

## **Section 1 – Background**

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

1.1 A vacancy arose in the Tin Sum Constituency of the Sha Tin District Council (“DC”) on 20 December 2012 after Mr Lau Kong-wah, an elected member of the 2011 DC Election for the constituency, resigned as Sha Tin DC member. Pursuant to section 26(b) of the District Council Ordinance (Cap. 547) (“DCO”), the Director of Home Affairs in accordance with section 32(1) of the DCO, declared the existence of a vacancy in the Tin Sum Constituency of the Sha Tin DC by publishing a notice in the Gazette on 4 January 2013.

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 Tin Sum Constituency of the Sha Tin DC.

### **The Constituency**

1.3 The Tin Sum Constituency is one of the 36 DC constituency areas in the Sha Tin District, with a registered electorate of 8,091. 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 10 March 2013 (Sunday) as the polling day for the Sha Tin DC Tin Sum Constituency By-election (“the By-election”) and specified the period from 18 January 2013 to 31 January 2013 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 11 January 2013.

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

### **Appointments**

2.1 Ms Ho Lai-sheung, Cora, JP, District Officer (Sha Tin) and Mr Cheng Siu-fun, Eric, Assistant District Officer (Sha Tin) 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 11 January 2013. Miss Lee Sau-kong, Senior Assistant Solicitor General and Ms Cheng Tai-ngar, Dorothy, Senior Government Counsel of the Department of Justice (“DoJ”), were appointed by the EAC Chairman as the AROs (Legal) on 7 January 2013 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 the necessary legal advice on the eligibility of candidates. Mr Ho’s appointment, covering the period from 18 January to 4 February 2013, was published in the Gazette on 11 January 2013.

### **Nominations**

2.3 By the close of the two-week nomination period on 31 January 2013, the RO received a total of four nominations. The four nominations were determined as valid by the RO. The nominees were

Mr Lam Hong-ching, Mr Pun Kwok-shan, Mr Ting Tsz-yuen and Miss So Pui-lam. The NAC(DC) did not receive any request from the RO for legal advice on the validity of the nominations. The names of the four validly nominated candidates were published in the Gazette on 8 February 2013.

### **Briefing for the Candidates**

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the four candidates on 6 February 2013 at the Sha Tin District Council 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, requirements relating to election advertisements (“EAs”) and election expenses, appointment and roles of various types of agents and conduct of electioneering activities. The CEO, RO and representatives 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 the candidates for displaying EAs. The result of the lots drawing was as follows:

<b><u>Candidate Number</u></b>	<b><u>Name of Candidate</u></b>
1	Mr Lam Hong-ching
2	Mr Pun Kwok-shan
3	Mr Ting Tsz-yuen
4	Miss So Pui-lam

A total of 60 spots in the Tin Sum Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated 15 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.

## **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 for the dedicated polling stations (“DPSs”) and polling-cum-counting station were conducted on 27 February 2013 and 1 March 2013 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 Lung Hang Estate Community Centre as the only and main counting station for the By-election, where the votes cast therein and in the DPSs were to be counted. The result of the election was to be announced at this counting station. 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 Tin Sum 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 9 March 2013, a total of nine registered electors of the Tin Sum Constituency would be in their custody on the polling day in six penal institutions. Hence, a DPS was set up in each of these penal institutions. Owing to security considerations, the polls at these six DPSs were conducted from 9:00 a.m. to 4:00 p.m. on the polling day.

3.5 A DPS was also set up on the polling day at the Tin Sum Police Station for registered electors of the Tin Sum 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 Tin Sum Constituency at any time on the polling day, the DPS at the Tin Sum Police Station was required to be open throughout the polling hours from 7:30 a.m. to 10:30 p.m. on the polling day in line with the OPS set up in Lung Hang Estate Community Centre. The set-up of a DPS was basically the same as that of an OPS, 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 DPSs, such votes were transferred to the main counting station at the Lung Hang Estate Community 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 DPSs and the counting station was published in the Gazette on 8 February 2013. Candidates were informed that subject to the required security clearance, they or their election / polling agents could enter the DPSs to observe the poll and witness the delivery of the ballot boxes to the main counting station by the Presiding Officers (“PROs”) concerned 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 PROs (“DPROs”) 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 DPROs and APROs performed the duties of Assistant Counting Supervisors.



