

Section 1 – Background

Cause of the By-election

1.1 In accordance with section 32(1) of the District Councils Ordinance (Cap. 547) (“DCO”), the Director of Home Affairs declared by notice in the Gazette on 7 December 2018 that the office of Mr CHONG Wing-charn Francis, an elected member of the Yau Tsim Mong District Council (“DC”) Tai Nan Constituency who passed away on 21 November 2018, had become vacant pursuant to section 26(a) of the DCO.

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 an elected member to fill the vacancy in the Tai Nan Constituency of the Yau Tsim Mong DC.

The Constituency

1.3 The Tai Nan Constituency is one of the 19 DC constituencies in the Yau Tsim Mong District, with a registered electorate of 7 257. A map showing the area of the Constituency is in **Appendix I**.

The Polling Day and the Nomination Period

1.4 A notice of the 2019 Yau Tsim Mong DC By-election for the Tai Nan Constituency (“By-election”) was published in the Gazette on 18 January 2019. It specified 24 March 2019 (Sunday) as the polling day and the period from 8 February to 21 February 2019 (both dates inclusive) as the nomination period of the By-election.

Section 2 – Appointments and Nominations

Appointments

2.1 Mrs ARON Laura Liang, JP, District Officer (Yau Tsim Mong) was appointed by the EAC Chairman as the Returning Officer (“RO”) for the By-election, and Miss PONG Kin-wah Katherine, Assistant District Officer (Yau Tsim Mong)² was appointed as the Assistant Returning Officer (“ARO”). Their appointments, which were post-tied, were published in the Gazette on 18 January 2019. Ms CHENG Tai-ngar Dorothy, Acting Senior Assistant Solicitor General and Mr KWONG Yu-hang Elvin, Government Counsel of the Department of Justice (“DoJ”), were also appointed by the EAC Chairman on 2 January 2019 as the AROs (Legal) for the By-election.

2.2 Mr WONG Ching-yue, Senior Counsel, was appointed to serve on the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the By-election to provide the RO with legal advice as and when required as to whether a particular candidate is eligible to be, or disqualified from being, nominated as a candidate at the By-election. Mr WONG’s appointment, covering the period from 8 February to 25 February 2019 (both dates inclusive), was published in the Gazette on 18 January 2019.

Nominations

2.3 The two-week nomination period ended on 21 February 2019, and the RO received a total of two nominations. All these nominations were determined as valid by the RO. The nominees were Mr LEE Kwok-kuen and Ms LI Sze-man. The NAC(DC) did not receive any request from the RO for legal advice on the validity of nomination. The names of the two validly nominated candidates were published in the Gazette on 1 March 2019.

Briefing for the Candidates

2.4 Mr Justice FUNG Wah Barnabas, the EAC Chairman, held a briefing session for the validly nominated candidates at the Committee Rooms I to III on 1/F, Queen Elizabeth Stadium, Wan Chai on 26 February 2019. The Chief Electoral Officer (“CEO”) and representatives of the DoJ, the Independent Commission Against Corruption (“ICAC”) and Hongkong Post also attended the briefing session. The EAC Chairman drew the attention of the candidates and their agents to the major provisions in the relevant electoral legislation and guidelines and the need for strict compliance with them. He also explained to the candidates the important points to note when conducting electioneering activities, including mainly polling and counting arrangements, appointment and roles of various types of agents, requirements relating to election advertisements (“EAs”) and election expenses, and the importance of protection of electors’ privacy when

using their personal information in electioneering activities. The representatives of the ICAC and Hongkong Post also briefed the attendees respectively on the provisions in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) and the requirements and arrangements of the free postage service for election mails.

2.5 Before 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 the display of EAs. The result of the lots drawing was as follows:

Candidate Number	Name of Candidate
1	Mr LEE Kwok-kuen
2	Ms LI Sze-man

A total of 56 spots in the Tai Nan Constituency were designated for the display of EAs by candidates during the election period, and each candidate was allocated 28 designated spots.

