

Section 1 – Background

Cause of the by-election

1.1 A vacancy arose in the membership of the Southern District Council (“DC”) on 2 August 2004 when Mr MIU Wah-chang, an elected member of the Tin Wan constituency of this DC, was disqualified from holding his office as a member of the Southern DC for the rest of his term in accordance with section 24(1)(d)(iv) of the District Councils Ordinance (Cap 547) (“DCO”), after having been convicted of omitting a material particular from an election related document in connection with the 2003 DC Election under section 104(1) and (3) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (“EAC (EP) (DC) Reg”) and section 7 of the Electoral Affairs Commission Ordinance (Cap 541) (“EACO”).

1.2 Pursuant to section 32(1) of the DCO, the Director of Home Affairs declared the existence of the vacancy by a notice published in the Gazette on 20 August 2004.

1.3 In accordance with section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC” or “the Commission”) was required to conduct a by-election to return a candidate to fill this vacancy (“the by-election”).

The Constituency

1.4 The Tin Wan constituency is one of the 17 DC constituencies in the Southern District, with a registered electorate of 9,304. A map showing the boundary of this constituency is at **Appendix I**.

The polling day and the nomination period

1.5 The Chief Electoral Officer (“CEO”) published a notice in the Gazette on 24 September 2004, appointing 21 November 2004 as the polling day of the by-election and specifying the period from 7 to 20 October 2004, both dates inclusive, as the nomination period.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr LAU Kwok-choi, JP, the District Officer (Southern) (“DO(Southern)”), was appointed as the Returning Officer (“RO”) and Mr LEE Kwok-hung, Damian, the Assistant District Officer (Southern), as the Assistant RO (“ARO”). Their appointments were made by the EAC Chairman and published in the Gazette on 24 September 2004. Ms Dorothy CHENG, a Senior Government Counsel of the Department of Justice (“D of J”), was appointed by the EAC Chairman as the ARO(Legal) on 8 October 2004.

2.2 Mr Lawrence LOK Ying-kam, SC, was appointed by the EAC Chairman as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the by-election to provide the RO with legal advice, as and when necessary, on the eligibility of the candidates nominated. Mr Lok’s appointment covered the period from 7 to 22 October 2004 and was published in the Gazette on 24 September 2004.

Nominations

2.3 At the close of nomination, the RO received a total of six nominations. The nominees were Messrs KWAN Man-yau, CHAN Fu-ming, WONG Huk-kam, CHAN Pak-chuen, CHONG Yui and FUNG Wa-hing. These nominations were all verified by the RO as valid. As

the cases were not complicated, there was no need for the RO to request the NAC(DC) for legal advice on the validity of the nominations. Under section 2 of District Councils (Subscribers and Election Deposit for Nomination) Regulation (“DC Subscribers and Election Deposit Reg”), the amount of deposit lodged by or on behalf of a candidate in respect of his nomination as a candidate is \$3,000.

Briefing for the candidates

2.4 A briefing session, hosted by the EAC Chairman, was conducted for the six candidates and their agents on 23 October 2004 in the conference room of the Southern DC. In this session, the EAC Chairman briefed the candidates and their agents on the electoral arrangements of the by-election and the major provisions of the electoral legislation and guidelines. All candidates attended the briefing session in person. Also present at the briefing session were the CEO and RO, and representatives from the D of J, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post. These departmental representatives briefed the candidates and answered their questions 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 of the six candidates and to allocate the designated spots to the candidates for the display of their election advertisements (“EAs”). As a result, Messrs CHONG Yui, FUNG Wa-hing, WONG Huk-kam, CHAN Fu-ming,

KWAN Man-yau and CHAN Pak-chuen were allocated the candidate number 1, 2, 3, 4, 5 and 6 respectively. A total of 150 spots in the district were designated for the display of EAs during the election period and the six candidates were each allocated with 25 spots.

2.6 The RO published in the Gazette on 29 October 2004 the candidates' names, and their candidate numbers and principal residential addresses.

