

THE FUNCTIONS AND OPERATION OF THE ELECTORAL AFFAIRS COMMISSION

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Introduction

1. The Electoral Affairs Commission (“EAC”) was established by the Electoral Affairs Commission Ordinance, Cap 541 (“the EAC Ordinance”) which came into force on 29 August 1997, very soon after the recovery of the exercise of sovereignty by China over Hong Kong. There was a former commission dealing with the same subject called the Boundary and Election Commission (“BEC”) established by an ordinance of the same name, passed in 1993 and repealed on 1 July 1997.
2. The EAC consists of three members, and they are appointed by the Chief Executive of the HKSAR. The membership qualifications and formalities of appointment can be found in s 3 of the EAC Ordinance. Significantly, anyone who is known to have any political affiliation, let alone actively engaged in politics, is not qualified for appointment. This is to ensure that there is no conflict of interest, actual or felt, between the job and the member, and also to maintain the apolitical status, neutrality, impartiality and independence of the EAC. Moreover, the sanitization of its members from involvement in politics lasts a period of 4 years before appointment and 4 years after the conclusion of the term of office¹.

Ambit of the EAC

3. The EAC Ordinance itself refers to the general election, which means the Legislative Council (“LegCo”) general election², and the District Councils (“DCs”) election, both of which are within the express ambit of the EAC’s functions³. The Ordinance was amended to cover the Chief Executive election consequential upon the enactment of the

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¹ See s 3 and s 13(1)(c) of the EAC Ordinance.

² S 2 of the EAC Ordinance.

³ See the preamble and ss 4(a) and 18(1) of the EAC Ordinance.

Chief Executive Election Ordinance, Cap 569, in September 2001⁴. Elections of village representatives in the New Territories are not within the EAC's ambit.

4. The DCs election is geographically based in that qualified⁵ and registered electors of a particular area are to elect a DC member for that area. There are 18 Districts in Hong Kong and each District is to return a different number of elected DC members, depending on the population size. Each District is divided into a number of constituency areas, and a DC member is elected for each area. Altogether, there are 390 elected DC members. There are three kinds of constituencies for electing LegCo members, geographical constituencies ("GCs"), functional constituencies ("FCs") and the Election Committee ("EC") with 800 members⁶. Since September 2000, LegCo membership consists of 24 persons elected by 5 GCs, 30 persons elected by 28 FCs⁷ and 6 persons elected by the EC. Most of the 800 members of the EC are elected by four sectors composed of various subsectors⁸, which are based on the FCs. For example, the Legal FC elects a LegCo member and also elects 20 EC members. The EC is also to elect the Chief Executive⁹.

Functions of the EAC

5. The functions of the EAC can be summarised in a few words: making recommendations regarding the delineation of GCs, to be responsible for the conduct and supervision of elections, and to report on elections to the Chief Executive of the HKSAR¹⁰.
6. It is important to stress at the very beginning that whatever our functions and however we carry out such functions, the EAC has to ensure that elections and any process relating to the conduct and

⁴ S 2 of the EAC Ordinance.

⁵ Any person who is or over 18 years old, being a permanent resident of Hong Kong, ordinarily resides in Hong Kong, his registered residential address is his only or principal residence and holds an identity document, is qualified to be an elector: s 24 of the Legislative Council Ordinance, Cap 542.

⁶ Annex II to the Basic Law and Parts III and IV of the Legislative Council Ordinance.

⁷ S 25 of the Legislative Council Ordinance. Save that the Labour FC returns 3 LegCo members, all the other 27 FCs elects one member.

⁸ The religious subsector returns 40 EC members by nomination. The Deputies to the National People's Congress and LegCo members are ex-officio EC members, totalling 96 in number. The remaining 664 EC members are returned by elections held for various subsectors. See schedule 2 of the Legislative Council Ordinance.

⁹ Annex I to the Basic Law and the Chief Executive Election Ordinance, Cap 569.

¹⁰ For details, see ss 4 and 8 of the EAC Ordinance.

supervision of elections under the ambit of the EAC are conducted **openly, honestly and fairly**¹¹.