The EAC Guidelines on Election-related Activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election (“the Guidelines”) issued by the EAC in September 2015 were applicable to the By-election. The EAC also

included supplementary information to the Guidelines in January 2019, setting out the latest legislative changes and electoral arrangements concerned which were applicable to the By-election for reference and compliance by candidates and relevant parties. The Guidelines and the supplementary information were available at the EAC website (<https://www.eac.hk>) for browsing and downloading. They were also available at the Registration and Electoral Office (“REO”) during the election period.

Section 3 – Preparation Work

Appointment and Training of Polling/Counting Staff

3.1 The polling and counting duties of the By-election were performed by staff of the REO. On 7 March 2019, the REO held a polling management training session for the Presiding Officers (“PROs”), Deputy Presiding Officers (“DPROs”) and Assistant Presiding Officers (“APROs”) in order to enhance the quality of management of polling stations. The training covered topics such as the key provisions under the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) (“EAC (EP) (DC) Reg”), quality polling service, complaints handling and crisis management. In addition, two half-day briefing sessions on polling and counting duties were also conducted on 7 and 8 March 2019 respectively for staff of the ordinary polling station (“OPS”) and dedicated polling stations (“DPSs”) to familiarise themselves with their duties. Moreover, a half-day workshop was organised on 18 March 2019 for staff responsible for vote counting to take part in a mock counting exercise so as to familiarise themselves with the counting procedures.

The Polling-cum-counting Station

3.2 The CEO designated the Fresh Fish Traders’ School as the only OPS for the By-election, and as the Main Counting Station (“MCS”) where the votes cast thereat and at the DPSs would be mixed and counted.

The counting result of the election would also be announced there. The OPS was accessible to electors with mobility difficulties.

3.3 The OPS 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 press area and a public area where members of the public might observe the count. Candidates and their election/counting agents were allowed to enter the counting zone to observe the count around the counting tables.

Dedicated Polling Stations

3.4 To enable registered electors of the Tai Nan Constituency who were imprisoned or remanded by the Correctional Services Department (“CSD”) to cast their votes on the polling day, DPSs were set up at penal institutions for the By-election by the REO. According to the information provided by the CSD on 23 March 2019, a total of six registered electors of the Tai Nan Constituency were in their custody at three penal institutions on the polling day. Therefore, a DPS was required to be set up at each of these three penal institutions. Owing to security considerations, the polls at the DPSs were conducted from 9:00 a.m. to 4:00 p.m.

3.5 On the polling day, the REO also set up a DPS at the Cheung Sha Wan Police Station for registered electors of the Tai Nan 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 their votes. Since the LEAs might arrest persons who happened to be registered electors of the Constituency during the polling hours on the polling day, the polling hours for the DPS at the Cheung Sha Wan Police Station were the same as those of the OPS, i.e. from 7:30 a.m. to 10:30 p.m. 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 therein were specially designed.

3.6 To protect the secrecy of the votes cast at the DPSs, such votes were transferred to the MCS at the Fresh Fish Traders’ School and mixed with the ballot papers cast at that station before commencement of vote counting procedures in accordance with section 76 of the EAC (EP) (DC) Reg.

3.7 The designation of the aforesaid venues as polling and counting station, DPSs and MCS was published in the Gazette on 1 March 2019. 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 PROs of the DPSs concerned in accordance with the relevant electoral regulation.

Polling and Counting Arrangements

3.8 During the polling hours, the PRO of the OPS, with the assistance of the DPROs and APROs, was responsible for ensuring the smooth operation of the polling station. The PRO also 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 assisted by an APRO and/or a Polling Officer. After the close of poll, the PROs locked and sealed the ballot boxes, and delivered them to the MCS set up at the Fresh Fish Traders' School under the escort of the Police.

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 unobstructed access to the polling stations. A notice was put up at a conspicuous spot outside each polling station, showing the areas of the NCZ and NSZ.

Poll Cards to Electors

3.11 On 8 March 2019, the REO sent a poll card to each registered elector of the Tai Nan Constituency who was eligible to vote in the

By-election, notifying the electors of the date and 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 Guide on Voting Procedure (including information on “Documents Required for Collecting Ballot Paper”) and a leaflet on clean and fair elections produced by the ICAC. The “Introduction to Candidates”, which included the candidates’ election platforms, was also uploaded onto the EAC website. To assist persons with visual impairment in reading the contents of candidates’ election platforms, the REO appealed to candidates to provide a typed text version of their messages to be included in the “Introduction to Candidates” for uploading onto the EAC website. The two candidates in the By-election heeded the advice and provided 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 and information related to the nominations received, the setting up of OPS and DPSs, voter turnout rates, visits of the EAC to the polling station and counting station, and the election result. Besides, all relevant information on the By-election (including press releases, hourly voter turnout rates, election result, etc.) was uploaded onto the EAC website for public information.