Revisions of the EAC's Guidelines

2.7 In line with the latest revisions in the EAC electoral guidelines on the Legislative Council ("LegCo") elections, the guidelines on the DC elections issued in September 2003 (in loose-leaf format) were amended and copies of the amendment sheets were produced and distributed to all parties concerned in early October 2004 before this by-election. The major amendments include –

- (a) the candidates to remove their EAs displayed on government land/property within ten days, instead of seven days, following an election or by-election;
- (b) a candidate, his election agent or counting agents not to touch any ballot paper at anytime;
- (c) clarification that materials published by any person,

including a candidate, for the purpose of prejudicing a candidate or candidates are treated as EAs, if reference could be made from the materials to identify the candidate(s) being prejudiced;

- (d) clarification on how election expenses should be counted for EAs prejudicing the election of a candidate;
- (e) a new provision to specify that for current affairs or other programmes on TV and radio which are not election-related, candidates may take part as guests in these programmes insofar as their participation is pertinent;
- (f) the RO to issue a notice to candidates requiring them to remove their EAs posted at private premises within the no canvassing zone on the polling day; and
- (g) the inclusion of a guidance note on safe conduct of election-related activities, a guidance note on personal data privacy in respect of electioneering activities, and the methods of folding of EAs for free postage as appendices to the guidelines.

Section 3 – Preparation Work

Appointment and training of polling/counting staff

3.1 In view of the relatively small scale of this election, it was not necessary to conduct a service-wide recruitment exercise. Instead, the staff of the Registration and Electoral Office (“REO”) assumed the polling and counting duties themselves. As usual, a series of in-house briefing sessions and mock polling and counting exercises were organised for them from 16 to 19 November 2004 in the REO’s conference room on 10/F Guardian House in Wan Chai.

The polling-cum-counting station

3.2 As in the previous by-elections and the 2003 DC Election, the same venue was used for the conduct of both the poll and the count. Because of the relatively large electorate in this constituency, two polling-cum-counting stations were set up for the convenience of the electors: one at the Caritas Aberdeen Social Centre (code: D1301) in Tin Wan, and the other at S.K.H. Tin Wan Chi Nam Primary School (code: D1302), also in Tin Wan. The designation of these places as the polling and counting stations was announced in the Gazette by the CEO on 29 October 2004. The S.K.H. Tin Wan Chi Nam Primary School was designated by the CEO as the dominant counting station, where the largest number of electors was to cast their votes and where the result of the poll was to be announced.

3.3 The stations were set up in the afternoon on the day preceding the polling day, ie 20 November 2004. For the layout of the station at S.K.H. Tin Wan Chi Nam Primary School, it was partitioned into two separate sections with wooden boards. One section was to be used as the polling station, furnished with voting compartments, ballot paper issuing desks and the polling staff's working tables. Polling activities were confined to this section. The other section was reserved as the counting station, where the counting tables and counting equipment were set up and markings were made on the floor to delineate the counting zone. An area in this section was also set aside for the Presiding Officer ("PRO") to determine questionable ballot papers. The counting station would not be opened until the poll had been closed. The other station at the Caritas Aberdeen Social Centre was relatively small and the entire place was delineated as a polling station during the poll. The whole area was converted into a counting station after the close of poll.

Notification to electors

3.4 The REO sent a poll card to each of the registered electors on 8 November 2004. In line with established practices, other information materials were sent together with this poll card, which included an introductory leaflet on the candidates, a guidance note on voting, a location plan of the polling station, a letter from the DO(Southern) appealing to the electors to cast their vote at the polling stations on the polling day and a pamphlet prepared by the ICAC on the need to ensure clean and fair elections.

Publicity

3.5 The REO issued press releases on the major events of this by-election, eg the EAC Chairman's briefing for the candidates, the poll, the count and the EAC and VIP visits to the station. These events were widely covered by the media. All the relevant information relating to the by-election was also displayed on the EAC and the REO websites for public browsing.

The contingency plan

3.6 To cope with any unforeseeable situations in which the by-election could not be proceeded with as scheduled for one reason or another, eg inclement weather conditions, the REO made arrangements with the management authorities of the two venues to reserve them for the same purpose on the Sunday following the polling day, ie 28 November 2004. There was also a reserve stock of ballot boxes, ballot papers and other electoral equipment.

Section 4 – The Poll

Polling hours

4.1 The polling hours were from 7:30 am to 10:30 pm. This was announced in the Gazette by the CEO on 29 October 2004.

Logistical arrangements

4.2 As in previous by-elections, a central command centre and an enquiry centre were set up in the REO's office on 13/F Guardian House on the polling day, operating from 7:00 am till the end of counting and manned by the REO staff. The set up of the central command centre served two purposes: (a) to oversee the operation of the poll and provide logistical support to the polling staff whenever necessary; and (b) to collate the relevant statistical information (eg the hourly electors' turnout rates, the number and types of complaints received by the various complaints-handling parties) for public information through the media. The enquiry centre operated an enquiry hotline for members of the public and provided support to the polling staff in respect of problematic cases in polling stations such as those relating to electors' entitlement to vote etc.