7. The various functions of the EAC can be easily understood by dealing with them chronologically according to the schedule of work required to be done for an election.
8. The first thing required for any election is to have electors. So, the first step taken by the EAC is to register electors and supervise this exercise¹². Registration is an annual event, but the work regarding registration becomes important in a year where there is going to be an election. This is to ensure that only the electors who are living in a GC, and not others who live in another GC, are entitled to vote in that constituency, and those who used to be FC electors and remain qualified as such are registered, and those who are qualified for being voters in the subsectors elections for electing members of the Election Committee are also registered. This involves the EAC having to make regulations for the registration of electors and voters¹³. It also entails hefty work in the Registration and Electoral Office (“REO”) headed by the Chief Electoral Officer, which operates as the EAC’s executive arm, carrying out the regulations and policies decided by the EAC and all sorts of election-related work and arrangements made for conducting elections. The heavy registration work includes a vast vetting exercise to ensure that those who are deceased or disqualified are excluded and new applicants who are qualified are registered.
9. The EAC also has the function to conduct or supervise promotional activities relating to registration of electors¹⁴. This involves a territory-wide promotional drive to encourage more qualified persons to be registered as electors in an election year.
10. The registration procedure is first to receive and process applications, causing the names of those qualified to be entered into a provisional register which also contains the electors of the past election. The data will also be updated and altered, if required, such as for new addresses. Once the provisional register is prepared, it will be

¹¹ S 4(h) of the EAC Ordinance.

¹² S 4(d)(i) and s 7(1)(a) of the EAC Ordinance.

¹³ The EAC made the following regulations regarding registration, namely, EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation for registration of GC electors, and the EAC (Registration) (Electors for LegCo Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation for registration of FC and subsector voters and Election Committee members.

¹⁴ S 4(d)(iii) of the EAC Ordinance.

published for public inspection, so that those who are not satisfied with their names proposed to be omitted or not being included can raise claims and those whose names should not be on the register would be objected to. Only after the revising officer (ie, a judicial officer) has dealt with the claims and objections that a final register can be published.¹⁵ For the Chief Executive election, the final register of Election Committee members will be published within seven days after the results of subsector elections are gazetted¹⁶. Those whose names and particulars are on the final register are entitled to vote. Steps have also been taken to protect the privacy of the electors, for instance, the number of the elector's identity document will not be included in the register, and any use of the information in the register other than for the purpose of the relevant election is a criminal offence.

11. The next step is to have GCs formed. The whole of Hong Kong is divided into 18 Districts and each District has a DC¹⁷. For election purposes, there are a number of GCs in each District. The DCs consist of some appointed members but the majority of their members are elected from the GCs¹⁸. The LegCo consists of 60 seats, and in the 2000 LegCo general election (the second term after the change of sovereignty), 24 members were returned by 5 GCs¹⁹.
12. It is relating to GCs that the EAC has a very important function, ie, to demarcate their boundaries. The EAC is to make recommendations to the Chief Executive as to the delineation of GCs²⁰. This starts with the REO preparing proposals of delineation for the consideration of the EAC, consisting of maps of the whole of the HKSAR and population distribution, because the chief criterion for demarcation is population, ie, the general population as opposed to the elector population, although there are other factors we have to take into consideration, such as community identities and the preservation of local ties, and physical features, accessibility and development of the areas concerned²¹. The population quota (ie, the total population of

¹⁵ For details, please see, for example, the Electoral Affairs Commission (Registration of Electors) (Geographical Constituencies) Regulation and the Electoral Affairs Commission (Registration) (Electors for LegCo Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation.

¹⁶ S 40 of Schedule to the Chief Executive Election Ordinance, Cap 569

¹⁷ S 4 of the District Councils Ordinance, Cap 547.

¹⁸ For details, see s 5 of and Schedule 3 to the District Councils Ordinance. Altogether there were 390 constituencies in the District Councils election in 1999 each returning 1 District Council member.

¹⁹ See of the Legislative Council Ordinance, Cap 542, ss 19, 21, 23 respectively.

²⁰ S 18 of the EAC Ordinance.

²¹ See s 20 of the EAC Ordinance.

Hong Kong divided by the total number of members to be elected for all the GCs²²) should be strictly adhered to, plus or minus 15% regarding a LegCo GC or plus or minus 25% for a DC constituency²³, unless the other factors mentioned above render a departure necessary or desirable²⁴.

13. The demarcation exercise involves cooperation and support of quite a number of Government Departments, such as the Census and Statistics Department which provides the population figures collected and collated by it since the last general census that takes place once every 10 years and by-census that takes place once every 5 years, the Planning Department that possesses figures of population distribution, and the Lands Department which produces maps with the estimated population distribution over street blocks (a unit which is larger than a usual street block), etc²⁵. These relevant Government Departments will sit together in a working group and contribute towards providing the necessary material for the EAC to consider the proper way of delineation of GCs. The EAC may also consult the District Officers of the Home Affairs Department, because they as officers in charge of affairs in Districts in Hong Kong would be familiar with local circumstances and able to help the EAC regarding the said other factors.
14. After the EAC has determined its provisional recommendations on delineation, there must be a public consultation as to such recommendations. This consultation should be for a period of not less than 30 days²⁶ with maps showing the proposed GCs for inspection by the public at reasonable hours and free of charge²⁷. The representations made by the public to the EAC should be in writing, but the EAC may hold meetings to hear oral representations²⁸. Having regard to these representations, the EAC will finalise its recommendations to the Chief Executive²⁹.
15. The next step to be taken is to make regulations regarding electoral procedures such as nomination of candidates, polling and counting³⁰.

