

## **Section 1 – Background**

### **Cause of the By-election**

1.1 A vacancy arose in the Kwai Shing East Estate Constituency of the Kwai Tsing District Council (“DC”) on 25 August 2008 after Mr Leung Kwong-cheong, an elected member of the 2007 DC Election for the Kwai Shing East Estate Constituency, was convicted of making false claims of reimbursement of expenses and sentenced to 16 months’ imprisonment suspended for three years. In accordance with section 24(1)(d)(i) of the District Councils Ordinance (Cap 547) (“DCO”), Mr Leung was disqualified from holding his office. Pursuant to sections 26(c) and 32(1) of the DCO, the Acting Director of Home Affairs declared the existence of a vacancy in the Kwai Shing East Estate Constituency of the Kwai Tsing DC by a notice published in the Gazette on 9 April 2009.

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 Kwai Shing East Estate Constituency is one of the 28 DC constituencies in the Kwai Tsing District, with a registered electorate of 10,153. 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 6 September 2009 (Sunday) as the polling day for the By-election and specified the period from 24 July to 6 August 2009 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 10 July 2009.

## **Section 2 – Appointments and Nominations**

### **Appointments**

2.1 Mr Chow Shou-shun, Allan, JP, District Officer (Kwai Tsing), and Miss Tam Cheuk-chi, Fabia, Assistant District Officer (Kwai Tsing), 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 10 July 2009. Ms Cheng Tai-ngar, Dorothy, Senior Government Counsel of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO(Legal) for the By-election on 8 July 2009.

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 24 July to 8 August 2009, was published in the Gazette on 10 July 2009.

### **Nominations**

2.3 By the close of the two-week nomination period on 6 August 2009, the RO received a total of four nominations and one notice of withdrawal of candidature. The three remaining nominations were determined valid by the RO. The nominees were Messrs Li Chi-fai, Chow Wai-hung, Rayman and Ms Lai Fan Fong. 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 14 August 2009.

### **Briefing for the candidates**

2.4 Mr Justice Pang Kin-kee, the outgoing EAC Chairman, held a briefing session on 11 August 2009 at the Kwai Tsing District Office (“K&TDO”) 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. Mr Justice Fung Wah, Barnabas, the incoming EAC Chairman, also attended the briefing<sup>1</sup>.

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, Messrs Li Chi-fai, Chow Wai-hung, Rayman and Ms Lai Fan Fong were allocated the candidate number 1, 2 and 3 respectively. A total of 156

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<sup>1</sup> Mr Justice Fung Wah, Barnabas assumed the position of EAC Chairman on 17 August 2009.

spots in the Kwai Shing East Estate Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated with 52 spots.

### **EAC Guidelines on election-related activities**

2.6 The Guidelines on Election-related Activities in respect of the District Council Election updated in August 2008 (“the Guidelines”) 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 31 August 2009 to familiarise all the staff concerned with their duties.

### **The polling-cum-counting station**

3.2 The CEO designated the TWGHs Chen Zao Men College as the polling station and the main counting station for the By-election, where the votes cast therein and in the dedicated polling stations (“DPSs”) (details of which are set out in paragraphs 3.4 – 3.7 below) were to be counted and where the result of the election was to be announced. The station was accessible to the disabled.

3.3 The polling station was set up in the afternoon 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.

### **Dedicated polling stations**

3.4 Three DPSs were planned to be set up in this By-election for remanded persons and detainees. The DPS at the Lai Chi Kok Reception Centre and the DPS at the Tai Lam Centre for Women were provided for male and female registered electors who were remanded under the custody of the Correctional Services Department (“CSD”) respectively. The DPS at the Kwai Chung Division Police Station in Kwai Tsing District was provided for registered electors 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. 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.

