

Section 1 – Background

Cause of the By-election

1.1 The elected member of the 2011 District Council (“DC”) Ordinary Election for San Fu Constituency of the Tai Po DC Mr LO Sou-chour, was convicted of four offences of fraud on 31 March 2015, and was subsequently sentenced to 5 months’ imprisonment by the Magistrates’ Court on 14 April 2015. In accordance with section 24(1)(d)(i) of the District Councils Ordinance (Cap. 547) (“DCO”), Mr Lo was disqualified from holding his office and his office became vacant on 31 March 2015. Pursuant to section 32(1) of the DCO, the Director of Home Affairs (Acting) declared the existence of a vacancy in the San Fu Constituency of the Tai Po DC by publishing a notice in the Gazette on 24 April 2015.

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 San Fu Constituency of the Tai Po DC.

The Constituency

1.3 The San Fu Constituency is one of the 19 DC constituencies in the Tai Po District, with a registered electorate of 8,649. 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 19 July 2015 (Sunday) as the polling day for the Tai Po DC San Fu Constituency By-election (“the By-election”) and specified the period from 28 May 2015 to 10 June 2015 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 22 May 2015.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr SO Chek-leung, Bassanio, JP, District Officer (Tai Po), and Miss YAU Sze-wing, Swing, Assistant District Officer (Tai Po), 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 22 May 2015. Ms CHENG Tai-ngar, Dorothy, Acting Senior Assistant Solicitor General of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO (Legal) on 20 May 2015 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 28 May to 12 June 2015, was published in the Gazette on 22 May 2015.

Nominations

2.3 By the close of the two-week nomination period on 10 June 2015, the RO received a total of four nominations. Out of them, three nominations were determined as valid by the RO. The nominees were

Mr HO Man-kit, Mr LO Hiu-fung and Mr KWOK Wing-kin. 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 19 June 2015.

Briefing for the Candidates

2.4 Mr Justice FUNG Wah, Barnabas, the EAC Chairman, held a briefing session for the three validly nominated candidates on 12 June 2015 at the Tai Po 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	Mr HO Man-kit
2	Mr LO Hiu-fung
3	Mr KWOK Wing-kin

A total of 108 spots in the San Fu Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated 36 designated spots.

EAC Guidelines on Election-related Activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election updated in September 2012 (“the Guidelines”) were applicable to this By-election. The Guidelines were available at the website of the EAC (<http://www.eac.gov.hk>) for reference during the election period.

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. Two half-day briefing sessions on polling and counting duties for the dedicated polling stations (“DPSs”) and polling-cum-counting stations were conducted on 8 and 9 July 2015 respectively to familiarise all the staff concerned with their duties.

The Polling-cum-counting Stations

3.2 In view of the large area of the San Fu Constituency, the CEO designated two ordinary polling stations (“OPSs”), one at Law Ting Pong Secondary School and the other at Norwegian International School, to facilitate electors to cast their votes. The CEO also designated Law Ting Pong Secondary School as the main and dominant counting station for the By-election, where the votes cast therein and in the DPSs were to be mixed and counted and where the result of the election was to be announced. The OPS at Law Ting Pong Secondary School was 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 inside the counting zone.

Dedicated Polling Stations

3.4 To enable registered electors of the San Fu 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 18 July 2015, a total of five registered electors of the San Fu Constituency would be in their custody in three penal institutions on the polling day. Subsequently, a DPS was set up in each of these penal institutions. Owing to security considerations, the polls at these three 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 Sheung Shui Divisional Police Station for registered electors of the San Fu Constituency who were remanded or detained on the polling day by law enforcement agencies (“LEAs”) (other than the CSD) including the Police, 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 Sheung Shui Divisional 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 DPSs, such votes were transferred to the Main Counting Station (“MCS”) at the Law Ting Pong 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 OPSs, the DPSs and the counting stations was published in the Gazette on 26 June 2015. 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 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 The PRO of each DPS was supported by an APRO and/or a Polling Officer. The PROs delivered, under the escort of the Police, the sealed ballot boxes to the MCS at the Law Ting Pong 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 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 San Fu Constituency on 6 July 2015 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 onto the EAC’s website. To assist persons with visual impairment to read the contents of candidates’ election

platform, candidates were encouraged to provide a typed text version of their election platforms for uploading onto the EAC's website. It was noted that one of the candidates had heeded the advice to provide a typed text version.

