

Section 1 – Background

Cause of the By-election

1.1 A vacancy arose in the On Tai Constituency of the Sha Tin District Council (“DC”) on 18 July 2012 when a bankruptcy order was made against Mr Yeung Cheung-li, an elected member of the 2011 DC Election for the constituency, who was hence disqualified from holding office in accordance with section 24(1)(g) of the District Councils Ordinance (Cap 547) (“DCO”). Pursuant to section 26(c) of the DCO, Mr Yeung’s office became vacant. The Director of Home Affairs, in accordance with section 32(1) of the DCO, declared the existence of a vacancy in the On Tai Constituency of the Sha Tin DC by publishing a notice in the Gazette on 3 August 2012.

1.2 Pursuant to section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC”) was required to arrange for a by-election to return a candidate to fill the vacancy in the On Tai Constituency of the Sha Tin DC.

The Constituency

1.3 The On Tai Constituency is one of the 36 DC constituency areas in the Sha Tin District, with a registered electorate of 11,186. A map showing the boundary of the constituency area is at **Appendix I**.

The Polling Day and the Nomination Period

1.4 The Chief Electoral Officer (“CEO”) of the Registration and Electoral Office (“REO”) appointed 4 November 2012 (Sunday) as the polling day for the Sha Tin DC On Tai Constituency By-election (“the By-election”) and specified the period from 21 September 2012 to 4 October 2012 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 31 August 2012.

Section 2 – Appointments and Nominations

Appointments

2.1 Mrs Do Pang Wai-ye, JP, District Officer (Sha Tin) and Mr Cheng Siu-fun, Eric, Assistant District Officer (Sha Tin) were appointed by the EAC Chairman as the Returning Officer (“RO”) and Assistant Returning Officer (“ARO”) respectively for the By-election. Their appointments, where were post-tied, were published in the Gazette on 31 August 2012. Upon the transfer out of Mrs Do, Mr Cheng had acted up to hold the office of District Officer (Sha Tin) and also taken over the role of the RO with effect from 15 October 2012. In this connection, Mr Chan Yiu-kwok, Senior Liaison Officer (East) (Sha Tin) was appointed by the EAC Chairman as the ARO for the By-election and his appointment took effect on 15 October 2012. Ms Ng Suet-ching, Anita, Senior Government Counsel and Miss Lee Sau-kong, Senior Assistant Solicitor General of the Department of Justice (“DoJ”), were appointed by the EAC Chairman as the AROs (Legal) on 28 August 2012 and 26 October 2012 respectively for the By-election.

2.2 Mr Lui Kit-ling, Barrister-at-law was appointed as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the By-election to provide the RO with the necessary legal advice on the eligibility of candidates. Mr Lui’s appointment, covering the period from 21 September to 6 October 2012, was published in the Gazette on 31 August 2012.

Nominations

2.3 By the close of the two-week nomination period on 4 October 2012, the RO received a total of five nominations. The five nominations were determined as valid by the RO. The nominees were Mr Chan Pui-ming, Mr So Tat-leung, Mr Chiu Man-leong, Mr Chan Kwok-keung (James) and Ms Yau Yuet-wah Donna. The NAC(DC) did not receive any request from the RO for legal advice on the validity of the nominations. The names of the five validly nominated candidates were published in the Gazette on 12 October 2012.

Briefing for the Candidates

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the five candidates on 9 October 2012 at the Sha Tin District Office to remind them and their agents of the major provisions in the relevant electoral legislation and guidelines and the need for strict compliance. Topics included polling and counting arrangements, requirements relating to election advertisements (“EAs”) and election expenses, appointment and roles of various types of agents and conduct of electioneering activities. The CEO, RO and representatives of DoJ, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post also attended the session to brief the candidates on subjects within their respective purview.

