

Section 1 – Background

Cause of the by-election

1.1 A vacancy arose in the Kam Ying Constituency of the Sha Tin District Council (“DC”) on 19 December 2006 when Mr WONG Kwok-hung, an elected member of the constituency, was disqualified from holding his office in accordance with section 24(1)(d)(iii) of the District Councils Ordinance (Cap 547) (“DCO”). Mr WONG’s appeal against his conviction under Part II of the Prevention of Bribery Ordinance (Cap 201) was rejected by the Court of Appeal on 19 December 2006. Pursuant to sections 26(c) and 32(1) of the DCO, the Director of Home Affairs declared the existence of the vacancy by a notice published in the Gazette on 22 December 2006.

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

The Constituency

1.3 The Kam Ying Constituency is one of the 36 DC constituencies in the Sha Tin District, with a registered electorate of 9,591. 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 Sunday, 11 March 2007 as the polling day for the by-election and specified the period from 25 January to 7 February 2007 (both dates inclusive) as the nomination period of the by-election by publishing a notice in the Gazette on 19 January 2007.

Section 2 – Appointments and Nominations

Appointments

2.1 Mr LAI Chi-wah, Andrew, JP, District Officer (Sha Tin) (“DO(Sha Tin)”) and Mr KWOK Hon-kwong, Anthony, Senior Executive Officer (District Management) of the Sha Tin District Office (“STDO”) were appointed as the Returning Officer (“RO”) and the Assistant Returning Officer (“ARO”) respectively for the by-election. Their appointments were made by the EAC Chairman and published in the Gazette on 19 January 2007. Ms LING Ka-wah, Florence, 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 8 January 2007.

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 25 January to 10 February 2007, was published in the Gazette on 19 January 2007.

Nominations

2.3 By the close of the two-week nomination period on 7 February

2007, the RO received a total of four nominations. The nominees were Mr WONG Huk-kam, Mr WONG Shun-loy, Mr CHAN Ming-hung and Ms TONG Po-chun. All the nominations were verified by the RO as valid. 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 16 February 2007.

Briefing for the candidates

2.4 A briefing session for the candidates and their agents, hosted by the EAC Chairman, was conducted on 10 February 2007 in the STDO. One candidate and her agent were present at the briefing. The Chairman highlighted the major electoral arrangements, including the major provisions in the electoral legislation and guidelines governing election advertisements (“EAs”) and election expenses, for their attention. The Chairman encouraged them to disseminate publicity materials to electors by e-mails and on a household basis in order to reduce the use of paper. Details of these measures are set out in paragraph 3.9 below. 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 candidate 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 allocated the designated spots to them for the display of their EAs in the district. As a result of the lots drawing, Mr WONG Huk-kam, Mr WONG Shun-loy, Mr CHAN Ming-hung and Ms TONG Po-chun were allocated the candidate numbers 1, 2, 3 and 4 respectively. A total of 32 spots in the Sha Tin District were designated for the display of their EAs during the election period, and each candidate was equally allocated with eight spots.

EAC Guidelines on election-related activities

2.6 The revised guidelines issued for the by-election held on 23 October 2005 were used for this by-election.

Section 3 – Preparation Work

Appointment and training of polling/counting staff

3.1 Similar to the previous DC by-elections, the staff of REO were appointed to take up the polling and counting duties. To ensure that the staff were competent in discharging their duties, a half-day briefing session on polling and counting duties including a mock-up session on counting work was conducted on 5 March 2007 to enable all the staff concerned to familiarise themselves with their duties.

The polling-cum-counting station

3.2 As in the previous DC by-elections, both the poll and the count for the by-election were conducted at the same place. In view of the size of the electorate and for the convenience of the electors, two polling-cum-counting stations were set up at the Ng Clan's Association Tai Pak Memorial School and F.D.B.W.A. Mrs. Fung Ping Shan Primary School. The CEO designated the polling station at the Ng Clan's Association Tai Pak Memorial School as the dominant counting station, where a larger number of electors was to cast their votes and where the result of the election was to be announced. The designation of these places as the polling and counting stations was published in the Gazette on 16 February 2007. Both stations were accessible to the disabled.