3.5 The CSD advised on 5 September 2009 that no female registered elector of the Kwai Shing East Estate Constituency would be remanded under their custody on the polling day. Hence, there was no need to set up a polling station at the Tai Lam Centre for Women. The DPS at the Lai Chi Kok Reception Centre was, however, required to be set up as two male registered electors of the Kwai Shing East Estate Constituency would be remanded by the CSD on the polling day. Since the LEAs might arrest persons who happen to be registered electors of the Kwai Shing East Estate Constituency any time on the polling day, the DPS at the Kwai Chung Division Police Station was required to be open.

3.6 To protect the secrecy of the votes cast in the DPSs, such votes would be transferred to the main counting station at the TWGHs Chen Zao Men College 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 stations and polling-cum-counting station was published in the Gazette on 14 August 2009. 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 Officers (“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 the polling station at the TWGHs Chen Zao Men College, assisted by Deputy Presiding Officer (“DPRO”) and 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.

3.9 In view of the very small electorate size of the two DPSs, the PROs were either supported by one APRO and one Polling Officer (for the DPS at the Kwai Chung Division Police Station) or by one Polling Officer (for the DPS at the Lai Chi Kok Reception Centre). The PROs delivered, under the escort of the Police, the sealed ballot boxes to the main counting station 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 Kwai Shing East Estate Constituency on 26 August 2009 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. Remanded persons and detainees who informed the LEAs that they were registered electors of the Kwai Shing East Estate Constituency would be provided with a copy of the “Introduction to Candidates”, a guidance note on voting and a leaflet on clean and fair elections issued by the ICAC.

**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 for remanded persons and detainees 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 13 September 2009. Besides, extra stock of electoral equipment and materials (such as ballot boxes, ballot papers, furniture, electoral forms, etc) was put in reserve. Two dedicated vans were 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 polling station at the TWGHs Chen Zao Men College and the DPS at the Kwai Chung Division Police Station were scheduled from 7:30 a.m. to 10:30 p.m. on 6 September 2009. In view of security and operational considerations, the polling hours for the DPS set up at Lai Chi Kok Reception Centre ran from 9:00 a.m. to 4:00 p.m. The CEO announced the polling hours of the By-election by a notice in the Gazette published on 14 August 2009.

### **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 station 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 in Guardian House from 7:00 a.m. on the polling day until 1:00 a.m. on 7 September 2009. 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 at 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 K&TDO 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 and the Civil Aid Service rendered support in maintaining law and order in the NCZ, the NSZ and inside the polling-cum-counting station. Police officers were also stationed at the two DPSs to provide support to the PROs.

### Turnout of electors

4.6 Out of 10,153 registered electors for the Kwai Shing East Estate Constituency, 3,921 (including two remanded persons) cast their votes. The overall turnout rate was 38.62%.

	<b>Number of registered electors (a)</b>	<b>Total number of elector turnout (b)</b>	<b>Turnout Rate (b)/(a) x 100%</b>
Polling Station (TWGHs Chen Zao Men College)	10,151	3,919	38.61%
Dedicated Polling Station (Lai Chi Kok Reception Centre)	2	2	100%
Dedicated Polling Station (Kwai Chung Division Police Station)	N.A.	-	-
<b>Total</b>	<b>10,153</b>	<b>3,921</b>	<b>38.62%</b>

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 Wah, Barnabas, the EAC Chairman, and Mr Lawrence Lok and Professor Andrew Chan, EAC Members, visited the polling stations in the morning of the polling day. They first visited the polling station at the Lai Chi Kok Reception Centre, followed by the Kwai Chung Division Police Station, and finally the TWGHs Chen Zao Men College. They concluded the visit by briefing the press on the latest progress of the poll. They also encouraged the electors to cast their votes.

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

## **Section 5 – The Conversion**

5.1 The poll at the Lai Chi Kok Reception Centre was closed at 4:00 p.m. and that at the TWGHs Chen Zao Men College and the Kwai Chung Division Police Station was closed at 10:30 p.m. as scheduled.

5.2 The PROs of the DPSs at the Lai Chi Kok Reception Centre and the Kwai Chung Division Police Station sealed the respective ballot box in the presence of a police officer. The PROs, under the escort of the Police, delivered the sealed ballot boxes to the main counting station after the close of poll.

