5. On 1/4/95, the BEC published proposed Guidelines to cater for the general election of the Legislative Council ("LegCo") to be held on 17/9/95 for public consultation between 1/4/95 and 30/4/95. The quoted passages were

identical, but again not a single representation or complaint was received from the organizations under censure or any others in their field. The Guidelines, as finalized after representations from the public having been fully considered, were published on 7/7/95.

Background -- the time of the close of poll

6. It used to be the case with the DB and MC elections that the poll closed at 10:30 pm on the polling day. Those elections were in respect of only geographical constituencies ("GCs"). The LegCo general election consisted of elections in respect of GCs, functional constituencies ("FCs") and the Election Committee Constituency ("ECC"). The original intention of the BEC was that for these LegCo elections, all the polls would similarly close at 10:30 pm. Eventually, however, it was decided while the polls for the GC and FC elections would close at 10:30 pm, the poll for the ECC election would close at 12 midnight.

7. The ECC was to return 10 members of LegCo out of the total of 60 to form the Legislature. The electorate of the ECC consisted of all the DB members who were elected in the DB ordinary election on 18/9/94 with only those who were qualified to be electors in the Urban Council, Regional Council and Rural FCs excluded. It turned out that there were altogether 283 ECC registered electors. Due to the complex nature of counting applicable to the ECC election, i.e., the Single Transferable Vote system, computerization was adopted for the conduct of the poll and count. Sessions were designed for the ECC electors to demonstrate to them the computerization processes. It was also decided that a single polling station for the ECC election would be used, for there were insufficient machines and resources to provide the computerization processes for more than one place on the polling day. During these sessions in June 1995, a number of ECC electors complained that as they were either candidates or canvassers for candidates, they would be required during the ordinary polling hours of 7:30 am to 10:30 pm to electioneer in their own locality, and keeping the same polling hours but providing only one polling station for them to cast their votes would create inconvenience and even difficulty. It would also be unfair to them while all other electors in other constituencies were allowed to cast their votes in a polling station close to their residence, with nearly 500 such polling stations throughout the territory. As a result, it was decided that the close of poll for the ECC election would be at midnight.

Background -- the confirmation of the guidelines

8. It was only after that decision was made that members of the electronic media requested to meet with the BEC to discuss the subject of publication of exit poll results. Mr. Robert CHUNG of the University of Hong Kong who headed a service conducting exit poll surveys was also requested to attend. This was the one and only time that the electronic media were known to be interested, and it was also the first time ever that they addressed the BEC about the right and interest of the public to know the exit poll results and the freedom of expression.

9. A meeting was held on 29/8/95 and Mr. CHUNG, the three organizations under censure, Metro Broadcast Corporation Limited and Television Broadcasts Limited attended. Lengthy discussions took place as to whether it was acceptable to the BEC that broadcast of the results of the exit polls to be conducted in respect of GCs and FCs be made after 10:30 pm on the polling day of 17/9/95 when all those polls closed but before the close of the poll of the ECC election. The tentative conclusion reached by the two BEC members there and then was that the guidelines should be followed, namely, that there should not be any publication of exit poll results before midnight on the polling day. A suggestion was then made that since the BEC had not consulted the media on the newly decided time for the close of the ECC election poll, it would be advisable for the ECC electors to be consulted on the desirable time for the publication of the GC and FC exit poll results. Mr. CHUNG agreed to design a questionnaire for the purpose.

10. A questionnaire drawn with the assistance of Mr. CHUNG was eventually sent out to each of the 283 electors and 18 candidates (15 of them also electors) of the ECC. 153 responses were received, summarized follows:

- (a) 58 (57 electors and 1 candidate) considered that announcement of the exit poll results could be made after 10:30 pm on the polling day;
- (b) 76 (64 electors and 12 candidates) considered that such announcement should not be made until after the midnight; and
- (c) 19 (18 electors and 1 candidate) had no opinion on the matter.

11. Having carefully considered the responses, the BEC decided that the exit poll results of the elections of the GCs and FCs should **not** be announced until after all the polls of the LegCo elections had closed at midnight. The reasons are shortly as follows:

- (a) Voter behaviour might be affected by any early release of the exit poll results. The ECC was to return 10 seats out of 60 in LegCo. Therefore, any possible external influence on any one of the 283 ECC electors might have a significant effect. Any doubt in the credibility of the election results must be avoided.
- (b) The majority of the ECC electors and candidates who had indicated a view were in favour of the exit poll results being announced after all the polls had closed at midnight.
- (c) While the public might be interested in the exit poll results, the Commission did not see any compelling need for the public to be apprised of them one and a half hours before all the polls closed, to justify an arrangement which might affect the election results.

12. The electronic media were duly informed of the BEC's decision by a letter of 13/9/95. The letter contained an appeal to them for cooperation and support of a fair election, urging them to observe the guidelines. A warning was also expressed in the letter that any breach would be viewed very seriously by the BEC and might very well result in a public censure.

