

Section 1 – Background

Cause of the By-election

1.1 A vacancy arose in the Pokfulam Constituency of the Southern District Council (“DC”) on 19 May 2010 after Mr Chan Ngok-pang, Ronald, an elected member of the 2007 DC Election for the Pokfulam Constituency, resigned as Southern DC member. Pursuant to sections 26(b) and 32(1) of the District Council Ordinance (Cap 547) (“DCO”), the Director of Home Affairs declared the existence of a vacancy in the Pokfulam Constituency of the Southern DC by a notice published in the Gazette on 28 May 2010.

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 in the Pokfulam Constituency of Southern DC.

The Constituency

1.3 The Pokfulam Constituency is one of the 17 DC constituencies in the Southern District, with a registered electorate of 5,021. 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 September 2010 (Sunday) as the polling day for the Southern DC Pokfulam Constituency By-election (“the By-election”) and specified the period from 23 July to 5 August 2010 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 9 July 2010.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr Wong Yin-fun, Alex, JP, District Officer (Southern), and Miss Leung Tsz-ying, Almaz, Assistant District Officer (Southern), were appointed by the EAC Chairman as the Returning Officer (“RO”) and the Assistant Returning Officer (“ARO”) respectively for the By-election. Their appointments were published in the Gazette on 9 July 2010. Ms Lee Ka-wai, Karen, Senior Government Counsel of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO(Legal) for the By-election on 7 July 2010.

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 candidates being nominated. Mr Ho’s appointment, covering the period from 23 July to 7 August 2010, was published in the Gazette on 9 July 2010.

Nominations

2.3 By the close of the two-week nomination period on 5 August 2010, the RO received a total of two nominations. The two nominations were determined valid by the RO. The nominees were Messrs Lau Ying-tung, Ellis and Zimmerman Paulus Johannes. The NAC(DC) did not receive 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 13 August 2010.

Briefing for the Candidates

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session on 9 August 2010 at the Southern District Office (“SDO”) 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 and representatives of the RO, the DoJ, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post attended the briefing. They briefed the candidates present and answered 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 for each candidate to be shown on the ballot papers and the designated spots to be allocated to the candidates for displaying EAs. As a result of the lots drawing, Messrs Lau Ying-tung, Ellis and Zimmerman Paulus Johannes were allocated the candidate number 1 and 2 respectively. A total of 72 spots in the Pokfulam Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated with 36 designated display spots.

EAC Guidelines on Election-related Activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election (“the Guidelines”), which were updated in January 2010 to reflect the latest arrangement for imprisoned persons to register as electors and for registered electors imprisoned, remanded or detained to vote as set out in the Voting by Imprisoned Persons Ordinance (“VIPO”) and the amendment regulations were used for this By-election.

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 25 August 2010 to familiarise all the staff concerned with their duties. Separately, a half-day briefing session was held on 26 August 2010 for staff who would man the dedicated polling stations (“DPSs”).

The Polling-cum-counting Station

3.2 In view of the large area of the Pokfulam Constituency, three polling-cum-counting stations were set up at Caritas Wu Cheng Chung Secondary School, Playground of Upper Baguio Villa and Cyberport Post Office to facilitate the electors to cast their votes. The CEO designated the polling-cum-counting station at Caritas Wu Cheng Chung Secondary School as the main counting station for the By-election, where the votes cast therein and in the DPSs were to be counted and where the result of the election was to be announced. The polling-cum-counting station at Playground of Upper Baguio Villa, which served the largest number of registered electors, was designated by the CEO as the dominant counting station. The polling stations at Caritas Wu Cheng Chung Secondary School and Cyberport Post Office were accessible to the disabled electors.

3.3 The three polling stations 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 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.

Dedicated Polling Stations

3.4 This was the first DC By-election held after the full commencement of the operation of the VIPO and the related amendment regulations since October 2009. To enable registered electors of the Pokfulam Constituency who were imprisoned or remanded by the Correctional Services Department (“CSD”) to vote on the polling day, DPSs were planned to be set up in penal institutions for this By-election. As advised by the CSD on 4 September 2010, no registered elector of the Pokfulam Constituency would be imprisoned or remanded under their custody on the polling day. Hence, there was no need to set up DPSs in penal institutions.

3.5 The DPS at the Happy Valley Police Station was provided for registered electors of the Pokfulam Constituency who were remanded or detained by the law enforcement agencies (“LEAs”) (other than the CSD) including the Police, the ICAC, Customs and Excise Department, Immigration Department, etc. Since the LEAs might arrest persons

who happened to be registered electors of the Pokfulam Constituency any time on the polling day, the DPS at the Happy Valley Police Station was required to be open throughout the polling hours from 7:30 am to 10:30 pm as with other ordinary polling stations. The set-up of the DPS would be basically the same as that of an ordinary polling station, except that some of the polling materials had to be specially designed for security reasons.