2.5 After the briefing session, the RO, witnessed by all parties present, drew lots to determine the candidate number for each candidate to be shown on the ballot papers and the designated spots to be allocated to the candidates for displaying EAs. The result of the lots drawing was as follows:

<u>Candidate Number</u>	<u>Name of Candidate</u>
1	Mr Chan Pui-ming
2	Mr So Tat-leung
3	Mr Chiu Man-leong
4	Mr Chan Kwok-keung (James)
5	Ms Yau Yuet-wah Donna

A total of 35 spots in the On Tai Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated seven designated spots.

EAC Guidelines on Election-related Activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election (“the Guidelines”) updated in September 2012 were applicable to this By-election.

Section 3 – Preparation Work

Appointment and Training of Polling/Counting Staff

3.1 The staff of REO were appointed to take up the polling and counting duties. A half-day briefing session on polling and counting duties for the polling-cum-counting station and the dedicated polling stations (“DPSs”) was conducted on 30 October 2012 to familiarise all the staff concerned with their duties.

The Polling-cum-counting Station

3.2 The CEO designated the only ordinary polling station (“OPS”) at the Tak Sun Secondary School as the only and main counting station for the By-election, where the votes cast therein and in the DPSs were to be counted. The result of the election was to be announced at this counting station. This polling station was accessible to electors with disabilities.

3.3 The polling station was set up in the afternoon of the day preceding the polling day. It was converted into a counting station after the close of poll. Within the counting station, there were a counting zone, a seating area for the candidates and their agents, a press area and a public area where members of the public might stay and observe the count. Candidates and their election/counting agents were allowed to observe the count around the counting tables within the counting zone.

Dedicated Polling Stations

3.4 To enable registered electors of the On Tai Constituency who were imprisoned or remanded by the Correctional Services Department (“CSD”) to cast their votes on the polling day, DPSs were planned to be set up in penal institutions for this By-election. As advised by the CSD on 3 November 2012, a total of two registered electors of the On Tai Constituency would be in their custody on the polling day in two penal institutions. Hence, a DPS was set up in each of these penal institutions. Owing to security considerations, the polls at these two DPSs were conducted from 9:00 a.m. to 4:00 p.m. on the polling day.

3.5 A DPS was also set up on the polling day at the Tin Sum Police Station for registered electors of the On Tai Constituency who were remanded or detained on the polling day by law enforcement agencies (“LEAs”) (other than the CSD) including the Police, the ICAC, Customs and Excise Department, Immigration Department, etc. to cast votes. Since the LEAs might arrest persons who happened to be registered electors of the On Tai Constituency at any time on the polling day, the DPS at the Tin Sum Police Station was required to be open throughout the polling hours from 7:30 a.m. to 10:30 p.m. on the polling day in line with the OPS set up in Tak Sun Secondary School. The set-up of a DPS was basically the same as that of an OPS, except that some of the polling materials had to be specially designed for security reasons.

3.6 To protect the secrecy of the votes cast in the DPSs, such votes were transferred to the main counting station at the Tak Sun Secondary School and mixed with the ballot papers cast in that OPS before counting in accordance with section 76 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) (“EAC (EP) (DC) Reg”).

3.7 The designation of the aforesaid venues as the OPS, the DPSs and the counting station was published in the Gazette on 12 October 2012. Candidates were informed that subject to the required security clearance, they or their election / polling agents could enter the DPSs to observe the poll and witness the delivery of the ballot boxes to the main counting station by the concerned Presiding Officers (“PROs”) in accordance with the relevant electoral regulation.

Polling and Counting Arrangements

3.8 During the polling hours, the PRO of the polling-cum-counting station, assisted by the Deputy PROs (“DPROs”) and Assistant PROs (“APROs”), was responsible for ensuring the smooth and efficient operation of the polling station. The PRO worked closely with the RO. When the count started, the PRO assumed the role of Counting Supervisor in overseeing the counting process and was responsible for determining the validity of questionable ballot papers, while the DPROs and/or APROs performed the duties of Assistant Counting Supervisors.

3.9 In view of the very small electorate of the DPSs, each PRO of DPS was supported by one APRO and/or one Polling Officer. The PROs delivered, under the escort of the Police, the sealed ballot boxes to the main counting station at the Tak Sun Secondary School after the close of poll.