3.3 Setting up arrangements for the polling stations were held in the afternoon on the day preceding the polling day. Each venue was partitioned into two parts, i.e. the polling area and the counting area. 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 each polling station, assisted by the Deputy PRO and Assistant PROs, was responsible for ensuring the smooth and efficient operation of the polling station and to work closely with the RO. When the count started, the PROs assumed the role of Counting Supervisors in overseeing the counting process and were also responsible for determining the validity of questionable ballot papers while the Deputy PROs and Assistant PROs performed the duties of Assistant Counting Supervisors.

3.5 Outside each polling station, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO so that the electors could have a free and safe passage to the station. A notice was put up at a conspicuous spot outside each station, notifying the public of the delineation of the NCZ and NSZ.

Other electoral arrangements

3.6 Similar to the preceding by-elections, arrangements were made to address the public concern on vote secrecy during the poll, including –

- (a) displaying prominent signs inside and outside the polling station to remind electors that it was an offence to use a mobile telephone inside the polling station;
- (b) the polling staff reminding each elector at the ballot paper issuing desk not to use mobile telephones;
- (c) not installing any curtain in front of the voting compartments so that the polling staff, the candidates and their agents could observe whether the elector was using a mobile telephone inside the voting compartment;
- (d) designating an enlarged restricted zone (around two metres) outside the voting compartments and not allowing any other person to stay in the zone, so that the elector's choice on the ballot paper would be prevented from being seen by other person; and
- (e) setting the table inside the voting compartment in such a

position that would cause the body of the elector to block the marking from being visible to persons outside the voting compartment.

3.7 To avoid exposure of the elector's personal particulars shown on the registers at the ballot paper issuing desks, especially to the electors waiting in a queue, a restricted zone (around one metre) was delineated in front of each issuing desk and a specially designed cardboard stand was placed at the front edge of the desk in both stations to block the line of vision of anyone standing behind him/her.

Notification to electors

3.8 In line with the established practices, the REO sent a poll card to each registered elector of the by-election on 22 February 2007 notifying him/her of the date, time and place of the poll. The poll card was sent together with other election-related materials, including a candidates' introductory leaflet, a guidance note on voting, a location map of the polling station assigned to the elector concerned, an appeal letter from the DO(Sha Tin) to electors to exercise their civic rights by casting their votes and a leaflet on clean and fair elections issued by the ICAC. The introductory leaflet which included the candidates' election platform was also uploaded onto the REO's website for public browsing.

Reduction of paper consumption in the by-election

3.9 To reduce paper consumption on election-related materials in the by-election, the REO had put in place the following arrangements on a trial basis –

- (a) similar to the DC by-elections held since June 2006, a revised layout of the candidates' introductory leaflet was adopted in which each candidate was allocated with the size of no more than a quarter of an A4 paper, as compared to the previous practice of allowing half an A4 size page;
- (b) similar to the DC by-elections held since October 2005, to encourage candidates to send their election-related publicity materials electronically to the electors, the REO had sent appeal letters to the electors of the Kam Ying Constituency beforehand inviting them to provide the REO with their e-mail addresses. A total of 560 e-mail addresses were thus collected for this particular by-election. All candidates were provided with a CD-ROM containing information of electors who had chosen to receive election-related publicity materials by e-mail (together with the addresses of all electors); and
- (c) to facilitate candidates to send election-related publicity materials on a household basis, the REO had provided an

option to all candidates to select one set of gum labels of the addresses of all electors in the constituency from either (i) addresses of all electors on household basis, or (ii) addresses of all electors on individual basis. Of the four candidates of the by-election, one of them opted for this arrangement.

Publicity

3.10 The REO had, on appropriate occasions, 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 visits of EAC members 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 onto the REO's website for public information.