²² S 17(1) of the EAC Ordinance.

²³ S 20(1) of the EAC Ordinance.

²⁴ S 20(5) of the EAC Ordinance.

²⁵ See the various bureaux and departments involved for the delineation of the GCs of the LegCo election 2000 at para 4.2 in the EAC Report on the Delineation of GCs, 30 October 1999.

²⁶ See s 19(4) of the EAC Ordinance.

²⁷ S 19(1) of the EAC Ordinance.

²⁸ S 19(6) of the EAC Ordinance.

²⁹ S 18 of the EAC Ordinance.

³⁰ Ss 4(d)(ii) and 7(1)(b)&(d) of the EAC Ordinance.

The making of regulations involves preparing drafting instructions that are sent to the Department of Justice for its Law Drafting Division to draw up regulations for the examination of members of the EAC who, where satisfied, will make the regulations accordingly. For the 2000 LegCo election, as for other elections previously, we made the *Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation* to govern the various aspects of procedures relating to the formation of the Election Committee (by way of election) and the LegCo general election. These aspects include nomination of candidates, polling and counting arrangements, and the design of the ballot papers. It also provides for the manner as to how the statutory requirements for the candidates to observe the ceiling of the election expenses imposed on them are to be complied with³¹. The ceiling is fixed by the Chief Executive in council and for the CE Election, the ceiling has been fixed at \$9.5 million³². For the coming Chief Executive election and the Election Committee subsector by-elections, we made the *Electoral Procedure (Chief Executive Election) Regulation* and the *Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation* respectively to provide for various procedures.

16. Regarding nomination of candidates, although there are ample provisions in the *Electoral Procedure Regulations*, we have used our powers of delegation given by s 11 of the EAC Ordinance to establish Nominations Advisory Committees in order to help intended candidates and returning officers by providing them with advice as to qualification of candidature. This was done by our making the *Electoral Affairs Commission (Nominations Advisory Committees)(Legislative Council) Regulation*, providing for the appointment of such committees, their functions and how they operate. A similar regulation was made in respect of the DCs Election in 1999³³. For the 2000 LegCo general election, five such committees were appointed by the EAC, each consisting of a practising lawyer with not less than 10 years' experience. For the Chief Executive election, it is not necessary to appoint Nominations Advisory Committees because the Returning Officer is a High Court judge or above³⁴.

³¹ Election expenses limit is governed and controlled by ss 24 and 25 of the Elections (Corrupt and Illegal Conduct) Ordinance, Cap 554.

³² The Maximum Amount of Election Expenses (Chief Executive Election) Regulation, LN 232 of 2001.

³³ The EAC (Nominations Advisory Committees) (District Councils) Regulation.

³⁴ S 41 of the Chief Executive Election Ordinance, Cap 569

17. Regarding the conduct of electioneering activities by candidates and their supporters, we have included some rules in the *Electoral Procedure Regulations* we made, but not all aspects relating to electioneering can be properly covered by the *Regulations*. For example, while we have included in the *Regulations* matters concerning the appointment of election agent, polling agent and counting agent, rules relating to no-canvassing zones surrounding polling stations on election day, and how election advertisements are to be controlled, etc, other matters such as joint attendance of public functions by government officials and candidates, electioneering in private premises, schools and organisations that electors frequent, coverage by the electronic and print media, use of loudhailers, exit polls, and the very important complaints procedures, etc, cannot be similarly treated. For these latter matters, the EAC issues guidelines³⁵, which it has been specifically conferred the power to do³⁶. We also make use of the guidelines to introduce and explain the important provisions of the electoral and relevant law, eg, for the coming Chief Executive election, the *Chief Executive Election Ordinance*, Cap 569, the *LegCo Ordinance*, Cap 542, the said *Electoral Procedure Regulation*, and the most important *Elections (Corrupt and Illegal Conduct) Ordinance*, Cap 554, which is specifically referable to conduct and practices at elections, with the aim of achieving a clean election and ensuring proper compliance by candidates with the limit of election expenses. These guidelines are for the purpose of helping those involved in elections understand the relevant law and regulations, and also to apprise members of the public of their rights and obligations as well as the complaints channels.
18. As said before, prior to making the recommendations to the Chief Executive of the HKSAR regarding delineation of GCs, the EAC is duty-bound to consult the public³⁷ and have regard to the representations made to it. Similarly, before finalising the guidelines to be issued, the EAC shall also consult the public, though the EAC has the discretion as to the length of the period and the manner of the public consultation³⁸. Our public consultation exercise used to last a month, but we consulted the public for only two weeks on the proposed guidelines in respect of the 2002 Chief Executive election