4.3 A district command centre, manned by staff of the Home Affairs Department ("HAD"), was set up at the Southern District Office as the contact point among the PROs and the RO. It was responsible for

keeping the RO and ARO informed of all significant events which occurred within the district and for handling election-related complaints received by the RO or cases referred from PROs or other complaints-receiving parties. A district team working under the direction of the district command centre was responsible for taking action against unauthorised EAs and illegal canvassing activities in the public area around the no canvassing zones outside the polling stations.

4.4 A complaints centre was set up in the REO's office on 10/F Harbour Centre to receive and process complaint cases lodged with the EAC direct and cases referred to the EAC by other complaints-handling parties, by phone or by fax. It was manned by the EAC secretariat staff operating from the start of the poll to the close of the poll.

4.5 The Police and the Civil Aid Service ("CAS") rendered assistance in maintaining law and order in the no canvassing zones, no staying zones and inside the stations.

The new arrangement

4.6 To address the concern on the illegal conduct of using mobile phones inside the polling stations during the poll, the Commission implemented new measures in the 2004 LegCo Election to tackle the issue. These measures were also adopted for this DC by-election and included –

- (a) more prominent signs were displayed outside and inside polling stations (including voting compartments) to remind electors that it was an offence for a person to use a mobile telephone, paging machine or any other device for electronic communication, or to film, take photographs or make any audio or video recording within a polling station without the express permission, in writing, of the PRO, RO or the EAC;
- (b) on issuing a ballot paper to an elector, the polling staff reminded the elector not to use mobile telephone or camera inside the polling station;
- (c) the curtain in front of the voting compartments was removed so that the polling staff, the candidates and their agents could observe whether the elector was using a mobile telephone or camera inside the voting compartment; and
- (d) an enlarged restricted zone (1.5 metres and 2 metres for the two polling stations respectively) was designated outside the voting compartments and no person would be allowed to enter or stay in the zone when an elector was marking the ballot paper inside the voting compartment, so that the elector's choice on the ballot paper would not be seen by other persons.

4.7 Moreover, to prevent the personal particulars (names and identity card numbers) shown on the electors' registers kept at the ballot paper issuing desks from being exposed to other electors, including the one standing behind the one waiting for the issue of ballot paper at the issuing desk, a restricted zone (0.5 metre and 1 metre for the two polling stations respectively) was delineated in front of the ballot paper issuing desks and a cardboard stand was placed at the front edge of the desks.

Turnout of electors

4.8 Of the 9,304 registered electors of the constituency, 3,976 turned up to cast their vote, 70 more than those who cast their votes in the 2003 DC ordinary election for the constituency. The turnout rate of this by-election was 42.73%. It was slightly lower than the overall 44.1% of the 2003 DC ordinary election, as well as the 44.35% for this constituency in that election. (The number of registered electors of the constituency in 2003 was 8,807.) A breakdown of the hourly turnout rates of the electors in this by-election is shown in **Appendix II**.

VIP visits

4.9 Mr Justice WOO, the EAC Chairman, Dr Elizabeth SHING, the member of the Commission, and Dr Norman LEUNG, the then Member, visited both polling stations in the morning on the polling day. They first visited the station at the Caritas Aberdeen Social Centre, arriving there at about 10:00 am. Then they proceeded to the station at

the S.K.H. Tin Wan Chi Nam Primary School at about 10:15 am. They found the polling arrangements at both stations satisfactory and observed that it was orderly both inside the stations and in the no canvassing zones outside. After the visit, they met the media outside the no staying zone of the S.K.H. Tin Wan Chi Nam Primary School. The Chairman informed the media that the Commission had visited both stations in the morning and they were satisfied with the polling arrangements.

4.10 Mr Stephen LAM, the Secretary for Constitutional Affairs (“SCA”), visited the polling stations at about 11:00 am on the polling day. He toured around the polling and counting areas and met the media after his visit.

Section 5 – The Conversion

5.1 At 10:30 pm, the poll closed and so were the entrances to the two polling stations. A notice was instantly put up at the entrance of each of the stations, notifying the members of the public and all other interested parties of the close of the poll and the temporary closure of the station to facilitate its conversion into a counting station. Before the counting of votes began, another notice was displayed outside each of the stations stating the approximate time when the station would be re-opened for admitting people to observe the count inside the station.