Contingency plan

3.11 To cater for unforeseen situations in which the by-election might not be proceeded with as scheduled for one reason or another (such as inclement weather conditions), fall back arrangements were made with the venue management of the polling stations concerned to reserve them for polling on the following Sunday, i.e. 18 March 2007. 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 each polling station to cater for any necessary transportation needs.

Section 4 – The Poll

Polling hours

4.1 The poll was scheduled from 7:30 am to 10:30 pm on Sunday, 11 March 2007. The CEO announced the polling hours of the by-election by a notice in the Gazette published on 16 February 2007.

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 stations 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, etc. The centre operated at the REO office in Guardian House from 7:00 am on the polling day until 1:00 am on 12 March 2007. A press enquiry desk was set up from 7:30 am until the announcement of the election result to handle press enquiries and disseminate information to the public through the media at regular intervals. An election enquiry centre with two hotlines was set up from 7:00 am to 11:00 pm to handle general enquiries from electors and to provide information to the polling stations on the identity and eligibility of electors.

4.3 A complaints centre was also set up in the REO office in Harbour Centre to receive and process election-related complaints lodged with the EAC direct from the public by phone, fax or e-mail and those referred to the EAC through other complaint-handling channels. It was manned by the staff of the Complaints Unit of the EAC secretariat and operated throughout the polling hours from 7:30 am to 10:30 pm on the polling day.

4.4 At the district level, a district command centre, manned by staff of the Home Affairs Department (“HAD”), was set up at the STDO 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 Civil Aid Service (“CAS”) rendered support in maintaining law and order in the NCZs, NSZs and inside the polling-cum-counting stations.

Turnout of electors

4.6 Out of 9,591 registered electors for the Kam Ying Constituency,

3,390 turned up to cast their votes. The overall turnout rate was 35.35%, which was 13.42% lower than the rate for this particular constituency in the 2003 DC ordinary election. The number of registered electors of the constituency had increased by 382 since 2003.

4.7 The turnout rates for the dominant polling station at the Ng Clan's Association Tai Pak Memorial School and the polling station at the F.D.B.W.A. Mrs. Fung Ping Shan Primary School were as follows -

	Number of registered electors (a)	Total number of elector turnout (b)	Turnout Rate (b)/(a) x 100%
Dominant Polling Station (Ng Clan's Association Tai Pak Memorial School)	6,478	2,565	39.60%
Polling Station (F.D.B.W.A. Mrs. Fung Ping Shan Primary School)	3,113	825	26.50%
Total:	9,591	3,390	35.35%

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

Visits

4.8 Mr Justice PANG, EAC Chairman, Mr Lawrence LOK and Professor Andrew CHAN, Members of the Commission, paid visits to the polling stations on the polling day. They first visited the polling station at the F.D.B.W.A. Mrs. Fung Ping Shan Primary School and then the dominant polling station at the Ng Clan's Association Tai Pak Memorial School in the morning. They concluded the visit by meeting the media in the Ng Clan's Association Tai Pak Memorial School and expressing satisfaction with the smooth conduct of the poll for the by-election.

4.9 Mr Stephen LAM, Secretary for Constitutional Affairs, and Mrs Pamela TAN, Director of Home Affairs, also visited the polling stations on the polling day.

Section 5 – The Conversion

5.1 The poll closed at 10:30 pm as scheduled. 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 stations to facilitate their conversion into counting stations. The telephone number of the Assistant PRO concerned was also shown on the notice for each station to facilitate communication between the candidates' agents and the station staff. Before the counting of the votes began, another notice was displayed outside each station, announcing the approximate time when the stations would be opened again for the public to observe the count.

5.2 The PROs sealed the ballot boxes in the presence of all candidates and their agents while the polling staff were preparing for the conversion of the station. The conversion process was completed smoothly at the dominant counting station and the other counting station within 30 minutes and 10 minutes respectively.

5.3 Mr Justice PANG and Professor Andrew CHAN observed the entire conversion process in the dominant counting station, while Mr Lawrence LOK observed the conversion process in the other counting station. They were satisfied with the smooth conduct of the conversion process at both stations.

