

Section 1 – Background

Cause of the by-election

1.1 A vacancy arose in the Jordan East Constituency of the Yau Tsim Mong District Council (“DC”) on 15 May 2008 upon the death of Mr Lau Chi-wing, an elected member of the constituency. Pursuant to sections 26(a) and 32(1) of the District Councils Ordinance (Cap 547) (“DCO”), the Acting Director of Home Affairs declared the existence of the vacancy by a notice published in the Gazette on 30 May 2008.

1.2 Pursuant to section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC”) was required to arrange for a by-election to return a candidate to fill the vacancy.

The Constituency

1.3 The Jordan East Constituency is one of the 16 DC constituencies in the Yau Tsim Mong District, with a registered electorate of 7,690. 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 5 October 2008 (Sunday) as the polling day for the by-election and specified the period from 14 to 27 August 2008 (both dates inclusive) as the nomination period of the by-election by publishing a notice in the Gazette on 4 July 2008.

Section 2 – Appointments and Nominations

Appointments

2.1 Mrs Kwok Wong Wing-ki, Vicki, JP, District Officer (Yau Tsim Mong) was appointed by the EAC Chairman as the Returning Officer (“RO”) for the by-election on 20 June 2008. Mr Fung Pan-chung, Chris, and Miss Lo Hau-wai, Alison, Assistant District Officer (Yau Tsim Mong) were appointed by the EAC Chairman as the Assistant Returning Officer (“ARO”) for the by-election for the period of 20 June 2008 to 9 September 2008 and 10 September 2008 onwards respectively. Their appointments were published in the Gazette on 4 July 2008. Ms Cheng Tai-ngar, Dorothy, Senior Government Counsel of the Department of Justice (“D of J”) was appointed by the EAC Chairman as the ARO(Legal) for the by-election on 20 June 2008.

2.2 Mr Ho Bing-kwan, Barrister-at-law, was appointed as the Nominations Advisory Committee (District Councils) (“NAC(DC)”) for the by-election to provide the RO with the necessary legal advice on the eligibility of the candidates being nominated. Mr Ho’s appointment, covering the period from 14 to 29 August 2008, was published in the Gazette on 4 July 2008.

Nominations

2.3 By the close of the two-week nomination period on 27 August 2008, the RO received a total of five nominations. The nominees were Mr Lau Wai-kwong, Ms Ng Po-shan, Austen, Mr Lung Wai-man, James, Mr Ip Ngo-tung, Chris, and Mr Li King-wah. All the nominations were confirmed valid by the RO. The NAC(DC) had not received any request from the RO for legal advice on the validity of the nominations. The names of all validly nominated candidates were published in the Gazette on 5 September 2008.

Briefing for the candidates

2.4 The EAC Chairman held a briefing session on 30 August 2008 at the Yau Tsim Mong District Office (“YTMDO”) to draw the attention of the candidates and their agents to the major provisions in the relevant electoral legislation and guidelines. Topics included polling and counting arrangements, requirements relating to election advertisements (“EAs”) and election expenses, appointment and roles of various types of agents and conduct of electioneering activities. The CEO, RO and representatives from the D of J, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post also attended the briefing. They took the opportunity to brief the candidates present and answer enquiries 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 to be shown on the ballot paper for each candidate and the designated spots to be allocated to the candidates for displaying EAs. As a result of the lots drawing, Mr Li King-wah, Mr Lau Wai-kwong, Mr Ip Ngo-tung, Chris, Ms Ng Po-shan, Austen and Mr Lung Wai-man, James were allocated the candidate number 1, 2, 3, 4 and 5 respectively. A total of 140 spots in the Jordan East Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated with 28 spots.