The broadcast of exit poll results

13. It came to the notice of the BEC that shortly after 10:30 pm on 17/9/95, exit poll results of the elections of the GCs and FCs were announced by the three organizations under censure together with predictions of which candidates would be successful.

The inquiry for explanations

14. A letter dated 21/9/95 was sent to each of the three organizations under censure providing them an opportunity to offer comments and explanations by 28/9/95 for the BEC's consideration. A reply each has been received from them.

ATV's reasons

15. In the letter from Asia Television Limited ("ATV") dated 26/9/95, a number of reasons for not following the guidelines were given:

- (a) The broadcast of the exit poll results in its 10:30 pm news break on 17/9/95 was nothing more than an act of professional and responsible journalism, in consideration of the public's utmost interest, i.e., the right to know.
- (b) It has the right to conduct and release the results of any exit polls even if voting has not finished. To withhold such information would be against the principle of press freedom.
- (c) Hong Kong people have the right to be informed as early as possible.
- (d) The extra one-and-a-half hours given to members of the ECC may raise suspicion about manipulating of their votes.
- (e) The exit poll results had no relevance to the ECC vote.
- (f) It is unacceptable to keep views in the dark for one-and-a-half hours after the results of exit polls were known particularly as the 283 members of the ECC might well have access to similar results through other means.
- (g) A censure from the BEC is meaningless and to a certain extent jeopardizing freedom of press.

Cable TV's reasons

16. Wharf Cable Limited ("Cable TV") responded on 27/9/95 to proffer the following reasons:

- (a) About 90% of the ECC voters had by the time of the broadcast voted.
- (b) It believed that the viewers wanted it to report as 900,000 electors had voted and they could be expected to have had an interest in the outcome of the election and therefore in the exit poll results.

- (c) The freedom of the Hong Kong media is enshrined by Article 16 of the HK Bill of Rights. The exercise of the freedoms carries with it great responsibility and it has not acted in any way irresponsibly.

RTHK's reasons

17. The reply from Radio Television Hong Kong ("RTHK") of 28/9/95 showed the following reasons:

- (a) The guidelines were based on an unestablished premise that the reporting of exit poll results might affect voter behaviour, which had long been a point of contention in many democratic countries. Unbiased, factual reporting and analysis based on non-partisan, scientifically conducted polls would not have any adverse effect on the credibility of an election. On the contrary, these tend to enhance public perception on the openness of an election.
- (b) The broadcast would not have any real effect on voting behaviour in the final hours of voting for the ECC, which comprised only a very tiny number of 283 voters. Also no fewer than 234 in the ECC had cast their votes by 10:30 pm on 17/9/95.
- (c) The broadcast has apparently not raised any public concern, for there has been no complaint received by the REO.
- (d) It had acted in good faith and provided a useful service to the general public.

The BEC's position

18. The BEC has considered very carefully the reasons and explanations given by the three organizations, and regrets to find that none could have justified the broadcast of the exit poll results at 10:30 pm.

19. The relevant guidelines against publication of exit poll results were first published for public consultation in May 1994, over 15 months before the electronic media ever sought to address the BEC on the topic. The guidelines contained the reason for their existence. Despite the present challenge from RTHK that influence of a publication of exit poll results on voter behaviour is not well established, and despite the reliance by the other two organizations on protection of press freedom and freedom of expression, none of them had ever made any representations to the BEC on those topics or at all during the whole course of the development of the BEC Guidelines.

20. The argument that knowledge of the GC and FC exit poll results had no relevance to the ECC vote is unsound. Out of 153 responses to the questionnaire, 76 ECC electors and an overwhelming majority of ECC candidates (12 out of 14) considered that publication should not be made until after the close of the ECC poll at midnight on 17/9/95. Although no reasons were given by the respondents, the

reason for the guidelines must have been an important consideration. It appears that the three organizations simply refused to follow the guidelines or respect these respondents' wishes. The consultation of the ECC electorate was agreed to by participants at the meeting of 29/8/95, but its result was conveniently ignored by the three organizations under censure.

21. As Cable TV stated, the freedom of expression enshrined in the Hong Kong Bill of Rights carries with it great responsibilities. While the BEC respects that freedom (including the public's freedom to information) and the freedom of the media, the integrity, credibility and fairness of an election are, in the BEC's view, interests also worthy of protection. The BEC thinks it appropriate to strike a fair balance in the circumstances, when the importance of the possible impact on voter behaviour should be accorded a slight priority over those freedoms. The BEC has never taken the position that exit poll results should not be published at all. What it urges members of the media to do is to publish them only after the close of poll. No sound explanation has been proffered by any of the three organizations under censure why the dissipation of the information could not be deferred for one and a half hours, and what adverse effect would the delay cause to the viewing public. The BEC feels that such effect must be negligible.

