

Section 1 – Background

Cause of the By-election

1.1 The elected member of the 2011 District Council (“DC”) Election for Tung Chung North Constituency of the Islands District Council, Mr Lam Yuet, was convicted of two offences on 4 November 2013, and was subsequently sentenced to 21 months’ imprisonment suspended for two years by the District Court on 6 December 2013. Pursuant to section 24(1)(d)(i) of the District Councils Ordinance (Cap. 547) (“DCO”) and rule 29 of the Criminal Appeal Rules (Cap. 221A), Mr Lam was disqualified from holding office and his office became vacant on 15 November 2013¹. Pursuant to section 32(1) of the DCO, the Director of Home Affairs declared the existence of a vacancy in the Tung Chung North Constituency of the Islands DC by publishing a notice in the Gazette on 10 January 2014.

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 Tung Chung North Constituency of the Islands DC.

¹ Rule 29 of the Criminal Appeal Rules (Cap. 221A) stipulates that “where upon conviction of any person of any offence any disqualification, forfeiture or disability attaches to him by reason of such conviction, such disqualification, forfeiture or disability shall not attach for the period of 10 days from the date of conviction, nor, in the event of an appeal, until the determination thereof by the Court of Appeal.”

The Constituency

1.3 The Tung Chung North Constituency is one of the 10 DC constituency areas in the Islands District, with a registered electorate of 6,639. A map showing the boundary of the Constituency 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 April 2014 (Sunday) as the polling day for the Islands DC Tung Chung North Constituency By-election (“the By-election”) and specified the period from 5 March 2014 to 18 March 2014 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 24 January 2014.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr Li Ping-wai, Anthony, JP, District Officer (Islands) and Miss Man Ying-yee, Bonnie, Assistant District Officer (Islands)² 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 24 January 2014. Ms Dorothy Cheng, Senior Government Counsel of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO (Legal) on 23 January 2014 for the By-election.

2.2 Mr Wong Ching-yue, S.C. 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 Wong’s appointment, covering the period from 5 March 2014 to 20 March 2014, was published in the Gazette on 24 January 2014.

Nominations

2.3 By the close of the two-week nomination period on 18 March 2014, the RO received a total of three nominations. The three nominations were determined as valid by the RO. The nominees were Mr Leung Siu-tong, Ms Cheung Fong-han, Juliana and

Mr Yu Chun-cheung, Peter. The NAC(DC) did not receive any request from the RO for legal advice on the validity of nomination. The names of the three validly nominated candidates were published in the Gazette on 28 March 2014.

Briefing for the Candidates

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the three candidates on 25 March 2014 at Wan Chai Activities Centre 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 Leung Siu-tong
2	Ms Cheung Fong-han, Juliana
3	Mr Yu Chun-cheung, Peter

A total of 24 spots in the Tung Chung North Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated eight 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 the 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 14 and 15 April 2014 respectively 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 Tung Chung Community Hall as the only and main counting station (“MCS”) 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. 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 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 Tung Chung North Constituency who were imprisoned or remanded by the Correctional Services Department (“CSD”) to cast their votes on the polling day, contingency arrangement was drawn up for the setting up of DPSs in penal institutions for this By-election. As advised by the CSD on 26 April 2014, no registered elector of the Constituency would be imprisoned or remanded under their custody on the polling day. Hence, there was no need to set up a DPS in any penal institutions.

3.5 A DPS was set up on the polling day at the Kwai Chung Police Station for registered electors of the Tung Chung North 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 Constituency at any time on the polling day, the DPS at the Kwai Chung 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, but for security reasons, some of the polling materials used were specially designed.

3.6 To protect the secrecy of the votes cast in the DPS, such votes were transferred to the MCS at the Tung Chung Community Hall 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 DPS and the MCS was published in the Gazette on 28 March 2014. 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 MCS by the Presiding Officer (“PRO”) of the concerned DPS 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 APROs performed the duties of Assistant Counting Supervisors.