EAC Guidelines on election-related activities

2.6 With reference to the latest revisions in the EAC electoral guidelines for the Legislative Council Election made in July 2008, the guidelines for the District Council Election issued in September 2007 in loose-leaf format were revised with a view to refining the electoral arrangements for this by-election. The major changes are as follows:

- (a) clarifying that any EAs displayed by the candidates on Government land/property other than designated spots are unauthorised and will be removed, save those EAs displayed in connection with electioneering activities conducted on Government land/property with approval by the authorities concerned;

- (b) adding a deadline of one week after the allocation of designated spots for a candidate to relinquish his/her allocated spots to the RO for reallocation;
- (c) clarifying that the candidate should deposit two copies of printed EAs in original colours with the RO for the constituency prior to the display, distribution or otherwise use of such EAs;
- (d) adding that the requirements for free postage of EAs are provided for general reference only, and the candidates should comply with the latest requirements issued by the Post Office at the time of the election concerned;
- (e) including short message service (“SMS”) in the guidelines governing electioneering calls;
- (f) specifying that a publisher would likely contravene the relevant legislation if the requirements for publishing and distributing EAs are not complied with prior to distributing free publication which is considered to have the effect of promoting or prejudicing the election of a particular candidate/candidates; and
- (g) setting out additional measures to step up the control on the conduct of exit polls and enhance the transparency of the organisations or persons with approval to conduct the exit polls.

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. A half-day briefing session on polling and counting duties including a mock session on counting work was conducted on 29 September 2008 to familiarise all the staff concerned with their duties.

The polling-cum-counting station

3.2 The polling-cum-counting arrangement was adopted for this by-election. Jordan Road Government Primary School was designated by the CEO as the polling-cum-counting station for the by-election. Designation of the school as the polling-cum-counting station was published in the Gazette on 12 September 2008. The station was accessible to the disabled.

3.3 The polling station was set up in the morning of the day preceding the polling day. It was converted into a counting station after the close of poll. Within the counting area, there was 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 stand around the counting table to observe the count from a close distance.

3.4 During the polling hours, the Presiding Officer (“PRO”) of the polling station, assisted by one Deputy Presiding Officer (“DPRO”) and seven Assistant Presiding Officers (“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 DPRO and APROs performed the duties of Assistant Counting Supervisors.

3.5 Outside the polling station, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO to provide the electors with a hindrance-free access to the station. A notice was put up at a conspicuous spot outside the station, notifying the public of the delineation of the NCZ and the NSZ.

Notification to electors

3.6 The REO sent a poll card to each registered elector of the Jordan East Constituency on 22 September 2008 notifying him/her of the date, time and place of the poll. The poll card was sent together with other election-related materials, including the “Introduction to Candidates”, a guidance note on voting, a location map of the polling-cum-counting station 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 REO’s website.

Publicity

3.7 The REO issued press releases covering the major events of the by-election which included the commencement and the close of the nomination period, the poll, the count and the EAC visits to the polling and counting station. Besides, all relevant information on the by-election (including press releases, the hourly electors' turnout rate, election result, etc) was uploaded to the REO's website for public information.

Contingency plan

3.8 To cater for the unforeseen situations in which the by-election might not be held as scheduled (such as inclement weather conditions), fall back arrangements were made with the venue management of the polling-cum-counting station to reserve the same venue on the following Sunday on 12 October 2008. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc) was put in reserve. A dedicated van was also provided to the polling-cum-counting station to cater for any necessary transportation needs.

Section 4 – The Poll

Polling hours

4.1 The poll was scheduled from 7:30 a.m. to 10:30 p.m. on 5 October 2008. The CEO announced the polling hours of the by-election by a notice in the Gazette published on 12 September 2008.

Logistical arrangements

4.2 A central command centre was set up for overseeing the operation of the poll and providing logistical support to the staff in the polling station on the polling day. In addition, the centre also assisted in handling enquiries and complaints and collating statistical information on the hourly electors' turnout rate, election result, number and types of complaints received. The centre operated at the REO office in Guardian House from 7:00 a.m. on the polling day until 1:00 a.m. on 6 October 2008. A media enquiry hotline was set up from 7:30 a.m. 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 operated from 7:00 a.m. to 11:00 p.m. to handle general enquiries from the electors and to provide information to the polling station on the identity and eligibility of electors.

4.3 A Complaints Centre was set up in the REO office in Harbour Centre to receive and process election-related complaints. It was manned by the staff of the Complaints Unit of the EAC Secretariat and operated throughout the polling hours from 7:30 a.m. to 10:30 p.m.

