

Section 1 – Background

Cause of the By-election

1.1 A vacancy arose in the Peng Chau and Hei Ling Chau Constituency of the Islands District Council (“DC”) pursuant to section 26(a) of the District Councils Ordinance (Cap. 547) (“DCO”) after Mr On Hing-ying, an elected member of the 2011 DC Election for the Constituency, passed away on 18 April 2014. The Director of Home Affairs, in accordance with section 32(1) of the DCO, declared the existence of a vacancy in the Peng Chau and Hei Ling Chau Constituency of the Islands DC by publishing a notice in the Gazette on 2 May 2014.

1.2 In accordance with section 33(1)(a) of the DCO, the Electoral Affairs Commission (“EAC”) was required to arrange a by-election to return a candidate to fill the vacancy in the Peng Chau and Hei Ling Chau Constituency of the Islands DC.

The Constituency

1.3 The Peng Chau and Hei Ling Chau Constituency is one of the 10 DC constituency areas in the Islands District, with a registered electorate of 3,722. A map showing the boundary of the Constituency area 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 7 September 2014 (Sunday) as the polling day for the Islands DC Peng Chau and Hei Ling Chau Constituency By-election (“the By-election”) and specified the period from 25 July 2014 to 7 August 2014 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 23 May 2014.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr Li Ping-wai, Anthony, JP, District Officer (Islands) and Miss Man Ying-ye, Bonnie, Assistant District Officer (Islands)² were appointed by the EAC Chairman as the Returning Officer (“RO”) and Assistant Returning Officer (“ARO”) respectively for the By-election. Their appointments, which were post-tied, were published in the Gazette on 23 May 2014. Mr Vernon Loh, Senior Government Counsel, and Mr Ip Wai-kee, Cliff, Government Counsel, of the Department of Justice (“DoJ”), were appointed by the EAC Chairman as the AROs (Legal) on 22 May 2014 for the By-election.

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 necessary legal advice on the eligibility of candidates. Mr Ho’s appointment, covering the period from 25 July to 9 August 2014, was published in the Gazette on 23 May 2014.

Nominations

2.3 By the close of the two-week nomination period on 7 August 2014, the RO received a total of three nominations. The three nominations were determined as valid by the RO. The nominees were

Mr Chan Chi-lin, Ms Tsang Sau-ho, Josephine, and Mr Wong Chi-lam. The NAC (DC) did not receive any request from the RO for legal advice on the validity of nomination. The names of the three validly nominated candidates were published in the Gazette on 15 August 2014.

Briefing for the Candidates

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the three candidates on 11 August 2014 at the Islands DC conference room to draw to the attention of the candidates and their agents the major provisions in the relevant electoral legislation and guidelines and the need for strict compliance. Topics included polling and counting arrangements, appointment and roles of various types of agents, requirements relating to election advertisements (“EAs”) and election expenses and conduct of electioneering activities. The CEO, RO and representatives of DoJ, the Independent Commission Against Corruption (“ICAC”) and the Hongkong Post also attended the session to brief the candidates 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 each candidate for displaying EAs. The result of the lots drawing was as follows:

<u>Candidate Number</u>	<u>Name of Candidate</u>
1	Mr Chan Chi-lin
2	Ms Tsang Sau-ho, Josephine
3	Mr Wong Chi-lam

A total of 21 spots in the Peng Chau and Hei Ling Chau Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated 7 designated spots.

EAC Guidelines on Election-related Activities

2.6 The Guidelines on Election-related Activities in respect of the District Council Election (“the Guidelines”) updated in September 2012 were applicable to this By-election. The Guidelines are available at the website of the EAC (<http://www.eac.gov.hk>) for reference.

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. Half-day briefing sessions on polling and counting duties for the dedicated polling stations (“DPSs”) and polling-cum-counting station were conducted on 28 and 29 August 2014 respectively to familiarise all the staff concerned with their duties.