3.9 The PRO of the DPS was supported by an APRO and a Polling Officer. The PRO delivered, under the escort of the Police, the sealed

ballot boxes to the MCS at the Tung Chung Community Hall 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 electors with an unobstructed access to the stations. A notice was put up at a conspicuous spot of each polling station, showing the areas of the NCZ and NSZ.

Notification to Electors

3.11 The REO sent a poll card to each registered elector of the Tung Chung North Constituency on 11 April 2014 notifying the elector of the date, time of polling and the assigned polling station. The poll card was sent together with other election-related materials, including an “Introduction to Candidates”, a location map of the polling station, 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 DPS, 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. 4 May 2014). 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 OPS at the Tung Chung Community Hall and the DPS at the Kwai Chung Police Station were from 7:30 a.m. to 10:30 p.m. on 27 April 2014. The CEO announced the polling hours of the By-election by a gazette notice published on 28 March 2014.

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 turnout rate of electors, election result and the number and types of complaints received. The centre operated inside the Tung Chung Community Hall from 7:00 a.m. on the polling day until 12:30 a.m. on 28 April 2014.

4.3 A media enquiry hotline was set up from 7:30 a.m. on 27 April 2014 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 Islands 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 NCZ.

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 Kwai Chung Police Station to provide support to the PRO.

Turnout of Electors

4.7 Out of 6,639 registered electors of the Tung Chung North Constituency, 2,704 cast their votes in the respective polling stations. The overall turnout rate was 40.73%. 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, observed the polling process at polling stations in the morning of the polling day. Mr Justice Fung visited the OPS at the Tung Chung Community Hall. Mr Lok paid a visit to the DPS at the Kwai Chung Police Station and, thereafter, proceeded to the Tung Chung Community Hall to join Mr Justice Fung for briefing the press on the latest progress of the poll.

Section 5 – The Conversion

5.1 The poll at the OPS at the Tung Chung Community Hall and the DPS at the Kwai Chung Police Station closed at 10:30 p.m. as scheduled.

5.2 The PRO of the DPS at the Kwai Chung Police Station sealed the ballot box in the presence of a police officer. Under the escort of the Police, the PRO delivered the sealed ballot box to the MCS at the Tung Chung Community Hall.

5.3 Regarding the OPS at the Tung Chung Community Hall, after the close of poll, the PRO of the OPS sealed the ballot box in the presence of the candidates or their agents who were present at the station, and 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. While the station was being converted, 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. The conversion of the station was completed within 30 minutes.

5.4 Mr Justice Fung, the EAC Chairman and Mr Lawrence Lok, EAC Member, were present at the polling station during the conversion and they were satisfied with the smooth conversion of the polling station into counting station.

Section 6 – The Count

Start of the Count

6.1 At about 11:05 p.m., the counting station at the Tung Chung Community Hall was open for admission of the public and the media to observe the count. In the presence of candidates and 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 ballot box was jointly emptied by Mr Justice Fung, EAC Chairman, Mr Lawrence Lok, EAC Member, and the RO. The PRO also unsealed the ballot box received from the DPS. After verifying that there was no ballot paper contained therein, which tallied with the ballot paper account of the DPS, the count commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 2,704 ballot papers issued, one ballot paper was stamped with “UNUSED” and kept by the PRO. Among the remaining 2,703 ballot papers cast into the ballot boxes, 16 ballot papers were determined as invalid (including 13 unmarked and three containing votes for more than one candidate). These 16 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg.

6.3 In addition, seven ballot papers were identified as questionable. In the presence of the candidates and their agents, the PRO concerned, with the assistance of the ARO(Legal), examined carefully the questionable ballot papers to determine their validity. A total of six questionable ballot papers were ruled valid by the PRO and were counted. The remaining questionable ballot paper was ruled invalid by the PRO and was not counted. The total number of ballot papers not counted was 17. 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 MCS with the ballot paper accounts. The figures were found tallied. The PRO made known the counting results to the candidates and their agents who were present at the counting zone.