4.4 At the district level, a district command centre, manned by the staff of the Home Affairs Department (“HAD”), was set up at the YTMDO to serve as the contact point between the RO and the PRO. The PRO was responsible for keeping the RO and ARO informed of all significant events which occurred within the polling station and for handling election-related complaints. Under the direction of the district command centre, a district team took action against unauthorised EAs and illegal canvassing activities in or around the NCZ and the polling station.

4.5 The Hong Kong Police Force and the Civil Aid Service rendered support in maintaining law and order in the NCZ, the NSZ and inside the polling-cum-counting station.

Issue during the poll

4.6 Amber rainstorm warning signal was hoisted in the morning and evening of the polling day. Due to the heavy rainstorm and the blockage of a manhole outside the polling station, rainwater overflowed into the voting compartment area of the station at around 10:00 a.m.

The polling staff mopped up water on the floor immediately and removed the rubbish blocking the manhole. The Drainage Services Department also cleared the drains in the vicinity of the polling station promptly to forestall the recurrence of similar incident in the remaining polling hours. The incident did not affect the smooth operation of the polling station.

Turnout of electors

4.7 Out of 7,690 registered electors for the Jordan East Constituency, 1,975 cast their votes. The overall turnout rate was 25.68%. A breakdown of the hourly turnout rate of electors is at **Appendix II**.

Visits

4.8 Mr Justice Pang, the EAC Chairman, and Mr Lawrence Lok, the EAC Member, visited the polling station in the morning of the polling day. They concluded the visit by briefing the press on the latest progress of the poll. They also encouraged the electors to cast their votes.

4.9 Mr Stephen Lam, Secretary for Constitutional and Mainland Affairs, also visited the polling station on the polling day.

Section 5 – The Conversion

5.1 The poll closed at 10:30 p.m. as scheduled. 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. Before the counting of the 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.

5.2 The PRO sealed the ballot boxes in the presence of the candidates and their agents, while the polling staff were preparing for the conversion of the station. The conversion was completed smoothly within 30 minutes.

5.3 Mr Justice Pang, the EAC Chairman, and Mr Lawrence Lok and Professor Andrew Chan, Members of the EAC, observed the entire conversion process of the station. They were satisfied with the smooth conduct of the conversion.

Section 6 – The Count

Start of the count

6.1 At about 11:00 p.m., the station was re-opened for admission of the public and the media to observe the count. In the presence of all candidates and their agents, the PRO and DPRO transferred the sealed ballot boxes to the counting table. The PRO unsealed the ballot boxes which were jointly emptied by Mr Justice Pang, Mr Lawrence Lok, Professor Andrew Chan and Mr Stephen Lam. The count then commenced immediately.

Invalid and questionable ballot papers

6.2 Out of 1,975 ballot papers cast into the ballot boxes, 20 ballot papers were determined as invalid (including 18 unmarked, one not marked with the chop provided by the polling station and one containing votes for more than one candidate) and therefore not counted in accordance with section 78 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F). Another 30 ballot papers were identified as questionable.

6.3 In the presence of the candidates and their agents, the PRO, with the assistance of the ARO(Legal), examined carefully the questionable ballot papers to determine their validity.

Two questionable ballot papers were ruled invalid by the PRO and were not counted. These included one ballot paper bearing writing or mark by which the elector can possibly be identified and another ballot paper was void for uncertainty. The remaining 28 questionable ballot papers were ruled valid by the PRO and were counted. The total number of ballot papers not counted was 22. A summary of the ballot papers not counted is at **Appendix III**.

Election result

6.4 The count finished at around 11:30 p.m. The PRO verified the number of ballot papers counted with the ballot paper account. The figures were found consistent. The PRO informed the RO of the result of the count.

6.5 At about 11:40 p.m., as there was no request for a re-count from the candidates, the RO declared the election result. Mr Ip Ngo-tung, Chris, was elected with 916 valid votes, representing 46.90% of the total number of 1,953 valid votes cast. The other four candidates namely Mr Li King-wah, Mr Lau Wai-kwong, Ms Ng Po-shan, Austen, and Mr Lung Wai-man, James, received 154, 33, 753 and 97 votes respectively. The election deposits of two of the candidates, namely Messrs Lau Wai-kwong and Lung Wai-man, James, were forfeited in accordance with section 4(2) of the District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap 547A) because the

number of valid votes they obtained was less than 5% of the total number of valid votes cast. The election result for the Jordan East Constituency was published in the Gazette Extraordinary on 9 October 2008 and is now reproduced at **Appendix IV**.

