

## **Section 1 – Background**

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

1.1 A vacancy arose in the Nam Fung Constituency of the Eastern District Council (“DC”) on 13 February 2014 pursuant to section 26(c) of the District Councils Ordinance (Cap. 547) (“DCO”) after Ms Leung Suk-ching, an elected member of the 2011 DC Election for the Constituency, was disqualified from holding her office for being absent from three consecutive meetings of the District Council for over four consecutive months without obtaining the consent of the Council in accordance with sections 24(5) and 24(7) of the DCO. The Director of Home Affairs, in accordance with section 32(1) of the DCO, declared the existence of a vacancy in the Nam Fung Constituency of the Eastern DC by publishing a notice in the Gazette on 21 February 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 Nam Fung Constituency of the Eastern DC.

### **The Constituency**

1.3 The Nam Fung Constituency is one of the 37 DC constituency areas in the Eastern District, with a registered electorate of 7,911. 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 18 May 2014 (Sunday) as the polling day for the Eastern DC Nam Fung Constituency By-election (“the By-election”) and specified the period from 28 March 2014 to 10 April 2014 (both dates inclusive) as the nomination period of the By-election by publishing a notice in the Gazette on 7 March 2014.

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

### **Appointments**

2.1 Ms Teng Yu-yan, Anne, JP, District Officer (Eastern) and Ms Au Tsz-kwan, Fiona, Assistant District Officer (Eastern) 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 7 March 2014. Miss Lee Sau-kong, Senior Assistant Solicitor General of the Department of Justice (“DoJ”), was appointed by the EAC Chairman as the ARO (Legal) on 6 March 2014 for the By-election.

2.2 Mr Lui Kit-ling, 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 Lui’s appointment, covering the period from 28 March to 14 April 2014, was published in the Gazette on 7 March 2014.

### **Nominations**

2.3 By the close of the two-week nomination period on 10 April 2014, the RO received a total of two nominations. The two nominations were determined as valid by the RO. The nominees were Mr Cheung Kwok-cheong (Howard Cheung) and Ms Lee Ching-har. The NAC(DC)

did not receive any request from the RO for legal advice on the validity of nomination. The names of the two validly nominated candidates were published in the Gazette on 17 April 2014.

### **Briefing for the Candidates**

2.4 Mr Justice Fung Wah, Barnabas, the EAC Chairman, held a briefing session for the two candidates on 15 April 2014 at the Eastern 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:

<b><u>Candidate Number</u></b>	<b><u>Name of Candidate</u></b>
--------------------------------	---------------------------------

1	Mr Cheung Kwok-cheong (Howard Cheung)
2	Ms Lee Ching-har

A total of 24 spots in the Nam Fung Constituency were designated for the display of EAs during the election period, and each candidate was equally allocated 12 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 polling-cum-counting station and dedicated polling stations (“DPSs”) were conducted on 8 and 9 May 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 Quarry Bay Community Hall 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 Nam Fung 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 17 May 2014, a total of two registered electors of the Nam Fung Constituency would be in their custody in two penal institutions on the polling day. Hence, a DPS was set up in each of these penal institutions. Owing to security considerations, the polls at these two 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 Happy Valley Police Station for registered electors of the Nam Fung 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 Happy Valley 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. 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 DPSs, such votes were transferred to the MCS at the Quarry Bay Community Hall 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 MCS was published in the Gazette on 17 April 2014. 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 MCS by the Presiding Officers (“PROs”) of the concerned DPSs 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 The PRO of each DPS was supported by an APRO and/or a Polling Officer. The PROs delivered, under the escort of the Police, the sealed ballot boxes to the MCS at the Quarry Bay Community Hall 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 Nam Fung Constituency on 2 May 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), fall back arrangements were made with the venue management of the polling stations to reserve the same venues for the following Sunday (i.e. 25 May 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 Quarry Bay Community Hall and the DPS at the Happy Valley Police Station were from 7:30 a.m. to 10:30 p.m. on 18 May 2014. 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 17 April 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 Quarry Bay Community Hall from 7:00 a.m. on the polling day until 12:20 a.m. on 19 May 2014.

4.3 A media enquiry hotline was set up from 7:30 a.m. on 18 May 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 Eastern 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 Happy Valley Police Station to provide support to the PRO.

## Turnout of Electors

4.7 Out of 7,911 registered electors of the Nam Fung Constituency, 3,915 cast their votes in the respective polling stations. The overall turnout rate was 49.49%. 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 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 DPS at the Tai Lam Correctional Institution. Mr Lok paid a visit to the DPS at the Happy Valley Police Station. Following that, they visited the OPS at the Quarry Bay Community Hall together and conducted 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 Quarry Bay Community Hall and the DPS at the Happy Valley Police Station closed at 10:30 p.m. while that at the DPSs at the two penal institutions closed at 4:00 p.m. as scheduled.

5.2 The PROs of the DPSs at the Happy Valley Police Station and the two 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 delivered the sealed ballot boxes to the MCS at the Quarry Bay Community Hall.