Contingency Plan

3.13 To cater for unforeseen situations (such as inclement weather conditions) under which the By-election could not be held as scheduled, fallback arrangements were made by the REO with the venue management of the polling stations to reserve the same venues for the following Sunday (i.e. 31 March 2019). Besides, a reserve polling station was set up on the polling day, and extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture and electoral forms, etc.) were put in reserve. A lorry 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 OPS at the Fresh Fish Traders' School and the DPS at the Cheung Sha Wan Police Station were from 7:30 a.m. to 10:30 p.m. on the polling day. The polling hours for the DPSs at the 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 1 March 2019.

Logistical Arrangements

4.2 A central command centre was set up by the REO on the polling day to oversee the operation of the poll and to provide logistical support to staff in the polling stations. The centre was also tasked with the dissemination of statistical information such as the hourly voter turnout rates, the election result, and the number of complaints received. The centre operated at the Fresh Fish Traders' School from 7:00 a.m. on the polling day until the announcement of the election result.

4.3 To ensure prompt response to telephone enquiries from the public about the eligibility to vote and general electoral arrangements, and to render assistance to polling staff in ascertaining the eligibility of electors on voting so as to enhance the smooth operation of polling stations, an election enquiry hotline operating from 7:00 a.m. to

11:00 p.m. was set up by the REO on the polling day at its office at the Kowloonbay International Trade and Exhibition Centre. The majority of enquiries received on the polling day were related to eligibility on voting. Besides, a media enquiry hotline was set up from 7:30 a.m. on the polling day until the announcement of the election result for handling media enquiries and disseminating relevant information of the By-election to the public through the media.

4.4 A complaints centre was set up at the REO office at the Harbour Centre to receive and handle election-related complaints. It was manned by 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 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 the significant events occurred at the polling stations, and assisted in handling election-related complaints. Under the direction of the district command centre, a district team would take immediate action against the unauthorised display of EAs and the conduct of illegal canvassing activities in or around the NCZs.

4.6 The Police rendered assistance in maintaining law and order inside the NCZs/NSZs and the polling/counting stations. Police officers were also stationed at the OPS at the Fresh Fish Traders' School and the

DPS at the Cheung Sha Wan Police Station to readily provide support to the PROs.

Turnout of Electors

4.7 In the By-election, 2 495 of the 7 257 registered electors of the Tai Nan Constituency cast their votes. The overall turnout rate was 34.38%. The hourly voter turnout rates of the By-election are shown in **Appendix II**.

Visit to Polling Station

4.8 Mr Justice FUNG Wah Barnabas, the EAC Chairman together with Mr LUK Yee-shun Arthur and Professor CHEUNG Mui-ching Fanny, EAC Members, visited the OPS at the Fresh Fish Traders' School in the morning of the polling day and conducted a media briefing on the latest progress of the poll and answered questions from the media.

Section 5 – Setting-up of Counting Station

5.1 The poll at the OPS at the Fresh Fish Traders' School and the DPS at the Cheung Sha Wan Police Station closed as scheduled at 10:30 p.m., while the poll at the DPSs at the three penal institutions closed at 4:00 p.m.

5.2 The PROs of the DPSs locked and sealed the ballot boxes in the presence of a police officer or an officer of the CSD after the close of poll. Under the escort of the Police, the PROs delivered those ballot boxes to the MCS at the Fresh Fish Traders' School.

5.3 Regarding the OPS set up at the Fresh Fish Traders' School, after the close of poll, the PRO of the OPS locked and sealed the ballot boxes in the presence of election/polling agents at the polling station. At the same time, the polling staff displayed a notice at the entrance of the polling station, notifying the public of the close of poll and the closure of the polling station for its conversion into a counting station. The notice also contained the telephone number of the polling station concerned to facilitate communication between the candidates or their agents and the polling staff.