3.10 Outside all the polling stations, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO to provide the electors with an unobstructed access to the station. A notice was put up at a conspicuous spot of each polling station, showing the areas of the NCZ and the NSZ.

Notification to Electors

3.11 The REO sent a poll card to each registered elector of the On Tai Constituency on 19 October 2012 notifying him/her of the date, time and the assigned polling station. The poll card was sent together with other election-related materials, including the “Introduction to Candidates”, a location map of the polling station with a guidance note on voting and a leaflet on clean and fair elections issued by the ICAC. The “Introduction to Candidates” which included the candidates’ election platform was also uploaded to the EAC’s website. To facilitate the visually impaired to be apprised of the election platform of a candidate, the REO had invited the candidates to provide a text version of their election platforms for uploading to the EAC’s website on 22 October 2012.

Publicity

3.12 The REO issued press releases covering the major events of the By-election, which included the nomination period, number of nominations received, names of the validly nominated candidates, the poll, the count, the setting up of DPSs, the turnout rates and the EAC's visits to the polling and counting stations. Besides, all relevant information on the By-election (including press releases, the hourly electors' turnout rate, election result, etc.) was uploaded to the EAC's website for public information.

Contingency Plan

3.13 To cater for unforeseen situations in which the By-election could not be held as scheduled (due to unforeseen circumstances such as inclement weather conditions), fall back arrangements were made with the venue management of the polling stations to reserve the same venues on the following Sunday (i.e. 11 November 2012). Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc.) was put in reserve. One dedicated van was also provided to the polling station to cater for any necessary transportation needs.

Section 4 – The Poll

Polling Hours

4.1 The polling hours for the OPS at the Tak Sun Secondary School and the DPS at the Tin Sum Police Station were from 7:30 a.m. to 10:30 p.m. on 4 November 2012. The polling hours for the DPSs in penal institutions ran from 9:00 a.m. to 4:00 p.m. The CEO announced the polling hours of the By-election by a notice in the Gazette published on 12 October 2012.

Logistical Arrangements

4.2 A central command centre was set up by the REO to oversee the operation of the poll and to provide logistical support to the staff in the polling stations on the polling day. The centre was also responsible for disseminating statistical information on the hourly electors' turnout rate, election result and the number and types of complaints received. The centre operated inside the Tak Sun Secondary School from 7:00 a.m. on the polling day until 1:30 a.m. on 5 November 2012.

4.3 A media enquiry hotline was set up from 7:30 a.m. until the announcement of the election result to handle press enquiries and to disseminate information to the public through the media at regular intervals. The election enquiry hotline, which was set up to handle general enquiries from electors and to provide assistance to polling

stations in ascertaining the eligibility of electors, operated from 7:00 a.m. to 11:00 p.m. at the REO Office at Guardian House on the polling day.

4.4 A complaint centre was set up at the REO office at Harbour Centre to receive and process election-related complaints. It was manned by the staff of the EAC Secretariat and operated from 7:30 a.m. to 11:00 p.m.

4.5 At the district level, a district command centre, manned by the staff of the Home Affairs Department, was set up at the Sha Tin District Office to serve as the contact point between the RO and the PROs. The PROs were responsible for keeping the RO and the ARO informed of all significant events which occurred within the polling stations and for handling election-related complaints. Under the direction of the district command centre, a district team would take action against unauthorised EAs and illegal canvassing activities in or around the NCZs.

4.6 The Police rendered assistance in maintaining law and order in the NCZ, the NSZ and inside the polling-cum-counting station. Police officers were also stationed at the DPS at the Tin Sum Police Station to provide support to the PRO.

Turnout of Electors

4.7 Out of 11,186 registered electors of the On Tai Constituency, 4,407 cast their votes in the respective polling stations. The overall

turnout rate was 39.40%. A breakdown of the hourly turnout rate of electors in respect of this By-election is shown in **Appendix II**.