The Polling-cum-counting Station

3.2 The CEO designated the only ordinary polling station (“OPS”) at the Peng Chau Sports Centre as the only and main counting station (“MCS”) 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. This polling station was accessible to electors with disabilities.

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 station, there were 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 observe the count around the counting tables within the counting zone.

Dedicated Polling Stations

3.4 To enable registered electors of the Peng Chau and Hei Ling Chau Constituency who were imprisoned or remanded by the Correctional Services Department (“CSD”) to cast their votes on the polling day, DPSs were planned to be set up in penal institutions for this By-election. As advised by the CSD on 6 September 2014, no registered elector of the Constituency would be in their custody on the polling day. Hence, there was no need to set up a DPS in any penal institutions.

3.5 A DPS was set up on the polling day at the Marine South Division of Hong Kong Police Force for registered electors of the Peng Chau and Hei Ling Chau Constituency who were remanded or detained on the polling day by law enforcement agencies (“LEAs”) (other than the CSD) including the Police, the ICAC, Customs and Excise Department, Immigration Department, etc. to cast votes. Since the LEAs might arrest persons who happened to be registered electors of the Constituency at any time on the polling day, the DPS at the Marine South Division of Hong Kong Police Force was required to be open throughout the polling hours from 7:30 a.m. to 10:30 p.m. on the polling day. The set-up of a DPS was basically the same as that of an OPS, but for security reasons, some of the polling materials used were specially designed.

3.6 To protect the secrecy of the votes cast in the DPS, such votes were to be transferred to the MCS at the Peng Chau Sports Centre and

mixed with the ballot papers cast in that OPS 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 OPS, the DPS and the MCS was published in the Gazette on 15 August 2014. Candidates were informed that subject to the required security clearance, they or their election/polling agents could enter the DPS to observe the poll and witness the delivery of the ballot boxes to the MCS by the Presiding Officer (“PRO”) of the concerned DPS in accordance with the relevant electoral regulation.

Polling and Counting Arrangements

3.8 During the polling hours, the PRO of the polling-cum-counting station, assisted by the Deputy PRO (“DPRO”) and Assistant PROs (“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 The PRO of the DPS was supported by an APRO and a Polling Officer. The PRO delivered, under the escort of the Police, the sealed

ballot box to the MCS at the Peng Chau Sports Centre 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 electors with an unobstructed access to the station. A notice was put up at a conspicuous spot of each polling station, showing the areas of the NCZ and NSZ.

Notification to Electors

3.11 The REO sent a poll card to each registered elector of the Peng Chau and Hei Ling Chau Constituency on 25 August 2014 notifying the elector of the date, time of polling and the assigned polling station. The poll card was sent together with other election-related materials, including an “Introduction to Candidates”, a location map of the polling station, a guidance note on voting 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. To facilitate the visually impaired to be apprised of candidates’ election platform, the candidates heeded the advice of the REO to provide a text version of their election platform for uploading to the EAC’s website.

Publicity

3.12 The REO issued press releases covering the major events of the By-election which included the nomination period, number of nominations received, names of the validly nominated candidates, the poll, the count, the setting up of DPSs, the turnout rates 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 unforeseen situations in which the By-election could not be held as scheduled (due to unforeseen circumstances such as inclement weather conditions), fallback arrangements were made with the venue management of the polling stations to reserve the same venues for the following Sunday (i.e. 14 September 2014). 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 OPS at the Peng Chau Sports Centre and the DPS at the Marine South Division of Hong Kong Police Force were from 7:30 a.m. to 10:30 p.m. on 7 September 2014. The CEO announced the polling hours of the By-election by a notice in the Gazette published on 15 August 2014.

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 disseminating statistical information on the hourly turnout rate of electors, election result and the number and types of complaints received. The centre operated inside the Peng Chau Sports Centre from 7:00 a.m. on the polling day until 12:45 a.m. on 8 September 2014.

