

Section 1 – Background

Cause of the By-election

1.1 A vacancy arose in the King's Park Constituency of the Yau Tsim Mong District Council ("DC") on 4 July 2013 as a result of the ruling of the Court on an election petition lodged by Mr Lam Kin-man, one of the five candidates contesting in the Constituency in the 2011 DC Election held on 6 November 2011. In the election petition, the Court determined that Mr Leung Wai-kuen, Edward, the elected candidate for the Constituency, was not duly elected and that no other person was duly elected in accordance with section 55(2) of the District Councils Ordinance (Cap.547) ("DCO"). Pursuant to section 26(d), (e)(ii) and 32(1) of the DCO, the Director of Home Affairs declared the existence of a vacancy in the King's Park Constituency of the Yau Tsim Mong DC by publishing a notice in the Gazette on 12 July 2013.

1.2 In accordance with section 33(1)(a) of the DCO, the Electoral Affairs Commission ("EAC") was required to arrange a by-election to return a candidate to fill the vacancy in the King's Park Constituency of the Yau Tsim Mong DC.

The Constituency

1.3 The King's Park Constituency is one of the 17 DC constituency areas in the Yau Tsim Mong District, with a registered electorate of 7,106. 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 27 October 2013 (Sunday) as the polling day for the Yau Tsim Mong DC King's Park Constituency By-election ("the By-election") and specified the period from 6 September 2013 to 19 September 2013 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 26 July 2013.

Section 2 – Appointments and Nominations

Appointments

2.1 Ms Ho Siu-ping, Betty, JP, District Officer (Yau Tsim Mong) and Mr Chiu Chung-yan, Charlson, Assistant District Officer (Yau Tsim Mong) were appointed by the EAC Chairman as the Returning Officer (“RO”) and Assistant Returning Officer (“ARO”) respectively for the By-election. Their appointments, which were post-tied, were published in the Gazette on 26 July 2013. Ms Cheng Tai-ngar, Dorothy, Senior Government Counsel and Mr Loh Vernon, Senior Government Counsel (Acting) of the Department of Justice (“DoJ”), were appointed by the EAC Chairman as the AROs (Legal) on 17 July 2013 for the By-election.

2.2 Mr Ho Bing-kwan, Barrister-at-law was appointed as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the By-election to provide the RO with necessary legal advice on the eligibility of candidates. Mr Ho’s appointment, covering the period from 6 September to 24 September 2013, was published in the Gazette on 26 July 2013.

Nominations

2.3 By the close of the two-week nomination period on 19 September 2013, the RO received a total of four nominations. The four nominations were determined as valid by the RO. The nominees were Mr Chan Man, Mr Tang Ho-bun (Alex), Mr Lam Kin-man and Mr Fu Chuen-fu (Mark). The NAC(DC) did not receive any request from the RO for legal advice on the validity of nomination. The names of the four validly nominated candidates were published in the Gazette on 27 September 2013.

Briefing for the Candidates

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the four candidates on 25 September 2013 at the Yau Tsim Mong District Council conference room to draw to the attention of the candidates and their agents the major provisions in the relevant electoral legislation and guidelines and the need for strict compliance. Topics included polling and counting arrangements, appointment and roles of various types of agents, requirements relating to election advertisements (“EAs”) and election expenses 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 each candidate for displaying EAs. The result of the lots drawing was as follows:

<u>Candidate Number</u>	<u>Name of Candidate</u>
1	Mr Chan Man
2	Mr Tang Ho-bun (Alex)
3	Mr Lam Kin-man
4	Mr Fu Chuen-fu (Mark)

A total of 124 spots in the King's Park Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated 31 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. The Guidelines are available at the website of the EAC (<http://www.eac.gov.hk>) for reference.

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. Half-day briefing sessions on polling and counting duties for the polling-cum-counting station and dedicated polling stations (“DPSs”) were conducted on 15 October 2013 and 16 October 2013 respectively to familiarise all the staff concerned with their duties.

The Polling-cum-counting Station

3.2 In view of the large area of the King’s Park Constituency, the CEO designated two ordinary polling stations (“OPSs”) at the TWGHs Lo Yu Chik Primary School and Yaumati Kaifong Association School to facilitate electors to cast their votes. The CEO also designated the TWGHs Lo Yu Chik Primary School as the main and dominant counting station for the By-election, where the votes cast therein and in the DPSs were to be counted and where the result of the election was to be announced. Both OPSs at the TWGHs Lo Yu Chik Primary School and Yaumati Kaifong Association School were accessible to electors with disabilities.