3.9 In view of the very small electorate of the DPSs, each PRO of DPS was supported by one APRO and/or one Polling Officer. The PROs delivered, under the escort of the Police, the sealed ballot boxes to the main counting station at the Lung Hang Estate Community 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 the 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 the NSZ.

### **Notification to Electors**

3.11 The REO sent a poll card to each registered elector of the Tin Sum Constituency on 22 February 2013 notifying him/her of the date, time and the assigned polling station. The poll card was sent together with other election-related materials, including the “Introduction to Candidates”, a location map of the polling station with 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 the election platform of a candidate, the REO had invited the candidates to provide a text version of their election platforms for uploading to the EAC’s website on 22 February 2013.

## **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), fall back arrangements were made with the venue management of the polling stations to reserve the same venues on the following Sunday (i.e. 17 March 2013). 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 station to cater for any necessary transportation needs.

## **Section 4 – The Poll**

### **Polling Hours**

4.1 The polling hours for the OPS at the Lung Hang Estate Community Centre and the DPS at the Tin Sum Police Station were from 7:30 a.m. to 10:30 p.m. on 10 March 2013. The polling hours for the DPSs in penal institutions 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 8 February 2013.

### **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 electors' turnout rate, election result and the number and types of complaints received. The centre operated inside the Lung Hang Estate Community Centre from 7:00 a.m. on the polling day until 12:35 a.m. on 11 March 2013.

4.3 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, 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. at the REO Office at Guardian House on the polling day.

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 Sha Tin District Office to serve as the contact point between the RO and the PROs. The PROs were responsible for keeping the RO and the 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 NCZs.

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 Tin Sum Police Station to provide support to the PRO.

### **Turnout of Electors**

4.7 Out of 8,091 registered electors of the Tin Sum Constituency, 3,673 cast their votes in the respective polling stations. The overall

turnout rate was 45.40%. 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 Fung, the EAC Chairman, Mr Lawrence Lok and Professor Fanny Cheung, EAC Members, conducted visits to polling stations to observe the polling process in the morning of the polling day. Mr Justice Fung visited the DPS at the Pik Uk Correctional Institution. Mr Lok paid a visit to the DPS at the Lai Chi Kok Reception Centre. Professor Cheung visited the DPS at the Tin Sum Police Station. After that, they visited the OPS at the Lung Hang Estate Community Centre together and concluded the visit by briefing the press on the latest progress of the poll there.

## **Section 5 – The Conversion**

5.1 The poll at the polling stations at the Lung Hang Estate Community Centre and the Tin Sum Police Station closed at 10:30 p.m. while that at the DPSs at the six penal institutions closed at 4:00 p.m., as scheduled.

5.2 The PROs of the DPS at the Tin Sum Police Station and the DPSs at the six penal institutions sealed the respective ballot boxes in the presence of a police officer or an officer of the CSD at the close of poll. Under the escort of the Police, the PROs of DPSs delivered the sealed ballot boxes to the main counting station at the Lung Hang Estate Community Centre.

5.3 Regarding the polling-cum-counting station at the Lung Hang Estate Community Centre, after the close of poll, a notice was promptly displayed at the entrance of the station, notifying the public of the close of poll and the temporary closure of the station to facilitate its conversion into a counting station. The telephone number of the APRO concerned was also shown on the notice to facilitate communication between the candidates' agents and the station staff. Before the counting of votes began, another notice was displayed outside the station, announcing the approximate time when the station would be open again for the public to observe the count.

5.4 In addition, the PRO of the station sealed the ballot box in the

presence of the candidates or their agents who were present at the station, while the polling staff were preparing for the conversion of the station. The conversion was completed within 15 minutes.