Visits

4.8 Mr Justice Fung, the EAC Chairman, Mr Lawrence Lok and Professor Fanny Cheung, EAC Members, conducted visits to polling stations to observe the polling process in the morning of the polling day. Mr Justice Fung and Professor Cheung jointly visited the DPS at the Tung Tau Correctional Institution. Mr Lok paid a visit to the DPS at the Tin Sum Police Station. After that, they visited the OPS at the Tak Sun Secondary School together and concluded the visit by briefing the press on the latest progress of the poll there.

Section 5 – The Conversion

5.1 The poll at the polling stations at the Tak Sun Secondary School and the Tin Sum Police Station closed at 10:30 p.m. while that at the DPSs at the two penal institutions closed at 4:00 p.m., as scheduled.

5.2 The PROs of the DPS at the Tin Sum Police Station and the DPSs at the two penal institutions sealed the respective ballot boxes in the presence of a police officer or an officer of the CSD at the close of poll. Under the escort of the Police, the PROs of DPSs delivered the sealed ballot boxes to the main counting station at the Tak Sun Secondary School.

5.3 Regarding the polling-cum-counting station at the Tak Sun Secondary School, after the close of poll, a notice was promptly displayed at the entrance of the station, notifying the public of the close of poll and the temporary closure of the station to facilitate its conversion into a counting station. The telephone number of the APRO concerned was also shown on the notice to facilitate communication between the candidates' agents and the station staff. Before the counting of votes began, another notice was displayed outside the station, announcing the approximate time when the station would be open again for the public to observe the count.

5.4 In addition, the PRO of the station sealed the ballot box in the presence of the candidates or their agents who were present at the station,

while the polling staff were preparing for the conversion of the station. The conversion was completed within 30 minutes.

5.5 Mr Justice Fung, the EAC Chairman, Mr Lawrence Lok and Professor Fanny Cheung, EAC Members, were present at the polling station to observe the conversion and were satisfied with the smooth conversion of the polling station into a counting station.

Section 6 – The Count

Start of the Count

6.1 At about 11:00 p.m., the counting station at the Tak Sun Secondary School was opened for admission of the public and the media to observe the count. In the presence of candidates or their agents, the PRO and DPROs / APROs transferred the sealed ballot boxes to the counting tables. The PRO then unsealed the ballot boxes. The first one was then jointly emptied by Mr Justice Fung, EAC Chairman, Mr Raymond Tam, Secretary for Constitutional and Mainland Affairs as well as Mr Lawrence Lok and Professor Fanny Cheung, the EAC Members. The PRO also unsealed and emptied the ballot boxes received from DPSs and mixed the ballot paper contained therein with those of the polling station at the Tak Sun Secondary School before counting. The count then commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 4,407 ballot papers issued, 11 ballot papers were determined as invalid (including seven unmarked and four containing votes for more than one candidate). These 11 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg. Another 15 ballot papers were identified as questionable.

6.3 In the presence of the candidates or their agents, the PRO concerned, with the assistance of the AROs (Legal) if necessary, examined carefully the questionable ballot papers to determine their validity. All 15 questionable ballot papers were ruled valid by the PRO and were counted. The total number of ballot papers not counted was 11. A summary of the ballot papers not counted is at **Appendix III**.

Election Result

6.4 Upon completion of the count, the PRO verified the number of ballot papers counted at the main counting station with the ballot paper accounts. The figures were found tallied. The PRO made known the counting result to the candidates and their agents who were present at the counting zone. As there was a request for a re-count, the re-counting of ballot papers started at 12:54 a.m. on 5 November 2012. After the re-count was completed, the PRO then made known the re-counting result to the candidates or their agents who were present at the counting zone. The result of the re-count agreed exactly with the result of the first count. As there was no request for further re-count, the PRO subsequently reported to the RO the counting result. The RO declared the election result at about 1:16 a.m. on 5 November 2012. Mr Chiu Man-leong was elected with 1,488 valid votes, representing 33.85% of the total number of 4,396 valid votes cast. As regards other candidates, Mr Chan Pui-ming received 1,329 votes, Mr So Tat-leung received 53 votes, Mr Chan Kwok-keung (James) received 83 votes and Ms Yau Yuet-wah Donna received 1,443 votes respectively. The election result for the On Tai

Constituency was published in the Gazette on 8 November 2012 and is now reproduced at **Appendix IV**.