3.3 The two OPSs were set up in the afternoon of the day preceding the polling day. They were converted into counting stations after the close of poll. Within each 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 King's Park 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 26 October 2013, a total of two registered electors of the King's Park Constituency would be in their custody in two penal institutions on the polling day. 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 Cheung Sha Wan Police Station for registered electors of the King's Park 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 King's Park Constituency

at any time on the polling day, the DPS at the Cheung Sha Wan 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. 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 TWGHs Lo Yu Chik Primary 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 OPSs, the DPSs and the counting station was published in the Gazette on 27 September 2013. 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 Presiding Officers (“PROs”) concerned in accordance with the relevant electoral regulation.

Polling and Counting Arrangements

3.8 During the polling hours, the PRO of each polling-cum-counting station, assisted by the Deputy PRO (“DPRO”) and Assistant PROs (“APROs”), was responsible for ensuring the smooth and efficient

operation of the polling station. The PROs worked closely with the RO. When the count started, the PROs assumed the role of Counting Supervisors in overseeing the counting process and were responsible for determining the validity of questionable ballot papers, while the DPROs and 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 TWGHs Lo Yu Chik Primary 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 King’s Park Constituency on 11 October 2013 notifying him/her of the date, time of polling 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 candidates’ election platform, the candidates heeded the advice of the REO to provide a text version of their election platform for uploading to the EAC’s website.

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 for the following Sunday (i.e. 3 November 2013). 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 stations to cater for any necessary transportation needs.

Section 4 – The Poll

Polling Hours

4.1 The polling hours for the OPSs and the DPS at the Cheung Sha Wan Police Station were from 7:30 a.m. to 10:30 p.m. on 27 October 2013. 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 27 September 2013.

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 TWGHs Lo Yu Chik Primary School from 7:00 a.m. on the polling day until 12:30 a.m. on 28 October 2013.

4.3 A media enquiry hotline was set up from 7:30 a.m. on 27 October 2013 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. on the polling day at the REO Office at Guardian House.

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. on the polling day.

4.5 At the district level, a district command centre, manned by the staff of the Home Affairs Department, was set up at the Yau Tsim Mong District Office to serve as the contact point between the RO and the PROs. The PROs were responsible for keeping the RO and ARO informed of all significant events which occurred at 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 Cheung Sha Wan Police Station to provide support to the PRO.

Turnout of Electors

4.7 Out of 7,106 registered electors of the King's Park Constituency, 2,602 cast their votes in the respective polling stations as

detailed below. The overall turnout rate was 36.62%.

Polling Station	Number of registered electors (a)	Total number of elector turnout (b)	Turnout Rate (b)/(a) x 100%
TWGHs Lo Yu Chik Primary School	3,898	1,642	42.12%
Yaumati Kaifong Association School	3,206	959	29.91%
Cheung Sha Wan Police Station	0	0	0%
Siu Lam Psychiatric Centre	1	1	100%
Shek Pik Prison	1	0	0%
Total	7,106	2,602	36.62%

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 and Mr Lawrence Lok, EAC Member, conducted visits to polling stations to observe the polling process in the morning of the polling day. Mr Justice Fung visited the

DPS at the Siu Lam Psychiatric Centre. Mr Lok first visited the DPS at the Cheung Sha Wan Police Station, followed by the OPS at the Yaumati Kaifong Association School. After that, they visited the OPS at the TWGHs Lo Yu Chik Primary 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 OPSs at the TWGHs Lo Yu Chik Primary School and Yaumati Kaifong Association School and the DPS at Cheung Sha Wan 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 Cheung Sha Wan 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 TWGHs Lo Yu Chik Primary School.

5.3 Regarding the OPSs at the TWGHs Lo Yu Chik Primary School and Yaumati Kaifong Association School, after the close of poll, a notice was promptly displayed at the entrance of each 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 numbers of the APROs concerned were 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 each 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 each OPS 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 of each station was completed within 40 minutes.

5.5 Mr Justice Fung, the EAC Chairman and Mr Lawrence Lok, EAC Member, were present at the polling stations at the TWGHs Lo Yu Chik Primary School and Yaumati Kaifong Association School respectively to observe the conversion and they were satisfied with the smooth conversion of the polling stations into counting stations.

Section 6 – The Count

Start of the Count

6.1 At about 11:15 p.m., the counting stations were open for admission of the public and the media to observe the count. In the presence of candidates and their agents, the PRO and DPRO/APROs of each station transferred the sealed ballot boxes to the counting tables. The PROs then unsealed the ballot boxes. At the main counting station at the TWGHs Lo Yu Chik Primary School, the first ballot box was jointly emptied by Mr Justice Fung, EAC Chairman and the RO. The PRO concerned also unsealed the ballot box received from each DPS, verified the numbers of ballot papers contained therein against the ballot paper accounts and mixed them with those of the polling station at the TWGHs Lo Yu Chik Primary School before counting. As for the counting station at the Yaumati Kaifong Association School, the first ballot box was jointly emptied by Mr Lawrence Lok, EAC Member and the PRO concerned. The count then commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 2,602 ballot papers issued, 9 ballot papers were determined as invalid (including 5 unmarked, 2 not marked with the chop provided by the REO and 2 containing votes for more than one candidate). These 9 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg.