5.5 Mr Justice Fung, the EAC Chairman, Mr Lawrence Lok and Professor Fanny Cheung, EAC Members, were present at the polling station to observe the conversion and were satisfied with the smooth conversion of the polling station into a counting station.

## **Section 6 – The Count**

### **Start of the Count**

6.1 At about 11:05 p.m., the counting station at the Lung Hang Estate Community Centre was opened for admission of the public and the media to observe the count. In the presence of candidates or their agents, the PRO and DPROs / APROs transferred the sealed ballot boxes to the counting tables. The PRO then unsealed the ballot boxes. The first one was then jointly emptied by Mr Justice Fung, EAC Chairman, Mr Raymond Tam, Secretary for Constitutional and Mainland Affairs as well as Mr Lawrence Lok and Professor Fanny Cheung, the EAC Members. The PRO also unsealed and emptied the ballot boxes received from DPSs and mixed the ballot papers contained therein with those of the polling station at the Lung Hang Estate Community Centre before counting. The count then commenced immediately.

### **Invalid and Questionable Ballot Papers**

6.2 Out of 3,674 ballot papers issued, 12 ballot papers were determined as invalid (including 10 unmarked and 2 containing votes for more than one candidate). These 12 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg. Another 35 ballot papers were identified as questionable.



6.3 In the presence of the candidates or 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 34 questionable ballot papers were ruled valid by the PRO and were counted. Only one questionable ballot paper was ruled invalid. The total number of ballot papers not counted was 13. 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 main counting station 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. The PRO subsequently reported to the RO the counting result.

6.5 As there was no request for re-count, the RO declared the election result at about 12:35 a.m. on 11 March 2013. Mr Pun Kwok-shan was elected with 2,432 valid votes, representing 66.43% of the total number of 3,661 valid votes cast. As regards other candidates, Mr Lam Hong-ching received 531 votes, Mr Ting Tsz-yuen received 675 votes and Miss So Pui-lam received 23 votes respectively. The election result for the Tin Sum Constituency was published in the Gazette on 15 March 2013 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 18 January 2013, and ended 45 days after the polling day on 24 April 2013. 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 87 complaints were received from members of the public by the five complaints-handling parties including 28 complaints received on the polling day. The majority of these complaints concerned unauthorised display of election advertisements. A breakdown of the complaints is at **Appendix V**.

### **Complaints received on the Polling Day**

7.3 The EAC complaints centre, the RO, the Police and the PROs altogether received 28 complaints on the polling day. A breakdown of these complaints is as follows:

<b>Complaints-handling party</b>	<b>Number of complaints received on the polling day</b>
EAC Complaints Centre	0
RO	11
Police	12
PRO	5
<b>Total:</b>	<b>28</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 loudspeakers/broadcasting vehicles/telephone canvassing/ others. A breakdown of the nature of the complaints received on the polling day is at **Appendix VI**.

### **Outcome of Investigation**

7.5 Of the 87 complaints received during the complaints-handling period, 32 were found substantiated, 3 unsubstantiated, 46 requiring no further action and 6 are still under investigation at the time of compiling this report.

## **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 operations of the seven DPSs were also smooth.

8.2 The polling-cum-counting station was set up at Lung Hang Estate Community Centre. The EAC notes that the venue was easily accessible and located in the vicinity of the residence of most electors. Also, it was spacious and coped well even when the number of people who attended the counting station to observe the counting of votes and declaration of election result turned out to be relatively large in this By-election when compared with the past by-elections. No adverse comments about this polling-cum-counting station have been received by the REO. The EAC considers that it was a suitable venue for the electors to cast vote in this By-election and should be included in the list of venues for use as a polling-cum-counting station in future elections.

## **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 Police Force

Hongkong Post

Housing Department

Immigration Department

Independent Commission Against Corruption

Information Services Department

Lands 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 and the REO staff serving as the 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, 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.