5.3 Regarding the OPS at the Quarry Bay Community Hall, 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 the 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 30 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 11:00 p.m., the counting station at the Quarry Bay Community Hall 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 DPROs/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 each DPS, verified the numbers of ballot papers contained therein against the ballot paper accounts of the respective DPSs and mixed them with those of the polling station at the Quarry Bay Community Hall before counting. The count then commenced immediately.

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

6.2 Out of 3,915 ballot papers issued, 35 ballot papers were determined as invalid (including 27 unmarked, one not marked with the chop provided by REO and seven containing votes for more than one candidate). These 35 ballot papers were not counted in accordance with section 78 of the EAC (EP) (DC) Reg.

6.3 In addition, 18 ballot papers were identified as questionable. 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. A total of 15 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 38. 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 12:14 a.m. on 19 May 2014. Mr Cheung Kwok-cheong (Howard Cheung) was elected with 2,383 valid votes, representing 61.47% of the total number of 3,877 valid votes cast. The other candidate, Ms Lee Ching-har received 1,494 votes. The election result for the Nam Fung Constituency was published in the Gazette on 23 May 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 28 March 2014, and ended 45 days after the polling day on 2 July 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 PRO 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 70 complaints were received from members of the public by the five complaints-handling parties, including 45 complaints received on the polling day. The majority of these complaints concerned unauthorised display of EAs and disturbances caused to electors by electioneering activities. A breakdown of the complaints is at **Appendix V**.

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

7.3 There were 45 complaints received on the polling day by the RO, the PRO and the Police. The majority of the complaints received on the polling day were expeditiously handled and resolved. They mainly concerned unauthorised display of EAs and disturbances caused to electors by electioneering activities. A breakdown of the nature of

the complaints received on the polling day is at **Appendix VI**.

## **Outcome of Investigation**

7.4 Of the 70 complaints received during the complaints-handling period, 46 were found substantiated, 3 unsubstantiated and 21 requiring no further action.

## **Section 8 – Review and Recommendations**

8.1 On 12 May 2014, one of the candidates, namely Mr Cheung Kwok-cheong, lodged a complaint with the RO concerning 13 registered addresses of 33 electors in Nam Fung Constituency. According to the complaint, there were nine addresses with unclear particulars and another four involving multiple electors using the same address for voter registration. The complaint, which was also reported in the press the same day, was immediately referred to the EAC for handling. Thereafter, upon the instruction of the EAC, the REO conducted a prompt investigation into the complaint.

8.2 During the follow-up investigation, the REO approached all the nine electors registered with the nine addresses suspected to be unclear to ascertain the accuracy of the addresses. The REO also made reference to the information kept by the Rating and Valuation Department and the Hongkong Post in relation to the addresses concerned. It was discovered that except for three addresses with ambiguities in their description, the rest were found to be proper and acceptable. According to REO's findings, all the nine electors were still residing at their respective addresses and hence there was no evidence of provision of false information in voter registration. Regarding the three addresses with unclear description, the REO took immediate action to assist the electors concerned to rectify their registered addresses.

8.3 Concerning the other four addresses with multiple electors, the

investigation of REO also revealed no suspicious circumstances, although some of the electors might no longer be residing at the addresses concerned. In all these cases, the REO took resolute action to ascertain the continued eligibility of the electors for registration with the addresses concerned and update the particulars for the purpose of compilation of the 2014 Final Registers. As a result, a total of nine electors were removed from the 2014 Final Registers because two of them had passed away and seven electors were no longer residing at the addresses. There were four other electors who had reported a change in their residential addresses and had their registered addresses subsequently updated in the registers.

8.4 In summary, the investigation of REO revealed no *prima facie* evidence to lend support to the allegation that provision of false information for voter registration was involved. Nonetheless, the REO had in the course of the investigation written to all the electors concerned to remind them of the need to provide accurate and up-to-date registration particulars and, more importantly, the grave consequence of provision of false information for voter registration. The REO had also taken prompt action to correct or update the registered addresses of the persons concerned as deemed necessary for the compilation of the 2014 Final Registers. As the complaint had been reported in the press and caused public concern over the fairness of the By-election, there was an important need to dispel public worry and to maintain public confidence in the accuracy of the voter registration system. As such, two press statements (at **Appendix VII**) were issued by the REO on 12 May and 15 May 2014 to keep the public informed in a timely manner of the follow-

up actions taken and the findings before the By-election. A substantive reply was also given to the complainant on 16 May 2014 to advise him of the outcome. EAC Chairman also took the opportunity to give a succinct account of the findings of REO's investigation when responding to questions at the media briefing in the morning of the polling day.

8.5 Having reviewed the incident, the EAC considered that the REO had rightly taken prompt action to look into the complaint and respond to public concern. In particular, the two press statements were timely and served a useful purpose to allay public concern in view of the proximity of the polling day. Although no irregularities were eventually unveiled in the incident, it had nonetheless caused unwarranted concern over the accuracy of voter registers and the fairness of the By-election. The case had once again underscored civic responsibility on the part of electors to check and update their registered addresses in a timely manner. Undoubtedly, it also pointed to the need for the REO to bolster its publicity efforts to drive such message home. In this regard, the REO would continue to strengthen its efforts to remind electors and members of the public to provide clear and accurate information in the coming voter registration cycles.

## **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

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 serving as the RO, AROs, PROs, DPROs 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.