Meeting the media

6.6 The Chairman and Members of the EAC met the press immediately after the announcement of the election result to conclude that the EAC was content with the polling-cum-counting arrangement and the efficient completion of the counting process. They were satisfied that the principle of fairness, openness and honesty was upheld throughout the process of this by-election. The EAC undertook to continue to review the electoral procedures and arrangements with a view to refining and improving them for public elections in future. The Chairman also took the opportunity to thank all parties concerned for the smooth conduct of the by-election.

Section 7 – Complaints

Complaints-handling period

7.1 The EAC took up the responsibility to handle complaints in relation to the by-election. Five different parties were designated for handling and processing complaints: the EAC, RO, Police, ICAC and, on the polling day, the PRO as well. Complainants could lodge their complaints with any of the above parties.

7.2 The complaints-handling period started on the day when the nomination period commenced on 14 August 2008, and ended 45 days after the polling day on 19 November 2008. By the end of the complaints-handling period, a total of 28 complaints were received from the public by the five complaints-handling parties. The majority of these complaints concerned noise nuisances and EAs. A breakdown of the complaints is at **Appendix V**.

Complaints received on the polling day

7.3 The REO Complaints Centre, the RO, the PRO and the Police received altogether 21 complaint cases on the polling day. No complaint was received by the ICAC. A breakdown of these cases is as follows:

Complaints-handling party	Number of complaints received on the polling day
REO Complaints Centre	1
RO	9
Police	10
ICAC	0
PRO	1
Total	21

7.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned unauthorised display of EAs, illegal canvassing in NCZ/NSZ and noise nuisances. A breakdown of the complaint cases received on the polling day is at **Appendix VI**. These 21 complaints are also included in Appendix V.

Outcome of investigation

7.5 Of the 28 complaints received during the complaints-handling period, ten were found substantiated, four unsubstantiated, 11 requiring no further action and three under investigation.

Section 8 – Review and Recommendations

8.1 After the by-election, the EAC conducted an overall review of all aspects of the electoral procedures and arrangements with a view to improving the conduct of future elections. The EAC found the polling and counting arrangement generally satisfactory. The areas that have been reviewed and the related recommendations are set out in the ensuing paragraphs.

(A) Sending election advertisements

8.2 To reduce paper consumption on election-related materials in the by-election, the REO had encouraged candidates to send their EAs to the electors by electronic means. Over 300 e-mail addresses of the electors of the Jordan East Constituency were provided to each candidate for this purpose.

8.3 **Recommendation:** The EAC considers that candidates should continue to be encouraged to disseminate EAs by electronic means. Continuous efforts should be made by the REO to solicit e-mail addresses from electors, so that candidates can choose to send EAs to electors by electronic means.

(B) Polling station at Jordan Road Government Primary School

8.4 Same as the 2007 DC Election, the electors of the Jordan East Constituency were allocated to vote at Jordan Road Government Primary School, which was outside the constituency. The aforesaid school was selected as the venue for the polling station because no suitable venue could be identified within the constituency.

8.5 **Recommendation:** The EAC considers that continuous effort should be made by the REO to identify a suitable venue within the constituency as the polling station for the electors concerned in future elections.

Section 9 – Acknowledgement

9.1 The successful 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:

Civil Aid Service
Constitutional and Mainland Affairs Bureau
Department of Justice
Drainage Services Department
Electrical and Mechanical Services Department
Food and Environmental Hygiene Department
Government Logistics Department
Home Affairs Department
Hong Kong Police Force
Hongkong Post
Independent Commission Against Corruption
Information Services Department
Official Languages Division (of the Civil Service Bureau)

9.3 The EAC is grateful for the efforts of all officers and REO staff serving as RO, AROs, PRO, DPRO and APROs, and the legal practitioner serving on the NAC(DC) in the by-election.

9.4 The EAC would like to thank members of the media who had helped substantially to enhance the transparency of the by-election by giving a wide coverage.

9.5 The EAC would also like to express its appreciation to the electors who turned up to cast their votes and all those who complied 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 continue to make its efforts in keeping a vigilant watch over 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.