5.3 After the close of poll at the polling station at the TWGHs Chen Zao Men College, 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 to facilitate communication between the candidates' agents and the station's staff. Before the counting of the votes began, another notice was displayed outside the station, announcing the approximate time when the polling station would be open again for the public to observe the count.

5.4 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.

5.5 Mr Justice Fung, the EAC Chairman, together with Mr Lawrence Lok and Professor Andrew Chan, EAC Members, observed the entire conversion process of the station. They were satisfied with the smooth conduct of the conversion at the polling-cum-counting station.

## **Section 6 – The Count**

### **Start of the count**

6.1 At about 10:55 p.m., the station at the TWGHs Chen Zao Men College was 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 transferred the sealed ballot boxes to the counting tables. The PRO unsealed the ballot boxes which were then jointly emptied by Mr Justice Fung, Mr Lawrence Lok, Professor Andrew Chan and Mr Stephen Lam. The count then commenced immediately.

### **Invalid and questionable ballot papers**

6.2 Out of 3,921 ballot papers cast into the ballot boxes, 13 ballot papers were determined as invalid (including eight unmarked and five containing votes for more than one candidate) and therefore not counted in accordance with section 78 of the EAC (EP) (DC) Reg. Another 77 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. The PRO ruled two questionable ballot papers invalid and were not counted as they were voided for uncertainty. The remaining 75 questionable ballot papers were ruled valid by the PRO and were counted. The total

number of ballot papers not counted was 15. A summary of the ballot papers not counted is at **Appendix III**.

### **Election result**

6.4 Upon completion of the count at the TWGHs Chen Zao Men College, the PRO verified the number of ballot papers counted with the ballot paper account. The figures were found consistent. The PRO subsequently informed the RO of the result of the count.

6.5 At about 11:55 p.m., as there was no request for a re-count from the candidates, the RO declared the election result. Ms Lai Fan Fong was elected with 1,451 valid votes, representing 37.15% of the total number of 3,906 valid votes cast. The other two candidates, Messrs Li Chi-fai and Chow Wai-hung, Rayman, received 1,099 and 1,356 votes respectively. The election result for the Kwai Shing East Estate Constituency was published in the Gazette on 11 September 2009 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 24 July 2009, and ended 45 days after the polling day on 21 October 2009. By the end of the complaints-handling period, a total of 16 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, the RO and the Police altogether received six complaint cases on the polling day. A breakdown of these cases is as follows:

<b>Complaints-handling party</b>	<b>Number of complaints received on the polling day</b>
REO complaints centre	2
RO	2
Police	2
<b>Total</b>	<b>6</b>

7.4 The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned disturbances to electors caused by canvassing activities. A breakdown of the complaint cases received on the polling day is at **Appendix VI**. These six complaints are also included in **Appendix V**.

### **Outcome of investigation**

7.5 Of the 16 complaints received during the complaints-handling period, five were found substantiated, four unsubstantiated, six requiring no further action and one 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 two DPSs were also smooth. The area that has been reviewed and the related recommendation are set out in the ensuing paragraphs.

### **Improvements to polling stations**

8.2 The polling station was set up at the covered playground of TWGHs Chen Zao Men College. The playground is not accessible to wheelchair users as access is only by means of a set of steps. To overcome the physical constraints, the REO had tailor-made a ramp at the playground to provide access for electors using wheelchairs.

8.3 **Recommendation:** The EAC understands the difficulties encountered by the REO in identifying suitable venues as polling stations and has noted that the REO has carried out an exercise to conduct visits to some of the venues which were used as polling stations in the past elections to assess their latest conditions and to ascertain if any improvement works can be made to facilitate electors, particularly those with a disability, to vote. The improvement to the accessibility of the polling station as mentioned in paragraph 8.2 above was part of these improvement works. The EAC appreciates the effort made by

the REO and considers that the exercise should continue to be conducted.

## **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

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 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, DPRO 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 setting up DPSs to facilitate the remanded persons and detainees to cast their votes in this By-election.

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.