5.4 When the conversion of the polling station into counting station was nearing completion, the counting staff displayed another notice outside the counting station, announcing the approximate time when the counting station would be open for the public to observe the count. The

conversion of the counting station was completed within 35 minutes.

5.5 Mr Justice FUNG, the EAC Chairman, and Mr Arthur LUK and Professor Fanny CHEUNG, EAC Members were present at the polling station at the Fresh Fish Traders' School to observe the conversion, and were satisfied that the conversion process as a whole was smoothly completed.

Section 6 – The Count

Start of the Count

6.1 At 11:05 p.m. on the polling day, the counting station at the Fresh Fish Traders' School 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 put the locked and sealed ballot boxes onto the counting tables. The PRO then unsealed the ballot boxes. The first unsealed ballot box was jointly emptied by Mr Justice FUNG, the EAC Chairman, and Mr Arthur LUK and Professor Fanny CHEUNG, EAC Members as well as the PRO. The PRO then unsealed the ballot box received from each DPS, counted the numbers of ballot papers contained therein and verified the numbers against the ballot paper accounts of the respective DPSs, and then mixed them with those of the polling station at the Fresh Fish Traders' School. The count then commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of the 2 495 ballot papers issued by all the polling stations, 10 ballot papers were considered to be clearly invalid. These invalid ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg.

6.3 In addition, 27 ballot papers were identified as questionable ballot papers. In the presence of the candidates and/or their agents, the PRO, with the assistance of the ARO (Legal) whenever required, carefully examined the questionable ballot papers to determine their validity. A total of 19 questionable ballot papers were ruled valid by the PRO and were counted. The remaining 8 questionable ballot papers were ruled invalid by the PRO and were not counted. Overall speaking, the total number of ballot papers in ballot boxes that were not counted (including ballot papers that were clearly invalid and those determined by PRO as invalid) was 18. A summary of the ballot papers concerned is in **Appendix III**.

Election Result

6.4 Upon completion of the count, the PRO verified the number of ballot papers counted at the counting station with the ballot paper accounts. The figures were found tallied. The PRO made known the counting result to the candidates and/or their agents who were present at the counting zone and received no request for re-count.

6.5 As there was no request for re-count, the RO declared the election result at 12:45 a.m. on 25 March 2019: Ms LI Sze-man was elected with 1 343 valid votes, representing 54.22% of the total number of 2 477 valid votes cast. The number of votes given to the other candidate, Mr LEE Kwok-kuen was 1 134. The election result for the By-election was published in the Gazette on 29 March 2019 and is now

reproduced in **Appendix IV**.

Section 7 – Complaints

Complaints-handling Period

7.1 The complaints-handling period for the By-election started from the commencement of the nomination period on 8 February 2019 and ended on 8 May 2019 (i.e. 45 days after the polling day). During the complaints-handling period, a total of five different parties were designated for handling and processing complaints. They were the EAC, the RO, the Police, the ICAC and the PROs (who discharged duties on the polling day only). Complainants could lodge their complaints with any of the above parties.

7.2 As at the end of the complaints-handling period, a total of 65 complaints were directly received from the public by the aforesaid five parties, including 50 complaints received on the polling day. The majority of these complaints concerned the unauthorised display of EAs and nuisance to electors caused by the electioneering activities. A breakdown of the complaints received during the complaints-handling period by the receiving parties and their nature is shown in **Appendix V**.

Complaints Received on the Polling Day

7.3 A total of 50 complaints were received by the EAC, the RO, the Police, the ICAC and the PROs on the polling day. The majority of the complaints received on the polling day were expeditiously resolved on the spot, such as the unauthorised display of EAs and nuisance to electors caused by the electioneering activities. A breakdown of the complaints received on the polling day and their nature is shown in **Appendix VI**.

Outcome of Investigation

7.4 Of the 65 complaints received during the complaints-handling period, 31 were found substantiated, 1 partially substantiated, 8 unsubstantiated, 23 required no further action, and 2 still under investigation.