6.3 In addition, 20 ballot papers were identified as questionable. In the presence of the candidates and their agents, the PROs concerned, with the assistance of the AROs(Legal), examined carefully the questionable ballot papers to determine their validity. All 20 questionable ballot papers were ruled valid by the PROs and were counted. The total number of ballot papers not counted was 9. A summary of the ballot papers not counted is at **Appendix III**.

Election Result

6.4 Upon completion of the count, the PROs verified the number of ballot papers counted at their counting stations with the ballot paper accounts. The figures were found tallied. The PROs of all counting stations made known the counting results to the candidates and their agents who were present at the counting zones. The PRO of the counting station at the Yaumati Kaifong Association School then reported the counting results to the PRO of the dominant counting station at the TWGHs Lo Yu Chik Primary School immediately. After consolidating the results, the PRO of the dominant counting station reported to the RO the counting results of the two counting stations.

6.5 As there was no request for re-count, the RO declared the election result at about 12:20 a.m. on 28 October 2013. Mr Lam Kin-man was elected with 1,515 valid votes, representing 58.43% of the total number of 2,593 valid votes cast. As regards the other candidates, Mr Chan Man received 30 votes, Mr Tang Ho-bun (Alex) received 780 votes

and Mr Fu Chuen-fu (Mark) received 268 votes respectively. The election result for the King's Park Constituency was published in the Gazette on 1 November 2013 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 6 September 2013, and ended 45 days after the polling day on 11 December 2013. 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 PROs 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 88 complaints were received from members of the public by the five complaints-handling parties including 42 complaints received on the polling day. The majority of these complaints concerned unauthorized display of EAs and disturbances to electors caused by loudspeakers/broadcasting vehicles/telephone canvassing/others. A breakdown of the complaints is at **Appendix V**.

Complaints received on the Polling Day

7.3 The EAC complaints centre, the RO, the Police and the PROs altogether received 42 complaints on the polling day. A breakdown of these complaints is as follows:

Complaints-handling party	Number of complaints received on the polling day
EAC Complaints Centre	1
RO	19
Police	17
PROs	5
Total:	42

7.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned unauthorised display of EAs and disturbances to electors caused by loudspeakers/broadcasting vehicles/telephone canvassing/others. A breakdown of the nature of the complaints received on the polling day is at **Appendix VI**.

Outcome of Investigation

7.5 Of the 88 complaints received during the complaints-handling period, 18 were found substantiated, 30 unsubstantiated, 40 requiring no further action.

Section 8 – Review and Recommendations

8.1 The EAC reviewed the electoral procedures and arrangements made for the By-election and considered the overall polling and counting arrangement satisfactory. The EAC also noted that the operation of the three DPSs was smooth.

8.2 For this By-election, having taken into consideration the experience in previous elections and the large area of the King's Park Constituency, the REO had set up two polling stations at the TWGHs Lo Yu Chik Primary School and Yaumati Kaifong Association School respectively to facilitate electors to cast their votes at a place close to their residence. These two polling stations are conveniently located and accessible to the electors of the constituency. The polling station at the Yaumati Kaifong Association School is situated on the first floor of the building and electors assigned to cast votes at the station had to walk up stairs to enter the polling station. Despite this, electors with walking difficulties or using wheelchairs could use the lift available at the entrance to reach the polling station. The EAC considers that the REO should continue to look for venues which are convenient to the electors for setting up polling stations in the future.

8.3 The REO had implemented improvement measures to enhance the accuracy of marking the poll registers by polling staff when issuing ballot papers to the electors. Firstly, electors' entries in the registers were printed in alternate grey and white background colours to facilitate

easy differentiation. Secondly, the particulars of the electors were printed in a larger font size to facilitate the polling officers to check and cross out the electors' entries on the registers before the issue of ballot papers. The EAC appreciates the efforts made by the REO to enhance the procedures on the issue of ballot papers to electors and considers the improved arrangement effective.

8.4 The EAC noted with concerns that there were a number of complaints lodged against different candidates and their electioneering teams for illegal canvassing inside the NCZ of the polling station at the TWGHs Lo Yu Chik Primary School on the polling day. To prevent the situation from escalation, the PRO concerned and APRO(Liaison) had diligently monitored the situation and dutifully advised the candidates concerned to stop the canvassing activities whenever such behaviour was detected. The EAC considers that the conduct of illegal canvassing activities or any acts which may invite suspicion of canvassing in the NCZ should not be allowed in order to maintain a free and safe passage for electors and to guard against any possible occurrence which may threaten the integrity and fairness of the election. The EAC appeals to candidates and their electioneering teams to comply strictly with the electoral legislation and guidelines on conduct inside a NCZ.

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 Observatory

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 including 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 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.