³⁵ Eg, Guidelines on Election-Related Activities in respect of the 1999 District Councils Election, Guidelines on Election-Related Activities in respect of the 2000 Legislative Council Elections, Guidelines on Election-Related Activities in respect of the Election Committee Subsector Elections and Guidelines on Election-Related Activities in respect of the 2002 Chief Executive Election.

³⁶ S 6 of the EAC Ordinance.

³⁷ S 19 of the EAC Ordinance.

³⁸ S 6(2) of the EAC Ordinance.

and the Election Committee subsector by-elections because of the tight election timetable.

19. The predecessor of the EAC Ordinance is the repealed Boundary and Election Commission (“BEC”) Ordinance, the BEC established under which was functioning between July 1993 and 30 June 1997. The BEC had similar functions as the present EAC. In the first couple of elections handled by me, as the Chairman of the BEC, that Commission made regulations first before issuing proposed guidelines to consult the public. However, during the public consultation over the proposed guidelines, representations were received regarding some of the proposals which were a mere repetition of the regulations already made. This gave rise to difficulties when the BEC considered to adopt the representations, because there was insufficient time left for any amendment to be made to the regulations to reflect the representations. Thenceforth, with the experience so obtained, the BEC and its successor the EAC have included in its proposed guidelines the rules intended to be incorporated into the regulations so that any accepted representations from the public on the proposed guidelines can be reflected in the regulations before both are correspondingly finalised. Take for example the 2002 Chief Executive election and the Election Committee subsector by-elections, we consulted the public on the proposed guidelines in September before making the relevant regulations.
20. The *Electoral Procedure Regulations* also provide for procedural steps to be taken for setting up polling stations and counting stations. The physical arrangements, such as hiring venues for designating such stations as well as various logistical matters, are handled by the REO. The *Regulations* also provide for the manner to cast votes, eg, the use of a chop with a tick sign to mark ballot papers and for rules governing the determination of valid or invalid votes. The chop with a tick sign ensures a certain uniformity in the marking of ballot papers and thus minimises invalid votes. Electronic counting, ie, a term used for employing computerised devices to help counting, is also provided for in the *Regulation*. What is left to be done by EAC members is to supervise arrangements for the poll and the count, and indeed during all the past elections and by-elections in Hong Kong, the members attended polling and counting stations on each occasion to satisfy themselves as to the arrangements and to see if any improvements ought to be made.

21. A measure has been adopted since the May 1998 LegCo general election, which is to open a sample polling station for electors and candidates to observe how polling stations are generally set up, close to the election day. In the coming Chief Executive election, we plan to do likewise. On polling day, polling stations are open only to electoral staff, electors, candidates and polling agents of candidates. Other than these people, admission is strictly controlled. This is to help ensure that the vote is kept secret. Even when I enter a polling station to inspect polling activities, I have to make a declaration of secrecy and, if so requested, to produce it for examination by the Presiding Officer of the polling station. The sample polling station also gives those who are not legally admissible to polling stations an opportunity to see the general set-up of polling stations and the voting procedures.
22. At or shortly before each nomination period for candidature, the EAC establishes a Complaints Committee to handle complaints. The Complaints Committee receives and processes complaints right after its formation, up till 45 days after the polling day. We are not disposed to receive complaints too long after the polling day because (a) it would be difficult to gather evidence on events that led up to the polling day as most complaints would relate to those events; and (b) there is a time limit for an election petition to be lodged with the Court of First Instance of the High Court, which is 2 months after the gazettal of the result of an election³⁹. For the Chief Executive election, the deadline for lodging an election petition is 7 working days after the election result is declared⁴⁰. Any action taken after the expiration of the statutory time limit would be quite ineffective. In the Chief Executive election, the EAC alone will deal with all complaints. It is not necessary to set up a Complaints Committee in view of the small number of candidates.
23. Handling complaints is a statutory requirement⁴¹. Dealing with complaints is one of the most important functions of the EAC in ensuring an open, fair and honest election. The EAC's views on the usefulness of complaints can be seen from passages in its reports on elections to the Chief Executive. In the *EAC Report on the 1998 Legislative Council Elections*⁴², it is stated:

³⁹ Eg, see s 65 of the Legislative Council Ordinance.