Section 7 – Complaints

Complaints-handling Period

7.1 The complaints-handling period started on the day when the nomination period commenced on 21 September 2012, and ended 45 days after the polling day on 19 December 2012. During the complaints-handling period, five different parties were designated for handling and processing complaints: the EAC, the RO, the Police, the ICAC and, on the polling day, the PRO as well. Complainants could lodge their complaints with any of the above parties.

7.2 By the end of the complaints-handling period, a total of 67 complaints were received from members of the public by the five complaints-handling parties. The majority of these complaints concerned unauthorized display of election advertisements. A breakdown of the complaints is at **Appendix V**.

Complaints received on the Polling Day

7.3 The REO complaints centre, the RO, the Police and the PRO altogether received 30 complaints on the polling day. A breakdown of these complaints is as follows:

Complaints-handling party	Number of complaints received on the polling day
REO complaints centre	1
RO	23
Police	5
PRO	1
Total:	30

7.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned unauthorized display of election advertisements. A breakdown of the nature of the complaints received on the polling day is at **Appendix VI**.

Outcome of Investigation

7.5 Of the 67 complaints received during the complaints-handling period, 42 were found substantiated, 7 unsubstantiated, 15 requiring no further action and 3 are still under investigation at the time of compiling this report.

Section 8 – Review and Recommendations

8.1 After the By-election, the EAC reviewed the electoral procedures and arrangements made for the election. Overall, the EAC considered the polling and counting arrangements generally satisfactory. The operations of the three DPSs were also smooth.

8.2 The polling-cum-counting station was set up at Tak Sun Secondary School. The EAC notes that the venue was spacious and accessible to electors with disabilities. No adverse comments about this polling-cum-counting station have been received by the REO. The EAC considers that it was a suitable venue for the electors to cast vote in this By-election and should be included in the list of venues for use as a polling-cum-counting station in future elections.

Section 9 – Acknowledgement

9.1 The smooth conclusion of the By-election was attributable to the dedicated and concerted efforts of all parties involved.

9.2 The EAC would like to thank the following government bureaux and departments for their support and assistance:

Agriculture, Fisheries and Conservation Department

Civil Aid Service

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Justice

Drainage Services Department

Electrical and Mechanical Services Department

Food and Environmental Hygiene Department

Government Logistics Department

Home Affairs Department

Hong Kong Police Force

Hongkong Post

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Marine Department

Official Languages Division (of the Civil Service Bureau)

Official Receiver's Office

9.3 The EAC is grateful for the efforts of all officers and the REO staff serving as the RO, AROs, PROs, DPROs and APROs, and the legal practitioner serving on the NAC(DC) in the By-election.

9.4 The EAC is also grateful to the CSD, the Police and other LEAs for their assistance provided to the REO in making necessary arrangements to facilitate registered electors who were imprisoned, remanded or detained on the polling day to vote.

9.5 The EAC would like to thank the media who helped to enhance the transparency of the By-election by giving all major events good coverage.

9.6 The EAC would also like to express its appreciation to the electors who turned up to cast their votes and all those who rendered support or assistance in ensuring compliance with the electoral legislation and guidelines in the By-election.

Section 10 – Looking Forward

10.1 The EAC remains committed to fulfilling the mission of safeguarding the integrity of public elections in Hong Kong. It will make continued efforts to keep a vigilant watch on every election to ensure openness, fairness and honesty. The EAC welcomes positive and constructive comments to bring about improvements to the arrangements for future elections.

10.2 The EAC recommends that this report be made public, at a time the Chief Executive thinks appropriate, so that the public may be kept posted as to how the EAC conducted and supervised the By-election.