5.2 Meanwhile, inside the stations the PROs were sealing the ballot boxes in the presence of the candidates and their agents while the other polling staff were arranging for the place to be converted into a counting station. In less than 30 minutes the conversion process was completed in both stations. The candidates and their agents were allowed to stay in the polling stations while they were closed for the preparation of the count.

5.3 The polling team was re-deployed to carry out counting duties upon the completion of poll. The PRO was tasked to oversee the counting process.

5.4 The EAC Chairman and Dr Elizabeth SHING observed the entire conversion process in the station at the S.K.H. Tin Wan Chi Nam Primary School, the dominant counting station. They were satisfied with the way it was conducted.

Section 6 – The Count

Start of the count

6.1 At about 11:00 pm, both stations were re-opened to admit the media and members of the public to observe the count. In the presence of all those present, the PRO and Deputy PRO of each station moved their respective sealed ballot boxes to the counting table. In the dominant counting station, the PRO unsealed the ballot boxes which were jointly emptied by the EAC Chairman, Dr Elizabeth SHING, the SCA and the RO. The count then commenced. In the other counting station, it was the PRO that unsealed the ballot box and, with the Deputy PRO's assistance, emptied the box for the count to commence.

Invalid and questionable ballot papers

6.2 Of the 3,975 ballot papers cast into the ballot boxes in the two stations, 19 were determined as invalid right away and were not counted pursuant to section 78 of the EAC (EP) (DC) Reg. Another 15 were identified as questionable ballot papers. The PROs were responsible for determining the validity of questionable ballot papers. With the assistance of the ARO(Legal), the PROs, in the presence of the candidates and their agents, examined each of these 15 questionable ballot papers to determine their validity. As a result, one of the 15 questionable ballot papers was determined as invalid and therefore rejected; hence the total number of ballot papers not counted was 20. The other 14 questionable

ballot papers were determined as valid and accepted. An analysis of the ballot papers not counted (including those which were invalid, and the questionable one which was rejected by the PRO after consideration) is shown in **Appendix III**.

Election result

6.3 After counting the votes, the PROs verified the number of ballot papers so counted by comparing it with the ballot paper account. The ballot paper account figure was greater than the number of ballot papers counted for the polling station at S.K.H. Tin Wan Chi Nam Primary School by one. Experience from previous elections showed that such a small discrepancy was acceptable and not exceptional, as an elector might obtain a ballot paper from the issuing desk but, instead of marking it and casting it into the ballot box, take it away. The ballot paper account figure and the number of ballot papers counted for the polling station at the Caritas Aberdeen Social Centre tallied with each other.

6.4 The count at both stations finished at more or less the same time, around 12:20 am. The PRO of the other station informed her counterpart of the dominant station of the result of her count both over the phone and by fax. The PRO of the dominant station subsequently informed the RO of the results of the count conducted at both stations. Mr WONG Huk-kam, the candidate obtaining the second highest number of valid votes (1,170), raised a request for a re-count of all the votes in

the constituency. After consulting the ARO(Legal), the PRO did not accede to the request as the winning margin was too wide to warrant the necessity of a re-count. At about 12:30 am, the RO declared the election result: Mr CHAN Fu-ming was elected, with 1,423 valid votes, representing about 36% of the total number of valid votes cast (ie 3,955). Three of the candidates, ie Messrs CHONG Yui, FUNG Wa-hing and CHAN Pak-chuen, received 87, 91 and 19 votes respectively. Their election deposits were forfeited in accordance with section 4(2) of the DC Subscribers and Election Deposit Reg because the number of valid votes they each obtained was less than 5% of the total number of valid votes cast. The election result was published in the Gazette Extraordinary on 25 November 2004 and is now reproduced at **Appendix IV**.

Meeting the media

6.5 After the announcement of the election result, the EAC Chairman and Dr Elizabeth SHING met the media inside the station. The Chairman expressed their satisfaction with the polling-cum-counting arrangements in both stations and the relatively short time spent in completing the entire counting process and producing the election result. He remarked that the Commission was satisfied with the general arrangements made and that the Commission would continue to review these arrangements to look for improvements. He was also happy to see that the fair, open and honest principle was upheld as reflected from the way the by-election was conducted. The Chairman thanked all parties concerned for making the by-election successful.