⁴⁰ S 34(1) of the Chief Executive Election Ordinance.

⁴¹ See ss 6(3) and 8(2) of the EAC Ordinance.

⁴² Para 9.2, pp 105-6 of the Report.

“Complaints serve many purposes. They ease the tension created by grievance, whether the grievance is justified or otherwise. They indicate the areas in which review ought to be undertaken and improvement needed. They offer an avenue by which candidates and their agents who contravened the electoral law, regulation or guidelines or who are suspected of such contravention can be brought to justice, or at least warned against any further breach. An established complaints procedure made known to the public provides a ready means whereby candidates can effectively police the activities of each other and each other’s electioneering agents. All these would, one way or another, help ensure that elections are conducted by all concerned fairly and honestly. Candidates if they so wish can make public the fact of their complaints. Any complaint resulting in a public reprimand or censure will enable the public, including the electorate and candidates and agents, to learn how complaints of a more serious nature have been dealt with by the EAC. Notification of the determination of the Commission on complaints of lesser breaches will be given to the complainant and the complaine. By one of these means or another, a certain degree of openness is achieved, which is important for promoting or maintaining the citizens’ trust in our electoral system and arrangements.”

24. The relevant part of the *EAC Report on the 1999 District Councils Election* reads:

“8.25 Complaints are an indispensable means whereby grievances about what is seen to be non-observance of electoral law, regulations and guidelines can be aired. Complaints also provide a necessary facility for curbing or controlling abuses; thus mutual supervision amongst candidates is fortified.

8.26 Moreover, it cannot be over-emphasised that complaints are an important source of information, letting the EAC know what are, or are perceived to be, wrong or deficient with particular areas of the existing electoral arrangements. They also foreshadow the candidate’s or the elector’s expectations, widening the EAC’s horizons as to what improvements should be introduced to meet such expectations.”

25. The enforcement of our guidelines is by the EAC issuing warnings, censures and reprimands, and referring possible breaches of the law to the police or ICAC. The *Elections (Corrupt and Illegal Conduct) Ordinance*, Cap 554 is the main statutory instrument dealing with conduct relating to elections, and the enforcing agent is the Independent Commission Against Corruption (“ICAC”). Other forms of corrupt conduct may involve the *Prevention of Bribery Ordinance*, Cap 201, which is also under the auspices of the ICAC. Other offences relating to electioneering, such as criminal damage to candidates’ election posters, the posting of banners at places without

due authorisation, the creation of nuisance by using loudhailers, etc, are controlled by other statutes⁴³ and these are administered by the Police. The EAC is expressly empowered to issue censures and reprimands⁴⁴ for breach of its guidelines.

26. Apart from reporting to the Chief Executive on the recommended delineation of GCs for the District Councils and for the LegCo elections⁴⁵ for the consideration of the Chief Executive in Council⁴⁶, the EAC shall, within 3 months after the conclusion of an election, report to the Chief Executive on matters relating to that election, which shall include a report on any complaint made to the EAC in connection therewith⁴⁷. This also underlines the importance of the EAC dealing with complaints.

Operation of the EAC

27. Apart from satisfying the statutory requirement for the EAC to make regulations for the registration of electors and for electoral procedures of polling and counting and to issue guidelines, the EAC has been operating with a view to making the whole electoral process convenient to candidates and electors. For example, in the designation of polling stations, we have impressed upon the REO to get as many polling stations for the electors as reasonably practicable. For the 2000 LegCo election, we made available 522 polling stations, close to the electors' homes, and we made regulations that every single elector would be able to cast all his votes, as a GC elector (this is a common qualification for all electors), an FC elector or an Election Committee member, at the same polling station. Besides this one-stop service, facilities such as ramps in addition to stairs were made available to the physically disabled in many polling stations. The visually impaired had templates corresponding with the ballot papers provided to them so as to enable them to mark ballot papers unassisted. Candidates and their agents were inconvenienced by having to attend only one counting station to witness the count relating to their constituency. In the coming subsector by-elections, we are going to have four polling stations, one located on Hong Kong Island, and the three others in respectively Kowloon, New Territories West

⁴³ Such as the Crimes Ordinance, Cap 200, the Public Health and Municipal Services Ordinance, Cap 132, the Land (Miscellaneous Provision) Ordinance, Cap 28 and the Noise Control Ordinance, Cap 400.

⁴⁴ S 6(3) of the EAC Ordinance.

⁴⁵ S 18 of the EAC Ordinance.

⁴⁶ S 21 of the EAC Ordinance.

