

Section 1 – Background

Cause of the By-election

1.1 A vacancy arose in the South Horizons West Constituency of the Southern District Council (“DC”) on 15 December 2013 after Mr Fung Wai-kwong, an elected member of the 2011 DC Election for the constituency, resigned as Southern DC member. Pursuant to sections 26(b) and 32(1) of the District Councils Ordinance (Cap. 547) (“DCO”), the Director of Home Affairs declared the existence of a vacancy in the South Horizons West Constituency of the Southern DC by publishing a notice in the Gazette on 20 December 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 South Horizons West Constituency of the Southern DC.

The Constituency

1.3 The South Horizons West Constituency is one of the 17 DC constituency areas in the Southern District, with a registered electorate of 7,566. 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 23 March 2014 (Sunday) as the polling day for the Southern DC South Horizons West Constituency By-election (“the By-election”) and specified the period from 7 February 2014 to 20 February 2014 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 3 January 2014.

Section 2 – Appointments and Nominations

Appointments

2.1 Ms Wai Yee-yan, Christine, JP, District Officer (Southern) and Miss Ng Kai-ting, Nettie, Assistant District Officer (Southern) 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 3 January 2014. Mr Vernon Loh, Senior Government Counsel of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO (Legal) on 2 January 2014 for the By-election.

2.2 Mr Kevin Chan, 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 Chan’s appointment, covering the period from 7 February to 24 February 2014, was published in the Gazette on 3 January 2014.

Nominations

2.3 By the close of the two-week nomination period on 20 February 2014, the RO received a total of three nominations. The three nominations were determined as valid by the RO. The nominees were Ms Yuen Mi-ming, Erica, Mr Sin Chung-kai and Ms Chan Judy Kapui.

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 February 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 February 2014 at the Southern DC 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	Ms Yuen Mi-ming, Erica
2	Mr Sin Chung-kai
3	Ms Chan Judy Kapui

A total of 21 spots were designated for the display of EAs during the election period, and each candidate was equally allocated 7 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 12 March and 13 March 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 South Horizons Neighbourhood Community Centre 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 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 South Horizons West 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 22 March 2014, a total of two registered electors of the South Horizons West 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 Happy Valley Police Station for registered electors of the South Horizons West 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 South Horizons West Constituency at any time on the polling day, the DPS at the Happy Valley 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 MCS at the South Horizons Neighbourhood Community Centre and then 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 MCS was published in the Gazette on 28 February 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 Officers (“PROs”) of the concerned DPSs 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 each 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 MCS at the South Horizons Neighbourhood Community Centre 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 NSZ.

Notification to Electors

3.11 The REO sent a poll card to each registered elector of the South Horizons West Constituency on 10 March 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 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. 30 March 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 South Horizons Neighbourhood Community Centre and the DPS at the Happy Valley Police Station were from 7:30 a.m. to 10:30 p.m. on 23 March 2014. 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 gazette notice published on 28 February 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 electors' turnout rate, election result and the number and types of complaints received. The centre operated inside the South Horizons Neighbourhood Community Centre from 7:00 a.m. on the polling day until 1:00 a.m. on 24 March 2014.

4.3 A media enquiry hotline was set up from 7:30 a.m. on 23 March 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 Southern 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 Happy Valley Police Station to provide support to the PRO.

Turnout of Electors

4.7 Out of 7,566 registered electors of the South Horizons West Constituency, 4,059 cast their votes in the respective polling stations. The overall turnout rate was 53.65%. 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, observed the polling process at different polling stations in the morning of the polling day. Mr Justice Fung visited the DPS at the Lo Wu Correctional Institution. Mr Lok paid a visit to the DPS at the Happy Valley Police Station. Professor Cheung visited the DPS at the Pik Uk Prison. Following that, they visited the OPS at the South Horizons Neighbourhood Community Centre together and conducted a briefing for the press on the latest progress of the poll there.

Section 5 – The Conversion

5.1 The poll at the OPS at the South Horizons Neighbourhood Community Centre and the DPS at the Happy Valley 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 DPSs at the Happy Valley Police Station and 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 MCS at the South Horizons Neighbourhood Community Centre.

5.3 Regarding the OPS at the South Horizons Neighbourhood Community Centre, 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. While the polling staff were preparing for the conversion of the station, 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.

5.4 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. The conversion of the station was completed within 30 minutes.

5.5 Mr Justice Fung, the EAC Chairman and Professor Fanny Cheung, EAC Member, were present at the polling station to observe 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 11:10 p.m., the counting station at the South Horizons Neighbourhood Community Centre 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, Prof Fanny Cheung, EAC Member and the RO. The PRO 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 South Horizons Neighbourhood Community Centre before counting. The count then commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 4,059 ballot papers issued, 27 ballot papers were determined as invalid (including 24 unmarked and 3 containing votes for more than one candidate). These 27 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg.

6.3 In addition, 10 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. Six questionable ballot papers were voided for uncertainty. Four were ruled valid by the PRO and were counted. The total number of ballot papers not counted was 33. 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. The PRO then reported to the RO the counting results.

6.5 As there was no request for re-count, the RO declared the election result at about 12:27 a.m. on 24 March 2014. Ms Chan Judy Kapui was elected with 2,023 valid votes, representing 50.25% of the total number of 4,026 valid votes cast. As regards the other candidates, Ms Yuen Mi-ming, Erica received 1,083 votes, and Mr Sin Chung-kai received 920 votes respectively. The election result for the South Horizons West Constituency was published in the Gazette on 28 March 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 7 February 2014, and ended 45 days after the polling day on 7 May 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 79 complaints were received from members of the public by the five complaints-handling parties, including 55 complaints received on the polling day. The majority of these complaints concerned unauthorised display of EAs. A breakdown of the complaints is at **Appendix V**.

Complaints received on the Polling Day

7.3 There were 55 complaints received on the polling day by the RO, the PRO and the Police. The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned unauthorised display of EAs. A breakdown of the nature of the complaints received on the polling day is at **Appendix VI**.

Outcome of Investigation

7.4 Of the 79 complaints received during the complaints-handling period, 3 were found substantiated, 16 unsubstantiated, 60 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 smooth and satisfactory.

8.2 For this By-election, the number of roadside public display spots inside the South Horizons West Constituency available for allocation to the candidates was limited owing to the excavation works in relation to the construction of MTR South Island Line. To secure more public display spots for use by the candidates, the RO had identified suitable spots in the adjoining constituencies, i.e. the South Horizons East Constituency and the Ap Lei Chau Estate Constituency. The additional display spots were located at prominent areas close to the boundary of the South Horizons West Constituency.

8.3 Through the RO's coordinating effort, the estate management of South Horizons had released some space at roadside railings of the estate's private road for candidates to display banners and had also allowed the candidates to put up posters at the reception lobbies of all the 16 residential blocks in the South Horizons West Constituency.

8.4 The EAC appreciated the effective co-ordination and efforts made by the RO in identifying additional display spots for the candidates to promote their candidacy.

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 barrister 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.