Section 7 – Complaints

Complaints-handling period

7.1 As in previous by-elections, instead of forming a Complaints Committee as in ordinary elections, the Commission itself shouldered the responsibility of considering the complaint cases received in this by-election.

7.2 The period for receiving complaints commenced on 7 October 2004, when the nomination period started, and ended on 5 January 2005, ie 45 days after the polling day. During this period, the public lodged a total of 82 complaints (including the 66 cases received on the polling day as mentioned in paragraph 7.3 below) with the EAC, RO, PROs, Police and ICAC. Of these 82 cases, 27 concerned disturbances to electors caused by loudspeakers or telephone canvassing, 26 concerned illegal canvassing in no canvassing zone or no staying zone, and 15 concerned EAs. A breakdown of all complaint cases handled is detailed in **Appendix V**.

Complaints received on the polling day

7.3 During the poll, the REO's complaints centre, the RO, the PROs and the Police received altogether 66 complaint cases, while the ICAC received none. The following is a breakdown of these cases –

REO's complaints centre	:	11 cases
RO	:	50 cases
PROs	:	3 cases
Police	:	2 cases

7.4 All of these 66 cases were expeditiously handled, with 65 resolved on the spot. The other one, which concerned a complaint against a police officer over a dispute case, was received by the RO, who needed to take follow-up action after the polling day. Details of the cases are shown in **Appendix VI**.

Outcome of investigation

7.5 Of the 82 cases received during the complaints-handling period, 59 were found substantiated or partially substantiated and 20 were found not substantiated. The remaining three cases, one concerning false statement and two concerning bribery, were being investigated by the ICAC.

Section 8 – Review and Recommendations

8.1 After the by-election, the EAC, following the past practice, conducted an overall review of all aspects of the by-election to see whether there could be further improvements for future reference. The EAC found the polling and counting arrangements generally satisfactory.

(A) The polling-cum-counting arrangement

8.2 The Commission observed that the polling-cum-counting arrangement had been working smoothly in the 2003 DC ordinary election and all the DC by-elections held in 2003 and 2004, including this by-election. The count of this by-election took place simultaneously in two different venues and encountered no difficulties at all.

8.3 **Recommendation:** The EAC recommends that the polling-cum-counting arrangement be continued in future DC by-elections, in view of the successful implementation of such counting arrangement.

(B) The polling station at Caritas Aberdeen Social Centre

8.4 The Commission found that the area of the above polling station was relatively small, and in the event of a much higher voter turnout rate at a larger scale election, the station would become too over-crowded. The Commission also noted that the venue was selected

because it is easily accessible and located in the vicinity of a majority of electors' residence. There is no better alternative in the area at present.

8.5 **Recommendation:** If there is no other alternative venue in the proximity for the conduct of a large scale general election, consideration should be given to assigning some electors to the next nearest polling station in anticipation of a higher voter turnout.

Section 9 – Acknowledgement

9.1 The Commission wishes to extend its gratitude towards the following government bureaux and departments for their valuable assistance rendered throughout the by-election: the Constitutional Affairs Bureau, CAS, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Government Logistics Department, Highways Department, HAD, Hong Kong Police Force, Hongkong Post, ICAC, Information Services Department, Lands Department, Office of the Government Chief Information Officer (of the Commerce, Industry and Technology Bureau) and Official Languages Division (of the Civil Service Bureau). Each and every one of them contributed to make the by-election a success.

9.2 The Commission is particularly grateful for the devoted efforts of the REO staff, officers serving as the RO and AROs, and the legal practitioner serving on the NAC(DC) for the by-election.

9.3 The Commission wishes to thank the media for their wide coverage of the major events of the by-election.

9.4 Last but not least, the Commission would like to express its appreciation to the electors who turned up to cast their vote and all those who complied with the electoral legislation and guidelines during the election period.

Section 10 – Looking Forward

10.1 The imminent major task the EAC is now facing is the DC by-elections for the Fort Street Constituency of the Eastern DC and the Nam Cheong Central Constituency of the Sham Shui Po DC, both scheduled to be held on 6 March 2005, to be followed by the DC by-election for the Ap Lei Chau North of the Southern DC on 20 March 2005. Preparation work has already begun. The Commission will continue with its mission of ensuring that all public elections are conducted in an open, fair and honest manner. It will remain, as always, open to the views from the public on what measures should be taken to improve future electoral arrangements.

10.2 The Commission would like to recommend that this report be made public, at a time the Chief Executive thinks fit, to enable the public to know how the Commission performed its functions under the EACO in this by-election.