Section 8 – Review and Recommendations

8.1 The EAC considers that the By-election was conducted in an open, fair and honest manner, and is generally satisfied with the electoral arrangements. In line with the established practice, the EAC has conducted a comprehensive review on the electoral procedures and arrangements of the By-election with a view to improving the arrangements of future elections. The EAC's review findings and the related recommendations are set out in the ensuing paragraphs.

Candidate wilfully staying in the NCZ

8.2 According to section 43 of the EAC (EP) (DC) Reg, a person must not engage in canvassing votes in a NCZ on the polling day. Section 44 stipulates that the PRO must make his/her endeavours to ensure that a person does not engage in the canvassing of votes in the NCZ. If any person fails to obey a lawful order of the PRO in a NCZ, the PRO may order the person to leave the NCZ immediately.

8.3 Besides, according to the Operational Manual for polling staff issued by the REO, the PRO is required to arrange polling staff to patrol the NCZ at hourly intervals. If any violation of the requirements in respect of the NCZ is noticed by the polling staff, it should be reported to the PRO immediately.

8.4 As in the past, the EAC Chairman conducted a briefing session for candidates after the nomination period. Candidates and their agents were reminded of the major provisions of the relevant electoral legislation and the Guidelines. As for the requirements in respect of the NCZ, the EAC Chairman emphasised that no canvassing activities or disguised conduct for the canvassing of votes, such as nodding, smiling or greeting electors are allowed within the NCZ.

8.5 In the morning of the polling day, polling staff patrolling the NCZ noticed that a candidate and his/her agent(s) had been standing in the NCZ outside the polling station entrance for considerable time. As the EAC Chairman has reminded candidates that no canvassing activities or disguised conduct for the canvassing of votes are allowed within the NCZ, the polling staff concerned made a report to the PRO accordingly. The PRO immediately went there upon receipt of the report and advised the candidate and agent(s) concerned to leave the area. However, they said that they would not leave the NCZ because they were not canvassing votes at the time. In view of this and having consulted legal advice, the PRO considered that although the candidate and agent(s) concerned were not actively canvassing for votes (e.g. talking to electors, making signals to electors, etc.), and that they had denied any vote canvassing, given that electors would certainly see the candidate and agent(s) concerned when entering the polling station, and that they had been staying in the NCZ without reasonable grounds for considerable time, their staying was obviously canvassing activities in disguise which was in contravention of the rules of the NCZ. On such basis, the PRO requested them to leave

the area immediately, and they did so accordingly.

8.6 **Recommendation:** Section 43 of the EAC (EP) (DC) Reg stipulates that a person must not engage in canvassing activities in a NCZ on the polling day. Since the incident took place in the NCZ outside the polling station, having regard to the circumstances at the time and the legal advice obtained, the PRO was of the view that the act of staying wilfully in the NCZ on the part of the candidate and agent(s) concerned would affect the electors going to the polling station and constitute vote canvassing. Therefore, the PRO requested the candidate and agent(s) concerned to leave the area. The EAC considers that the PRO has discharged his/her duties in accordance with the statutory provisions with a view to ensuring that no one has conducted canvassing activities in the NCZ. It is sound for the PRO to request the persons concerned to leave. The EAC appeals to candidates to refrain from conducting any canvassing activities in the NCZ, such as deliberately staying or loitering, smiling or showing goodwill to electors, etc. To further remind the candidates and their supporters of the relevant legislative requirements, the EAC will specify clearly in the Guidelines that candidates deliberately stay or loiter in the NCZ and show goodwill to electors will constitute vote canvassing and also contravene the relevant legislation. On the other hand, the REO should also incorporate the said reminder in the “Candidate Folder”.

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

Lands Department

Leisure and Cultural Services Department

Marine Department

Official Receiver's Office

Social Welfare Department

Transport Department

9.3 The EAC is grateful for the efforts of all government officers serving as the RO, AROs, PROs, DPROs, APROs and those who assisted in performing the polling and counting duties, and the Senior Counsel serving on the NAC(DC) in the By-election.

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

9.5 The EAC would also like to thank the media who helped enhance the transparency of the By-election by giving it wide coverage.

9.6 Finally, the EAC would 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 the Guidelines in the By-election.

Section 10 – Looking Forward

10.1 The EAC remains committed to fulfilling the mission of safeguarding the fairness and 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.