3.6 To protect the secrecy of the votes cast in the DPS, such votes would be transferred to the main counting station at the Caritas Wu Cheng Chung Secondary School and mixed with the other ballot papers cast in that polling station 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 polling-cum-counting stations and the DPSs was published in the Gazette on 13 August 2010. Candidates were informed that having gone through the required security clearance, they or their election agents could enter the DPSs to observe the poll and witness the Presiding Officer (“PROs”) concerned to deliver the ballot boxes to the main counting station in accordance with the existing electoral regulation.

Polling and Counting Arrangements

3.8 During the polling hours, the PRO of each polling station, assisted by the Deputy PRO (“DPRO”) and/or 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 DPRO and APROs performed the duties of Assistant Counting Supervisors.

3.9 In view of the very small electorate size of the DPS, the PRO was supported by one APRO and one Polling Officer. The PRO delivered, under the escort of the Police, the sealed ballot box to the main counting station at Caritas Wu Cheng Chung 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 the electors with a hindrance-free access to the station. A notice was put up at a conspicuous spot outside each polling station, showing the area of the NCZ and the NSZ.

Notification to Electors

3.11 The REO sent a poll card to each registered elector of the Pokfulam Constituency on 23 August 2010 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 EAC’s website.

Publicity

3.12 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, the setting up of DPSs and the EAC’s visits to the polling and counting stations. Besides, all relevant information on the By-election (including press releases, the hourly electors’ turnout rate, election result, etc) was uploaded to the EAC’s website for public information.

Contingency Plan

3.13 To cater for 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 stations to reserve the same venues on the following Sunday on 12 September 2010. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc) was put in reserve. One dedicated van was also provided to the polling stations to cater for any necessary transportation needs.

Section 4 – The Poll

Polling Hours

4.1 The polling hours for the ordinary polling stations and the DPS at the Happy Valley Police Station were scheduled from 7:30 a.m. to 10:30 p.m. on 5 September 2010. The CEO announced the polling hours of the By-election by a notice in the Gazette published on 13 August 2010.

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 handling enquiries and complaints and disseminating statistical information on the hourly electors' turnout rate, election result, number and types of complaints received. The centre operated at the REO office at Caroline Hill Road from 7:00 a.m. on the polling day until 1:00 a.m. on 6 September 2010. 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 stations on the identity and eligibility of electors.

4.3 A complaints centre was set up at the REO office in Harbour Centre to receive and process election-related complaints. It was manned by the staff 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 Southern District Office to serve as the contact point between the RO and the PROs. The PROs were responsible for keeping the RO and ARO informed of all significant events which occurred within the polling stations 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 NCZs and the polling stations.

4.5 The Hong Kong Police Force rendered assistance in maintaining law and order in the NCZ, the NSZ and inside the polling-cum-counting stations. Police officers were also stationed at the DPS to provide support to the PRO.

Turnout of Electors

4.6 Out of 5,021 registered electors for the Pokfulam Constituency, 1,982 cast their votes in the respective polling stations as detailed below. The overall turnout rate was 39.47%.

	Number of registered electors (a)	Total number of elector turnout (b)	Turnout Rate (b)/(a) x 100%
Polling Station (Caritas Wu Cheng-chung Secondary School)	1,633	497	30.43%
Polling Station (Playground of Upper Baguio Villa)	2,131	905	42.47%
Polling Station (Cyberport Post Office)	1,257	580	46.14%
Dedicated Polling Station (Happy Valley Police Station)	N.A.	-	-
Total	5,021	1,982	39.47%

A breakdown of the hourly turnout rate of electors in respect of this By-election is shown in **Appendix II**.

Visits

4.7 Mr Justice Fung, the EAC Chairman, and Mr Lawrence Lok, EAC Member, visited the polling stations in the morning of the polling day. Mr Justice Fung first visited the DPS at Happy Valley Police Station, followed by the polling stations at Playground of Upper Baguio Villa and Caritas Wu Cheng Chung Secondary School. Mr Lok paid a visit first to the DPS at Happy Valley Police Station, followed by the polling stations at Cyberport Post Office and Caritas Wu Cheng Chung Secondary School. They concluded the visit by briefing the press on the latest progress of the poll at the polling station at Caritas Wu Cheng Chung Secondary School.

4.8 Mr Stephen Lam, Secretary for Constitutional and Mainland Affairs, also visited the polling station at Caritas Wu Cheng Chung Secondary School on the polling day.

Section 5 – The Conversion

5.1 The poll at the polling stations at Caritas Wu Cheng Chung Secondary School, Playground of Upper Baguio Villa, Cyberport Post Office and the Happy Valley Police Station closed at 10:30 pm as scheduled.

5.2 The PRO of the DPS at the Happy Valley Police Station sealed the ballot box in the presence of a police officer at the close of poll. Under the escort of the Police, the PRO delivered the sealed ballot box to the main counting station.