6.5 As there was a request for re-count, the PRO arranged a re-count of the ballot papers, which started at 12:01 a.m. on 28 April 2014. After the re-count was completed, the PRO then made known the result of the re-count to the candidates and their agents who were present at the counting zone. As there was no request for a further re-count, the PRO subsequently reported to the RO the counting result. The RO declared the election result at about 12:24 a.m. on 28 April 2014. Mr Yu Chun-cheung, Peter, was elected with 1,330 valid votes, representing 49.52% of the total number of 2,686 valid votes cast. As regards the other candidates, Mr Leung Siu-tong received 1,299 votes,

and Ms Cheung Fong-han, Juliana, received 57 votes respectively. The election result for the Tung Chung North Constituency was published in the Gazette on 28 April 2014 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 5 March 2014, and ended 45 days after the polling day on 11 June 2014. 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 45 complaints were received from members of the public by the five complaints-handling parties, including 15 complaints received on the polling day. The majority of these complaints concerned disturbances to electors caused by canvassing activities. A breakdown of the complaints is at **Appendix V**.

Complaints received on the Polling Day

7.3 There were 15 complaints received on the polling day by the EAC, the RO, the Police and the PRO. The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned disturbances to electors caused by canvassing activities. A breakdown of the nature of the complaints received on the

polling day is at **Appendix VI**.

Outcome of Investigation

7.4 Of the 45 complaints received during the complaints-handling period, 7 were found substantiated and 38 requiring no further action.

Section 8 – Review and Recommendations

8.1 The EAC has from time to time appealed to the media and organisations concerned for self-regulation and voluntary cooperation in the conduct of exit polls so that electors' behavior will not be unduly influenced and elections can be conducted honestly and fairly. In this regard, any person or organisation conducting exit polls is required to comply with specific guidelines governing the conduct of exit polls laid down in the EAC's Guidelines on Election-related Activities. To forestall public perception of unfairness, the REO would normally not grant approval for an application made by a person or organisation which has publicly expressed support for any candidate, or an organisation which has member(s) contesting in the constituency covered by the exit poll.

8.2 In the Tung Chung North Constituency By-election, approval was granted in mid-April 2014 for Dynamic Islands, Hong Kong Research Association and Public Opinion Programme of the University of Hong Kong to conduct exit polls on the polling day. Each of them had accordingly signed an undertaking to confirm that it had no member(s) contesting in the By-election, and had not publicly expressed support for any candidate(s) contesting in the By-election. On 24 April 2014, there were however press reports alleging that one of the approved organisations, namely Dynamic Islands, had connection with a political party which had a member contesting in the By-election. According to the press reports, the responsible person of Dynamic Islands

and some of its interviewers were allegedly members of the political party. The press reports unavoidably generated some doubts and worries among the public and this might have negative implication for the fairness of the By-election. To address public concern, the REO therefore took prompt action to issue a letter to Dynamic Islands on the same day to request a written clarification by 3:00 p.m. of the following day.

8.3 Dynamic Islands did not respond to REO's request for clarification before the deadline on 25 April 2014. Therefore, in order to dispel the public worry that the exit poll to be conducted by the organisation might affect the fairness of the By-election, the REO in consultation with the EAC decided to revoke the approval originally granted to Dynamic Islands for the exit poll. A press statement (at **Appendix VII**) was issued by the REO on the evening of the same day to explain and inform the public of the decision.

8.4 Having reviewed the above incident, the EAC considered it prudent and reasonable to tighten up the existing approving mechanism to uphold the fairness of an election. To further guard against any lingering public concern over the overriding principle of fairness arising from the conduct of exit poll, an applicant for exit poll should be required to make a written declaration to the effect that the responsible person(s) and the interviewer(s) assigned to conduct the exit polls on the polling day were not member(s) of any organisation(s) which had members contesting in the election; or member(s) of any organisation(s) which had

publicly expressed support for any of the candidates contesting in the election. The EAC notes that the above recommendation has been adopted when processing applications for exit poll in a by-election held later.

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 serving as the RO, AROs, PROs, DPROs and APROs, and the senior counsel 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.