Publicity

3.12 The REO issued press releases covering the major events of the By-election, which included the nomination period, the number of nominations received, names of the validly nominated candidates, the poll, the count, the setting up of DPSs, electors' turnout rates and visits of the EAC 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 onto 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), fallback arrangements were made with the venue management of the polling stations to reserve the same venues for the following Sunday (i.e. 26 July 2015). 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 urgent

transportation needs.

Section 4 – The Poll

Polling Hours

4.1 The polling hours for the OPSs at the Law Ting Pong Secondary School and Norwegian International School and the DPS at the Sheung Shui Divisional Police Station were from 7:30 a.m. to 10:30 p.m. on 19 July 2015. 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 26 June 2015.

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 Law Ting Pong Secondary School from 7:00 a.m. on the polling day until 12:45 a.m. on 20 July 2015.

4.3 A media enquiry hotline was set up from 7:30 a.m. on 19 July 2015 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 the Kowloonbay International Trade & Exhibition Centre.

4.4 A complaint centre was set up at the REO office at the 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 Tai Po 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 immediate action against unauthorised EAs and illegal canvassing activities in or around the NCZ.

4.6 The Police rendered assistance in maintaining the law and order inside the polling-cum-counting stations as well as the NCZ/NSZ. Police officers were also stationed at the DPS at the Sheung Shui Divisional Police Station to provide support to the PRO whenever required.

Turnout of Electors

4.7 Out of 8,649 registered electors of the San Fu Constituency, 3,680 cast their votes in the respective polling stations. The overall turnout rate was 42.55%. The hourly turnout rates are shown in **Appendix II**.

Visits

4.8 Mr Justice Fung, the EAC Chairman and Mr Arthur Luk, EAC Member, observed the polling process at polling stations in the morning of the polling day. Mr Justice Fung visited the DPS at the Pik Uk Prison. Mr Luk paid a visit to the DPS at the Sheung Shui Divisional Police Station and then the OPS at the Norwegian International School. After that, they visited the OPS at the Law Ting Pong Secondary School together and conducted a briefing for the press on the latest progress of the poll.

Section 5 – The Conversion

5.1 The poll at the OPSs at the Law Ting Pong Secondary School and Norwegian International School and the DPS at the Sheung Shui Divisional Police Station closed at 10:30 p.m. while that at the DPSs at the three penal institutions closed at 4:00 p.m. as scheduled.

5.2 The PROs of the DPSs sealed the respective ballot boxes at the close of poll with either a police officer or an officer of the CSD present as the witness. Under the escort of the Police, the PROs delivered the sealed ballot boxes to the MCS at the Law Ting Pong Secondary School.

5.3 Regarding the OPSs at the Law Ting Pong Secondary School and Norwegian International School, after the close of poll, the PRO of each OPS sealed the ballot box in the presence of the candidates or their agents who were present at the station. At the same time, 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 stations concerned were also shown on the notice to facilitate communication between the candidates/agents and the station staff.

5.4 When the conversion of the stations was nearing completion, 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. The conversion of both stations was completed

within 40 minutes.

5.5 Mr Justice Fung, the EAC Chairman and Mr Arthur Luk, EAC Member were present at the polling stations at the Law Ting Pong Secondary School and Norwegian International School respectively to observe the conversion. They were satisfied that the conversion of the polling stations into counting stations was smooth.

Section 6 – The Count

Start of the Count

6.1 At about 11:10 p.m., the counting stations at the Law Ting Pong Secondary School and Norwegian International School 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 MCS at the Law Ting Pong Secondary School, the first ballot box was jointly emptied by Mr Justice Fung, EAC Chairman, the RO and the PRO concerned. The PRO also unsealed the ballot box received from each DPS, verified the numbers of ballot papers contained therein against the ballot paper accounts of the respective DPSs and mixed them with those of the polling station at the Law Ting Pong Secondary School before counting of votes. As for the counting station at the Norwegian International School, the first ballot box was jointly emptied by Mr Arthur Luk, EAC Member and the PRO concerned. The count then commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 3,680 ballot papers issued, 26 ballot papers were determined as invalid (including 22 unmarked and 4 containing votes for more than one candidate). These 26 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg.