⁴⁷ S 8 of the EAC Ordinance.

and New Territories East. We give voters a choice as to which of the four polling stations they would like to attend to cast their votes. In the Chief Executive election, there is to be a single polling station and it is situated side by side with the counting station in the same building.

28. There is a golden thread that runs through all the functions and operations of the EAC, which is linked up with the cardinal principles of ensuring that elections are open, fair and honest. These are the principles that we always strive to uphold.

Openness

29. One will have notice that the EAC has been operating very openly regarding many of the electoral functions that it has performed, eg, the registration exercise is done by the EAC giving wide publicity to invite qualified persons to get registered. For the delineation of GCs, the EAC is duty-bound to consult the public after it has decided on its provisional recommendations, see para 14 above. Similarly, the EAC must also consult the public regarding the guidelines on electioneering activities that it proposes to issue, see para 18 above. The EAC has adopted the procedure mentioned in para 19 above to ensure that regulations governing electoral procedures it makes will first receive scrutiny by the public. The important aspects of electoral law and procedures are all included in the guidelines so that the electorate and candidates, and also members of the public who are interested but who will not spend time as specialist lawyers would in electoral law, will be notified of them as early as the start of the consultation period. The sample polling station arrangements, referred to in para 21 above, are also for making the electoral process open for everyone to see. Candidates and their polling agents are permitted inside polling stations to supervise polling. In respect of counting, candidates and their counting agents are allowed to get behind the counting tables to witness the count, and there is invariably a place set up for members of the public in the counting stations so that they can, if they so wish, observe the counting process.
30. The EAC has also explored various avenues to increase transparency of its work and the electoral procedures. Substantial resources have been devoted to:
 - (a) ensuring easy public access to data relating to the election;

- (b) applying modern information technology to enhance dissemination of the data;
- (c) reaching out to the public to explain the data and answer enquiries related to them;
- (d) helping the media utilise and understand the data; and
- (e) helping candidates understand and comply with the law and the guidelines.

31. To those ends, an Enquiry Hotline was established a long time ago so as to enable any enquiry about an approaching election to be answered over the telephone. The REO launched an Election Homepage in September 1999 to make available virtually all information about elections at the click of a mouse. An Electoral Information Centre providing a vibrant and stimulating environment for learning about various aspects of the electoral process was opened on 23 November 1999, which has continued to serve members of the public or groups who pay visits. REO officers and I have also given talks on the electoral process to various organisations, such as family services centres, youth centres, homes for the elderly, schools, rehabilitation centres and building management organisations. I have also taken every opportunity to meet with the media. For the 1999 District Councils Election, I hosted a total of 4 press conferences, 15 press briefings and stand-up sessions and 8 press interviews to explain the electoral arrangements, and attended 13 television and radio programmes, many of them included dealing with enquiries from members of the public phoning-in; and we also held central and regional briefings for candidates and their agents. In respect of the 2000 LegCo general election, I gave 5 press conferences, 15 media briefings and 8 media interviews and participated in 15 TV/radio programmes. This year alone, I have chaired two press conferences and five media briefings, and have attended four radio phone-in programmes.

32. The complaints avenues are also made known in the guidelines. Subject to some rules of confidentiality to protect the complainant, the EAC will publish the complaints it has received and the results of the complaints in its report on election to the Chief Executive. Invariably, a letter will be sent to the complainant and the complainee to notify them of the determination of the Complaints Committee on the complaint. However, if a complaint of a serious breach of the

guidelines is found to be substantiated and the EAC issues a serious warning, censure or reprimand, the EAC may issue it in public, either by way of a press release⁴⁸, or by way of a media conference or a public statement. Altogether, the EAC has issued numerous warnings that are not disclosed to the public, and has issued two public censures in respect of the 1998 LegCo general election⁴⁹, two reprimands in respect of the 1999 District Councils Election⁵⁰ and three public censures in respect of the 2000 LegCo general election⁵¹.

Fairness and Honesty

33. While there is the *Elections (Corrupt and Illegal Conduct) Ordinance*, aiming at achieving clean elections, administered by the ICAC to prevent corrupt and illegal practices in elections, the EAC has also acted in its own way to ensure fairness and honesty in elections.
34. Thus, the guidelines issued by the EAC introduce and explain the key provisions in the *Elections (Corrupt and Illegal Conduct) Ordinance* so as to give sufficient notice to those who may be affected, including provisions for the control of election expenses within the election expenses limit, for the prevention of corrupt or illegal conduct relating to nomination and withdrawal of candidature, election donations, electioneering and voting, and for the proscription of misrepresentation and namedropping⁵².
35. There have been successful prosecutions for breach of the *Corrupt and Illegal Practices Ordinance* that was replaced by the current Ordinance, for instance, for vote planting and bribing of electors, etc.⁵³ Such offenders were to be punished with an immediate

⁴⁸ Such a press release was made by the EAC regarding a breach of its guideline by a school headmaster during the subsector elections, July 2000. The publication of this warning was to apprise the parents of the school pupils concerned of the warning, who would not otherwise know. Another press release was made on 8 September 2000 relating to a warning against 32 other headmasters involved in the same incident.