22. ATV's contention that the extra one-and-a-half hours given to members of the ECC may raise suspicion about manipulating of their votes is most unsound. The contention somewhat conflicts with its own argument that the exit poll results had no relevance to the ECC election, for the knowledge of the exit poll results would, if the contention were correct, facilitate or reinforce such alleged manipulation. If the contention were correct, then all the more the publication of the exit poll results must be deferred until after the close of the ECC poll. How a manipulation of the votes in the ECC may be suspected because of the extension of polling time by one and a half hours is unsupported by any facts or arguments, if it can be substantiated at all. If this belief is faithfully held, then the fear of influence on voter behaviour created by the publication of exit poll results before the close of poll must comparatively be revered.

23. Cable TV and RTHK harped on the few number of ECC electors who had not cast their votes by 10:30 pm that could have been affected. The argument is clearly unsound when viewed against all the circumstances. By 10:30 pm, only 234 ECC electors had cast their votes, leaving 49 DB members who had not done so. At the close of the ECC poll at midnight, only one of the 283 electors had not attended. Although 49 or 48 electors might at first sight seem to be a small number, the effect of their votes could make a substantial difference in the result of the ECC election. The reason being that under the Single Transferable Voting system applicable to that election, 26 first preferences in favour of a candidate will definitely return him as a LegCo member. 49 votes therefore meant nearly two LegCo members in the Legislature consisting of 60 seats, amounting to over 3% of all LegCo seats and about 20% of the ECC election result. It is therefore wrong to lay emphasis on the number of electors who could have been affected. The preponderance must be placed on that the election result of the ECC election might have been affected.

24. It is also a lame excuse to say that the 49 voters might have already learned of the exit poll results from other sources. First, the existence of the alleged other resources is not substantiated. Secondly, even if they existed, the influence by the electronic media cannot be over-emphasized. If an announcement is shown on a hoarding or in a newspaper, the reader can freely decide at a glance how much of it he wishes to read. Where the announcement is made through the air in a programme that the listener and viewer wishes to hear or see, he has no similar way of curtailing it. The electronic medium is intrusive, into every family, and that is why it is so powerful. The public also tend to believe the things they see and hear over the air as reliable, and that is also what the electronic media want. The other unnamed sources might provide certain exit poll results, but the viewers (including the 49 voters) would not place so much reliance on them than those actually broadcast by the electronic media.

25. RTHK seems to suggest that its publication of the exit poll results shortly after 10:30 pm has not raised any public concern. The reverse is true, for a complaint has been received and there have been inquiries in newspapers about how the BEC is going to deal with these blatant breaches of the guidelines. In many cases, the BEC only acts upon complaint. Apart from the fact that a complaint is received, the guidelines are set out in a different manner from those on other activities and the express statement on exit poll is that 'if the BEC comes to know' of any breach, the BEC may censure. The acts of breach were open for everyone watching and listening to the relevant channels to see, and the fact is undeniable and has not been denied. From the warning contained in the BEC's letter of 13/9/95 to the electronic media, they should know at least the BEC, a statutory supervisor of elections in Hong Kong, was concerned. It is totally unacceptable that the warning was unheeded and that the guidelines that were so faithfully followed by others in the same field and supported by so many of those who might be most affected (i.e., the ECC electors and candidates) were flouted so wilfully.

26. The BEC does not agree that it is meaningless to issue a censure, for it is important that the public should be apprised of the stance of the BEC in case of a blatant and serious flouting of its Guidelines, although the contravention has created a *fait accompli*. Anyone who disagrees with any guideline should take the opportunity to make representations to the BEC during the public consultation period. When the Guidelines have been finalized after fully taking into account the representations and published, the openness of the electoral processes behoves the BEC to let the public know how a serious and blatant breach of the Guidelines will be dealt with. The publication of a censure is also an act, and not mere lip service, showing respect to the public's right to information.

27. The BEC has no doubt that the three organizations had their own purposes to serve to act in the way they did, despite the clear warning given by the BEC against publication before the close of poll at midnight on 17/9/95. The BEC does not doubt their alleged bona fides. However, blatantly flouting the guidelines

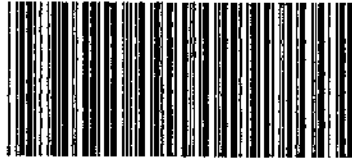
obviously with the warning in mind, and openly paying no regard to the majority wishes of the ECC electors and candidates are inexcusable and deplorable. In all the circumstances, therefore, the BEC feels that a public censure is appropriate and due.

28. On the other hand, the BEC notes with pleasure that the other members of the electronic media, especially those who had also made representations similar to those made by the three organizations under censure to the BEC at the meeting of 29/8/95, namely, Metro Broadcast Corporation Limited and Television Broadcasts Limited, exercised admirable self-restraint and acted most sensibly and responsibly in not adopting the same stance as that of those three organizations.



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