Section 6 – The Count

Start of the count

6.1 Before 11:00 pm, both stations were re-opened for admission of the public including the media to observe the count. In the presence of all candidates and their agents, the PRO and Deputy PRO of each station transferred the sealed ballot boxes to the counting table. At Ng Clan's Association Tai Pak Memorial School, the PRO concerned unsealed the two ballot boxes which were jointly emptied by Mr Justice PANG, Professor Andrew CHAN and Mr Stephen LAM. As for the counting station at the F.D.B.W.A. Mrs. Fung Ping Shan Primary School, the ballot box was unsealed by the PRO concerned and was jointly emptied by Mr Lawrence LOK, Mrs Cherry LING, Permanent Secretary for Constitutional Affairs and the PRO. The count then commenced immediately.

Invalid and questionable ballot papers

6.2 Out of 3,390 ballot papers cast into the ballot boxes, 18 ballot papers were determined as invalid (including 13 unmarked and five marked with votes for more than one candidate) and therefore not counted pursuant to section 78 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541F) ("EAC (EP) (DC) Reg"). In addition, another six ballot papers were identified

as questionable.

6.3 In the presence of the candidates and their agents, the PRO concerned, with the assistance of the ARO(Legal), examined carefully the questionable ballot papers to determine their validity. One of the questionable ballot papers, which was substantially mutilated, was determined as invalid and rejected by the PRO concerned. The remaining five questionable ballot papers were determined as valid and were accepted. The total number of ballot papers not counted was 19. An analysis of the ballot papers not counted is shown in **Appendix III**.

Election result

6.4 Upon the completion of the count at the dominant counting station at the Ng Clan's Association Tai Pak Memorial School and the counting station at the F.D.B.W.A. Mrs. Fung Ping Shan Primary School, the PROs verified the number of ballot papers counted at their counting stations with their ballot paper accounts. The figures were found consistent. The PRO of the counting station at F.D.B.W.A. Mrs. Fung Ping Shan Primary School made known the result of the counting of votes 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 by phone and by fax immediately. The PRO of the dominant counting station subsequently informed the RO of the results of the count conducted at both stations. There was no request for a re-count of votes

at either of the counting stations from the candidates or their agents.

6.5 The count at the counting stations at the F.D.B.W.A. Mrs. Fung Ping Shan Primary School and the Ng Clan's Association Tai Pak Memorial School finished at around 11:05 pm and 11:45 pm respectively. At about 11:50 pm, the RO declared the election result: Ms TONG Po-chun was elected with 1,704 valid votes, representing 50.27% of the total number of valid votes cast. The other three candidates, namely Messrs WONG Huk-kam, WONG Shun-loy and CHAN Ming-hung, received 767, 343 and 557 votes respectively. The election result for the Kam Ying Constituency was published in the Gazette Extraordinary on 15 March 2007 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 Commission was content with the polling-cum-counting arrangements in both stations 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 Commission undertook to continue to review the election-related 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

Complaint-handling period

7.1 The Commission took up the responsibility to handle complaints in relation to the by-election, instead of forming a Complaints Committee as in ordinary elections. Five different parties were responsible for processing the complaints received: the EAC, RO, Police, ICAC and, on the polling day, the PROs as well. Members of the public could lodge their complaints with any of these parties.

7.2 The period for receiving complaints commenced on 25 January 2007 when the nomination period began. It ended on 25 April 2007, i.e. 45 days after the polling day. During the complaint-handling period for this by-election, a total of 38 complaints were received from the public by the EAC, RO, Police, ICAC and PROs. The majority of these complaint cases were about noise nuisance. There were also complaints against disturbances to electors caused by loudspeakers and broadcasting vans, EAs, illegal canvassing in the no canvassing zone, conduct of electioneering activities on private premises and employment of young persons under 18 years of age for canvassing or electioneering activities. A breakdown of the complaints is set out in **Appendix V**.