5.3 After the close of poll at the polling stations at Playground of Upper Baguio Villa, Caritas Wu Cheng Chung Secondary School and Cyberport Post Office, 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 number of the APRO concerned was also shown on the notice for each station to facilitate communication between the candidates' agents and the station's staff. Before the counting of the votes began, 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.

5.4 The PROs 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.

5.5 Mr Justice Fung, the EAC Chairman, Mr Lawrence Lok and Professor Andrew Chan, EAC Members, observed the entire conversion process in the polling stations at Caritas Wu Cheng Chung Secondary School, Playground of Upper Baguio Villa and Cyberport Post Office respectively. They were satisfied with the smooth conduct of the conversion of the polling-cum-counting stations.

Section 6 – The Count

Start of the Count

6.1 Before 11:00 p.m., the stations were re-opened 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. At the main counting station at Caritas Wu Cheng Chung Secondary School, the PRO concerned unsealed the ballot boxes which were then jointly emptied by Mr Justice Fung and Mr Stephen Lam. As for the dominant counting station at Playground of Upper Baguio Villa, the unsealed ballot box was jointly emptied by the PRO concerned and Mr Lawrence Lok. The ballot box at the counting station at Cyberport Post Office was emptied by the PRO concerned and Professor Andrew Chan. The count then commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 1,982 ballot papers cast into the ballot boxes, six ballot papers were unmarked and determined as invalid. These six ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg. Another 11 ballot papers were identified as questionable.

6.3 In the presence of the candidates and their agents, the PROs concerned, with the assistance of the ARO(Legal) (who was stationed in the polling station at Caritas Wu Cheng Chung Secondary School) if necessary, examined carefully the questionable ballot papers to determine their validity. One questionable ballot paper was determined as invalid as it was voided for uncertainty and was not counted. The remaining 10 questionable ballot papers were ruled valid by the PROs and were counted. The total number of ballot papers not counted was seven. 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 their ballot paper accounts. The figures were found consistent. The PROs of the counting stations at Caritas Wu Cheng Chung Secondary School and Cyberport Post Office made known the counting results to the candidates and their agents who were present at the counting zone and reported the counting results to the PRO of the dominant counting station immediately. The PRO of the dominant counting station subsequently informed the RO of the results of the count conducted at the three counting stations.

6.5 At about 11:50 p.m., as there was no request for a re-count from the candidates, the RO declared the election result. Mr Paulus Johannes Zimmerman was elected with 1,183 valid votes, representing 59.9% of the total number of 1,975 valid votes cast. The other candidate, Mr Lau Ying-tung received 792 votes. The election result for the Pokfulam Constituency was published in the Gazette on 10 September 2010 and is now reproduced at **Appendix IV**.

Section 7 – Complaints

Complaints-handling Period

7.1 The EAC took up the responsibility of handling complaints in relation to the By-election. 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 The complaints-handling period started on the day when the nomination period commenced on 23 July 2010, and ended 45 days after the polling day on 20 October 2010. By the end of the complaints-handling period, a total of 77 complaints were received from the public by the five complaints-handling parties. The majority of these complaints concerned EAs. A breakdown of the complaints is at **Appendix V**.

Complaints received on the Polling Day

7.3 The REO complaints centre, RO, PRO and the Police altogether received 45 complaint cases on the polling day. A breakdown of these cases is as follows:

Complaints-handling party	Number of complaints received on the polling day
REO complaints centre	1
RO	36
Police	7
PRO	1
Total	45

7.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned election advertisements. A breakdown of the complaint cases received on the polling day is at **Appendix VI**. These 45 complaints are also included in **Appendix V**.

Outcome of Investigation

7.5 Of the 77 complaints received during the complaints-handling period, 22 were found substantiated, 3 partially substantiated, 12 unsubstantiated, 32 requiring no further action and 8 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 arrangements generally satisfactory. The operations of the DPS were also smooth. The area that has been reviewed and the related recommendation are set out in the ensuing paragraphs.

Selection of venue as Polling-cum-counting Station

8.2 As renovation works were underway, Sassoon Road Assembly Hall which was used as a polling station in the 2010 Legislative Council By-election in May 2010 was considered unsuitable for use in this By-election. Caritas Wu Cheng Chung Secondary School was then identified as a replacement venue for setting up a polling station.

8.3 **Recommendation:** The polling-cum-counting station at Caritas Wu Cheng Chung Secondary School was spacious and accessible to disabled electors. No adverse comments on this polling-cum-counting station have been received by the REO. Given the suitability of Caritas Wu Cheng Chung Secondary School for setting up a polling-cum-counting station, it should be included in the list of venues that should be considered for use as a polling-cum-counting station 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:

Agriculture, Fisheries and Conservation Department

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 Police Force

Hongkong Post

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Marine Department

Official Languages Division (of the Civil Service Bureau)

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

9.4 The EAC is also grateful to the CSD and other LEAs for their assistance provided to the REO in making necessary arrangements to facilitate registered electors who might be imprisoned, remanded or detained on the polling day to vote.

9.5 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.

9.6 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 make continued efforts to keep 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.