⁴⁹ Each was against a list of candidates for respectively repeated unauthorised displays of election advertisements and improper electioneering and canvassing activities, despite prior warning. For more details, see para 9.19 on p 113 of the EAC Report on the 1998 Legislative Council Elections.

⁵⁰ Both were for improper electioneering activities on private premises – see para 8.21 on p 37 of the EAC Report on the 1999 District Councils Election.

⁵¹ The candidates were censured for repeated breaches of guidelines on the display of election advertisements – see para 11.26 on p 82 of the EAC Report on the 2000 LegCo Elections.

⁵² See Chapters 14 - 16 of the Guidelines on Election-related Activities in respect of the 2000 Legislative Council Elections (“the LegCo Guidelines”) and Chapters 16-19 of the Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections (“the ECSS Guidelines”).

⁵³ See *R v Leung Kam Ho* [1995] 1 HKCLR 90 (bribery of electors); *R v Chan Ching-keung*, STC 1277/96 (unreported) (vote planting); *SJ v Lai Wai-cheong* [1998] 1 HKLRD 56 (vote planting); and *HKSAR v Lam Cheuk-bun* (林卓斌), CACC 180/98 (CA, 10 October 1999, unreported judgment in

custodial sentence⁵⁴, indicating that the courts join in the effort to maintaining elections clean. The most recent case is *HKSAR v LEE Pui-ying (李佩英)*⁵⁵, dealt with in the magistracy, where the defendant was sentenced to imprisonment for 2 months for conspiring to defraud the REO, which was in effect to plant votes.

36. Many of the rules that are outside the scope of the *Elections (Corrupt and Illegal Conduct) Ordinance* have been introduced by the EAC in its guidelines and they are designed towards attaining similar goals. Allocation of designated spots on public land is done in a fair manner by the drawing of lots for splitting the available spots amongst candidates⁵⁶. Conditions such as serial numbering of election advertisements and requiring prior deposit of copies of them with the returning officer⁵⁷ impose tight control so as to ensure honesty. The guideline that requires private buildings to apply the fair and equal principle to allowing or disallowing electioneering in the common areas of such buildings by candidates running in the same constituency prevents unfair treatment⁵⁸. Similarly, rules relating to candidates' participation and appearance in the media, both electronic and print⁵⁹, as well as electioneering in schools⁶⁰ are made for the same purpose of maintaining fairness and equality. A candidate is generally not allowed to acquiesce in breaches of those rules, albeit not committed by himself, to obtain any unfair advantage over other candidates vying for the same seat(s).
37. As intimated before, the complaints procedures devised by the EAC also help to make the conduct of election fair and honest. For the past several elections, the Complaints Committee of the EAC was composed of its three members and a District Judge; each of the four persons leads a vetting group to consider and decide on complaints,

Chinese) (vote planting), where a 4 months' imprisonment sentence imposed on a candidate was suspended by the CA because the offences were committed before the decision in *SJ v Lai Wai-cheong* which laid down sentencing guidelines. In *HKSAR v Chim Pui-chung*, HCMA 995 of 1999, 8 Sept 2000, unreported) (illegal treating), Gall J dismissed the appeal against conviction. There was no appeal against the sentence imposed by the magistrate of a fine of \$100,000 and costs of \$20,000 to be borne by the defendant.

⁵⁴ For vote planting, the CA in *SJ v Lai Wai-cheong*, *ibid*, at p 60F-G, laid down sentencing guidelines that immediate imprisonment sentence should be imposed, 4 months or more for a candidate or an election campaigner and 2 months and upwards for an elector.

⁵⁵ WSC 4267/2001 (4 October 2001, unreported), which is subject to appeal.

⁵⁶ See Chapter 5, Part III of the LegCo Guidelines and Chapter 8, Part III of the ECSS Guidelines.

⁵⁷ See Chapter 5, Parts IV and V of the LegCo Guidelines and Chapter 8, Parts IV and V of the ECSS Guidelines.

⁵⁸ Chapter 8 of the LegCo Guidelines and Chapter 10 of the ECSS Guidelines.