Complaints received on the polling day

7.3 The REO complaints centre, the RO and the Police received altogether 28 complaint cases on the polling day. No complaint was received by the ICAC and PROs. The following shows a breakdown of these cases –

	Number of complaints received on the polling day
REO complaints centre	3
RO	6
Police	19
Total	28

7.4 All cases received on the polling day were expeditiously handled and most of them were resolved on the spot. The majority of the complaint cases were about noise nuisance. A breakdown of complaint cases received on the polling day is shown in **Appendix VI**. These 28 complaints are also included in Appendix V.

Outcome of investigation

7.5 Of the 38 complaints received during the complaint-handling period, 25 were found substantiated and 13 not substantiated.

Section 8 – Review and Recommendations

8.1 After the by-election, the EAC conducted an overall review of all aspects of the by-election 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) Reduction of paper consumption on election-related materials

8.2 As a means to reduce paper consumption, the REO has continued to try out in the by-election the arrangements of sending out candidates' introductory leaflet with one quarter of an A4 page for each candidate, and collecting e-mail addresses from electors to facilitate candidates to send their publicity materials electronically. A new arrangement of providing candidates with the address labels of electors on a household basis has also been put on trial so that the candidates could send their publicity materials on a household basis. Details of the above arrangements are set out in paragraph 3.9 above.

8.3 **Recommendation:** Having regard to the success of the arrangement of sending out candidates' introductory leaflet with one quarter of an A4 page for each candidate tried out in several DC by-elections, the EAC recommends that the arrangement should

continue in future DC ordinary and by-elections. As for the arrangements of collecting e-mail addresses from electors to facilitate candidates to send their publicity materials electronically and providing candidates with the address labels of electors on a household basis, the EAC considers that it would be prudent to continue with the trial arrangements for the coming DC by-elections before coming to a view on whether the arrangements should be adopted on a long-term basis.

(B) Polling-cum-counting station at Ng Clan's Association Tai Pak Memorial School

8.4 The EAC noticed that the playground on the ground floor of Ng Clan's Association Tai Pak Memorial School might not be a very desirable venue for setting up the dominant polling station which had to serve over 6,400 registered electors as the venue could only barely accommodate both the polling and counting stations. Apart from the area constraint, there were many pillars inside the venue which blocked the line of vision of polling staff at different parts of the polling station, thereby affecting the efficiency of reception duties if a large number of electors came at the same time.

8.5 **Recommendation:** The EAC recommends that, where possible, a larger venue should be identified within the constituency as the dominant polling station in future.

(C) The polling-cum-counting arrangement

8.6 As in the 2003 DC ordinary election and all the DC by-elections held from 2003 to 2006, the polling-cum-counting arrangement had worked smoothly and efficiently in this by-election. The counting of votes in the two polling-cum-counting stations took place about 10 to 30 minutes after the close of poll in the respective polling stations. The counting process was completed within 25 to 45 minutes. All parties concerned were very pleased with the efficiency of the arrangement.

8.7 **Recommendation:** The EAC recommends that the polling-cum-counting arrangement should continue in future DC ordinary and by-elections, as the arrangement had proved to be both cost-effective and efficient.

Section 9 – Acknowledgement

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

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

9.3 The Commission wishes to thank the media for their wide coverage of the key events in relation to this by-election which has contributed much to enhance its transparency.

9.4 Last but not least, the Commission would like to express its

appreciation to the electors who turned up to cast their vote and all those who complied with the electoral legislation and guidelines in the by-election.

Section 10 – Looking Forward

10.1 The imminent tasks for the EAC are the Kwun Tong DC (Kai Yip Constituency) By-election and the Tai Po DC (Hong Lok Yuen Constituency) By-election, scheduled to be held on 20 May and 10 June 2007 respectively. Preparation work has already begun. The Commission will continue with its mission of ensuring that all public elections are conducted in an open, fair and honest manner. It will remain, as always, open to the views from the public on what measures should be taken to improve future electoral arrangements.

10.2 The Commission would like to recommend this report be made public, at a time the Chief Executive thinks fit, to enhance the transparency of the Commission's work in the conduct and supervision of the by-election under the EAC Ordinance (Cap 541).