6.3 In addition, 23 ballot papers were identified as questionable. In the presence of the candidates and their agents, the PROs concerned, with the assistance of the ARO (Legal), examined carefully the questionable ballot papers to determine their validity. A total of 19 questionable ballot papers were ruled valid by the PROs and were counted. The remaining 4 questionable ballot papers were ruled invalid by the PROs and were not counted. The total number of ballot papers not counted was 30. 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 made known the counting results to the candidates and their agents who were present at the counting zones and received no request for re-count. The PRO of the counting station at the Norwegian International School then reported the counting result to the PRO of the dominant counting station at the Law Ting Pong Secondary 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. The RO informed the candidates and their agents the overall counting results.

6.5 As there was no request for re-count, the RO declared the election result at about 12:30 a.m. on 20 July 2015.

Mr KWOK Wing-kin was elected with 1,392 valid votes, representing 38.14% of the total number of 3,650 valid votes cast. As regards the other candidates, Mr HO Man-kit received 1,147 votes and Mr LO Hiu-fung received 1,111 votes. The election result for the San Fu Constituency was published in the Gazette on 24 July 2015 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 28 May 2015, and ended 45 days after the polling day on 2 September 2015. 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 78 complaints were received from members of the public by the five complaints-handling parties, including 36 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 36 complaints received on the polling day by the EAC, 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 and illegal canvassing in the NCZ/NSZ. A breakdown of the complaints received on the polling day is at **Appendix VI**.

Outcome of Investigation

7.4 Of the 78 complaints received during the complaints-handling period, 44 were found substantiated, 33 unsubstantiated and 1 under investigation.

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.

8.2 The 2015 Voter Registration ("VR") Exercise was launched in May 2015. This By-election was held on 19 July 2015, shortly after the deadline for submission of new application for VR, i.e. 2 July 2015. As the By-election was conducted before the publication of the 2015 Final Register ("FR"), only electors who belonged to the San Fu Constituency and were included in the 2014 FR would be eligible to vote in the By-election. It was noted that a small number of people who had only applied for registration as electors of the Constituency in the 2015 VR Cycle attended the polling stations under the wrong impression that they would be eligible to cast vote in the By-election. After checking against the 2014 FR, the polling staff explained to such persons the current voter registration arrangements and why they have yet to be included in the FR and were not eligible to vote in the By-election.

8.3 Where a vacancy has arisen in the elected seats of a DC, a by-election should be held as soon as practicable to return a candidate to fill the vacancy. Determination of the polling date would depend on when the vacancy has arisen and a number of operational factors. In the present case where the existence of the vacancy was gazetted in late April, the polling date of the by-election was scheduled for mid July after taking

into account operational factors.

8.4 Whilst one may argue that it would be better for the By-election to avoid the period from the VR deadline up to publication of the FR of the year, in order to minimise confusion to persons who have newly applied for registration, it was impracticable to do so in the present case. The polling date of the By-election, if held after the publication of the 2015 FR in late September, would unavoidably fall within the four-month period preceding the end of the current term of office of the elected DC members (i.e., from September to December 2015) during which, as stipulated under section 33(2) of the DCO, no DC by-election was to be held. For this reason, the EAC appreciates that confusion is quite inevitable and polling staff have tried their best to deal with the situation. Indeed, the arrangement for holding the By-election before publication of the 2015 Provisional Register (“PR”) has gone a long way towards keeping any such confusion to a possible minimum because newly registered electors included in the 2015 PR would not be entitled to vote in the By-election. In the future, if a similar situation arises, the REO may consider enhancing the publicity efforts to remind the public that electors who are eligible to vote in a by-election would each receive a poll card from the REO and anyone who is not certain about his/her voting eligibility should ascertain their voting eligibility through the Online Voter Information Enquiry System or the REO Hotline beforehand.

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

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Leisure and Cultural Services 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.