4.3 A media enquiry hotline was set up from 7:30 a.m. on 7 September 2014 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, which was set up to handle general enquiries from electors and to provide assistance to polling stations in ascertaining the eligibility of electors, operated from

7:00 a.m. to 11:00 p.m. on the polling day at the REO Office at Guardian House.

4.4 A complaint centre was set up at the REO office at Harbour Centre to receive and process election-related complaints. It was manned by the staff of the EAC Secretariat and operated from 7:30 a.m. to 11:00 p.m. on the polling day.

4.5 At the district level, a district command centre, manned by the staff of the Home Affairs Department, was set up at the Islands 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 at the polling stations and for handling election-related complaints. Under the direction of the district command centre, a district team would take action against unauthorised EAs and illegal canvassing activities in or around the NCZ.

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

Turnout of Electors

4.7 Out of 3,722 registered electors of the Peng Chau and Hei Ling Chau Constituency, 2,269 cast their votes in the respective polling stations. The overall turnout rate was 60.96%. The hourly turnout rates are shown in **Appendix II**.

Visits

4.8 Mr Justice Fung, the EAC Chairman, and Mr Lawrence Lok, EAC Member, observed the polling process at polling stations in the morning of the polling day. Mr Justice Fung visited the OPS at the Peng Chau Sports Centre. Mr Lok paid a visit to the DPS at the Marine South Division of Hong Kong Police Force and then proceeded to the Peng Chau Sports Centre to join Mr Justice Fung to conduct a briefing for the press on the latest progress of the poll.

Section 5 – The Conversion

5.1 The poll at the OPS at the Peng Chau Sports Centre and the DPS at the Marine South Division of Hong Kong Police Force closed at 10:30 p.m. as scheduled.

5.2 The PRO of the DPS at the Marine South Division of Hong Kong Police Force 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 MCS at the Peng Chau Sports Centre.

5.3 Regarding the OPS at the Peng Chau Sports Centre, after the close of poll, the PRO of the OPS sealed the ballot box in the presence of the candidates or their agents who were present at the station. Shortly afterwards, 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 station staff.

5.4 While the station was being converted, 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. The conversion of the station was completed within 20 minutes.

5.5 Mr Justice Fung, the EAC Chairman, was satisfied that the conversion of the polling station into counting station was smooth.

Section 6 – The Count

Start of the Count

6.1 At about 11:15 p.m., the counting station at the Peng Chau Sports Centre was open for admission of the public and the media to observe the count. In the presence of candidates and their agents, the PRO and DPRO/APROs transferred the sealed ballot boxes to the counting tables. The PRO then unsealed the ballot boxes. The first ballot box was jointly emptied by Mr Justice Fung, EAC Chairman and the RO. The PRO also unsealed the ballot box received from the DPS. After verifying that there was no ballot paper contained therein, which tallied with the ballot paper account of the DPS, the count commenced immediately.

Invalid and Questionable Ballot Papers

6.2 Out of 2,269 ballot papers issued, 24 ballot papers were determined as invalid (including 12 unmarked, 1 not marked with the chop provided by REO and 11 containing votes for more than one candidate). These 24 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg.

6.3 In addition, 38 ballot papers were identified as questionable. In the presence of the candidates and their agents, the PRO concerned, with the assistance of the AROs (Legal), examined carefully the

questionable ballot papers to determine their validity. A total of 35 questionable ballot papers were ruled valid by the PRO and were counted. The remaining three questionable ballot papers were ruled invalid by the PRO and were not counted. The total number of ballot papers not counted was 27. A summary of the ballot papers not counted is at **Appendix III**.

Election Result

6.4 Upon completion of the count, the PRO verified the number of ballot papers counted at the MCS with the ballot paper accounts. The figures were found tallied. The PRO made known the counting result to the candidates and their agents who were present at the counting zone.