⁵⁹ Chapter 9 of the LegCo Guidelines and Chapter 11 of the ECSS Guidelines.

⁶⁰ Chapter 12 of the LegCo Guidelines and Chapter 13 of the ECSS Guidelines.

unless there are special matters, such as the consideration of hitherto undecided principles or of issuing a censure or reprimand, requiring the whole EAC to meet. For the Chief Executive election, all complaints will be handled by the EAC members. Because of the small number of candidates, it is considered unnecessary to set up a Complaints Committee. Where a complaint or part of it relates to contraventions of statutory provisions which are enforced by the Police or the ICAC, the Complaints Committee refers it to the relevant authorities. Regarding complaints for breaches of the guidelines, the Complaints Committee has the cooperation of the returning officers who will help dispose of the complaints by way of swift action, such as removing the election advertisement complained of for its not having been disclosed to the returning officer or for its being displayed on a spot without prior authorisation. For other complaints that cannot be resolved straightaway, the Complaints Committee will seek an answer from the complainee or further information or evidence from the complainant before reaching its conclusion. The rule of natural justice of *audi alteram partem* has always been adhered to by the Complaints Committee. In case there is a provisional decision to issue a censure or reprimand, the EAC will also notify the complainee who is given an opportunity to address the EAC against it, as the EAC is bound to do⁶¹. In fact, the same rule has been adopted by the EAC in making public a warning referred to in footnote 48 above. The EAC has no fear in publishing such warnings, censures or reprimands because it is protected from liability for anything done, or omitted to be done, by it in good faith in the performance of a function, and its communications, reports or statements are expressly provided to be absolutely privileged in the law of defamation⁶².

38. During the early years of the BEC's operation, members believed that the Commission had no teeth by merely publishing censures or reprimands as punishment for a serious or recalcitrant breach of a guideline because it was not envisaged that a censure, as compared with a criminal conviction and the penalty ensued, would cause too much concern to a candidate. However, this belief had been proven wrong. On the occasions when the BEC or EAC intended to publish a censure and informed the target candidate or person of it, he invariably raised vehement objections and presented many arguments and facts as perceived by him in the hope of persuading us to change

⁶¹ S 6(4) of the EAC Ordinance.

⁶² S 14 of the EAC Ordinance.

our mind. We are now firmly of the view that censures and reprimands are a weighty weapon for us to wield over candidates and others involved in electoral matters, which can be wisely employed in the furtherance of fairness and honesty.

39. Thus, the dealing with complaints in a fair manner will also have the effect of upholding fairness and honesty in the electoral process. Altogether, 937 complaints were promptly handled by the EAC in respect of the 1998 LegCo Elections, 975 were disposed of in the 1999 DCs Election and 802 were received in respect of the 2000 LegCo Elections. There were other election-related complaints that had been directed to the relevant authorities, respectively 1,633 in 1998, 2,917 in 1999 and 1,111 in 2000. Since the 1999 DCs Election, I have adopted the practice of personally perusing all the complaints handled by the vetting groups of the Complaints Committee for the purpose of achieving consistency.
40. As shown by the experience gathered in the past eight years, complaints are not only made by candidates in opposite camps and their followers; quite often they are from members of the public who are interested in elections. Indeed, it is the mutual policing by candidates amongst themselves and policing by the public that contribute towards maintaining the electoral process fair and honest.

Conclusion

41. Since September this year, the EAC has been entrusted with the new task of supervising the Chief Executive election to be held on 24 March 2002. The nomination exercise will run from 15 to 28 February 2002. Before members of the Election Committee elect the Chief Executive, by-elections will have to be held on 6 January 2002 to fill four vacancies on the Election Committee arising from the resignation of three members in the “Legal”, “Architectural, Surveying and Planning” and “Finance” subsectors, and the death of a member in the Heung Yee Kuk subsector⁶³. Nominations for candidature for these four seats will be open from tomorrow (December 14) to December 20. Being a member of the legal profession, you are qualified to run for a seat if you have already registered as a geographical constituency elector⁶⁴.

⁶³ See ss 3 and 5 of Schedule to the Chief Executive Election Ordinance.

⁶⁴ S 17 of Schedule to the Chief Executive Election Ordinance.

42. The EAC has been functioning and operating smoothly as an apolitical, neutral, impartial and independent body ever since the establishment of its predecessor, the BEC. We have been working with the cooperation and support of various Government Departments, the media, candidates and the public to ensure that elections in Hong Kong are open, fair and honest. We believe that the right-thinking members of this community have approved of the manner in which the EAC carries out its responsibilities, and it is hoped that such cooperation, support and approval will forever continue.