6.5 As there was no request for re-count, the PRO then reported to the RO the counting result. The RO declared the election result at about 12:20 a.m. on 8 September 2014. Ms Tsang Sau-ho, Josephine was elected with 1,249 valid votes, representing 55.7% of the total number of 2,242 valid votes cast. As regards the other candidates, Mr Chan Chi-lin received 296 votes and Mr Wong Chi-lam received 697 votes. The election result for the Peng Chau and Hei Ling Chau Constituency was published in the Gazette on 12 September 2014 and is now reproduced at **Appendix IV**.

Section 7 – Complaints

Complaints-handling Period

7.1 The complaints-handling period started on the day when the nomination period commenced on 25 July 2014, and ended 45 days after the polling day on 22 October 2014. During the complaints-handling period, 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 By the end of the complaints-handling period, a total of 3 complaints were received from members of the public by the five complaints-handling parties. No complaint was received by any of the complaints-handling parties on the polling day. A breakdown of the complaints is at **Appendix V**.

Outcome of Investigation

7.3 Of the 3 complaints received during the complaints-handling period, 1 was found substantiated, 1 requiring no further action and 1 case was still under investigation by the ICAC when this report was compiled.

Section 8 – Review and Recommendations

8.1 After the By-election, the EAC reviewed the electoral procedures and arrangements made for the election. Overall, the EAC considered the polling and counting arrangements generally satisfactory. The operation of the DPS was also smooth.

8.2 The polling-cum-counting station was set up at the Peng Chau Sports Centre. The EAC noted that the venue was spacious and would be a suitable venue for use as a polling-cum-counting station in future elections.

8.3 The 2014 Final Register (“FR”) of electors for Geographical Constituencies (“GC”) was published on 25 July 2014 and only electors whose names were contained in the Peng Chau and Hei Ling Chau Constituency of the 2014 FR would be eligible for voting in the By-election. On the other hand, for the Rural Representative (“RR”) Election, following conclusion of the 2014 voter registration campaign, the Electoral Registration Officer published the provisional registers (“PRs”) on 27 August 2014 for the Village Representative Election and the Kaifong Representative Election. It was noted that a small number of people who were not registered in the 2014 FR for the GC but newly registered for the Market Town of Peng Chau for the RR Election were under the false impression that they would be eligible for voting in the By-election by virtue of their registration on the Market Town PR for Peng Chau. These people only realised that they were not registered GC

electors and, therefore, were not eligible to vote in the By-election after checking with the polling staff at the polling station. In this regard, the polling staff had to explain to such persons the different voter registration arrangements for the GC and RR under the electoral law and assist them to register for the GC in the next voter registration cycle. The EAC observed that the polling staff had exercised due care and patience in rendering assistance to such persons and considered that publicity should be suitably strengthened to alert people to the different voter registration arrangements for the GC and RR should a similar situation arise in the future.

Section 9 – Acknowledgement

9.1 The smooth conclusion of the By-election was attributable to the dedicated and concerted efforts of all parties involved.

9.2 The EAC would like to thank the following government bureaux and departments for their support and assistance:

Agriculture, Fisheries and Conservation Department

Civil Aid Service

Constitutional and Mainland Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of Justice

Drainage Services Department

Electrical and Mechanical Services Department

Food and Environmental Hygiene Department

Government Logistics Department

Home Affairs Department

Hong Kong Observatory

Hong Kong Police Force

Hongkong Post

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands Department

Leisure and Cultural Services Department

Marine Department

Official Languages Division (of the Civil Service Bureau)

Official Receiver's Office

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

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

9.5 The EAC would like to thank the media who helped enhance the transparency of the By-election by giving all major events good 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 rendered support or assistance in ensuring compliance 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 on every election to ensure openness, fairness and honesty. The EAC welcomes positive and constructive comments to bring about improvements to the arrangements for future elections.

10.2 The EAC recommends that this report be made public, at a time the Chief Executive thinks appropriate, so that the public may be kept posted as to how the EAC conducted and supervised the By-election.

