

## Section 1 – Background

### *The vacancy*

1.1 Shortly after the 2002 Kowloon City District Council (“KCDC”) Kai Tak Constituency By-election held on 3 November 2002, another vacancy arose in the membership of the KCDC on 24 November 2002 upon the death of Mr MAK King-lun, an elected member of the Hoi Sham Constituency. The Director of Home Affairs declared the existence of this vacancy vide a notice in the Government Gazette on 29 November 2002 in accordance with s 32(1) of the District Councils Ordinance (“DCO”).

1.2 As required by s 33(1) of the DCO, the Electoral Affairs Commission (“EAC” or “Commission”) had to conduct a by-election to return a member to fill that vacancy in the District Council (“DC”).

1.3 The Hoi Sham Constituency is one of the 22 DC constituencies in the Kowloon City District. A map showing the boundary of the Hoi Sham constituency is enclosed at **Appendix I**. The registered electorate of this constituency is 7,008.

***Date of the by-election and nomination period***

1.4 The Chief Electoral Officer (“CEO”) published a notice in the Gazette on 6 December 2002, designating 9 February 2003 as the polling day for the by-election and the period from 20 December 2002 to 2 January 2003 as the nomination period.

## **Section 2 – Preparation and Nomination**

### ***Appointments of Returning Officer and Assistant Returning Officers***

2.1 The EAC Chairman appointed Mr Kevin YEUNG, the District Officer (Kowloon City) (“DO(KC)”) as the Returning Officer (“RO”) of the by-election, Mr Damian CHAN, the Assistant District Officer (Kowloon City) as the Assistant RO (“ARO”) and Ms Dorothy CHENG, a Senior Government Counsel of the Department of Justice (“D of J”) as the ARO(Legal) of the by-election. The appointments of the RO and ARO were published in the Gazette on 6 December 2002 and that of the ARO(Legal) was made vide a letter from the EAC Chairman dated 20 January 2003 to the ARO(Legal).

### ***Appointment of Nominations Advisory Committee***

2.2 The EAC Chairman also appointed Mr Lawrence LOK Ying-kam, SC, as the Nominations Advisory Committee (“NAC”) for the by-election to provide the RO with legal advice on the eligibility of the candidates nominated. His appointment covering the period from 20 December 2002 to 4 January 2003 was published in the Gazette on 6 December 2002. Mr Lok did not receive any requests for legal advice from the RO during the period of his appointment.

### ***Nominations***

2.3 At the close of nomination, the RO received a total of six nominations, all of which he confirmed valid. The six validly nominated

candidates were Messrs Pius YUM Kwok-tung, Guide LAM Hoi-sing, Stephen LEUNG Yun-yeung, LAM Kin-man, PUN Kwok-wah and Ms WOO Yan-yue (alias WOO Wai-hing). A notice showing their names, candidate numbers and principal residential addresses was published in the Gazette on 10 January 2003.

### ***Briefing for the candidates***

2.4 The EAC Chairman met the candidates at 10 am on 4 January 2003 in the conference room of the District Office (Kowloon City) and briefed them on the electoral arrangements of the by-election and the major provisions of the electoral legislation and guidelines. The venue for the briefing session was chosen according to a recommendation put forth in the EAC's report on the Kai Tak Constituency By-election that the briefing session for candidates of a by-election should preferably be held in a venue in the constituency or district concerned.

2.5 All of the six candidates turned up for the briefing session personally. Also present at the briefing session were the CEO and RO, and representatives from the D of J, Independent Commission Against Corruption ("ICAC") and Hongkong Post. These representatives briefed the candidates and addressed questions on the subjects within their purview.

2.6 When the briefing session was over, the RO drew lots to determine the candidate number for each of the candidates and the locations of the designated spots for them to display their election advertisements ("EAs").

A total of 240 spots was designated in the constituency area for the candidates to display their EAs for the purpose of this by-election.

### ***Notification to the electors***

2.7 Each of the electors was sent a poll card by the Registration and Electoral Office (“REO”) on 17 January 2003. Other information materials were also sent together with this poll card, which included an introductory leaflet on the candidates, a guidance note on voting, a plan showing the location of the polling station, a letter from the DO(KC) appealing to the electors to go to the polling station on the polling day and cast their vote, and a pamphlet prepared by the ICAC reminding the electors of the need to uphold clean and fair elections.

### ***Appointment and training of the polling and counting staff***

2.8 As in previous by-elections, it was not necessary to conduct a service-wide recruitment exercise for polling and counting staff because of the relatively small scale of the election. The staff of the REO assumed the duties of polling and counting staff themselves for this by-election. In-house refresher training sessions were organised for them on 29 January 2003.

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

2.9 In the case of the Kai Tak Constituency By-election held on 3 November 2002 the poll and the count were conducted in the same venue.

The polling station was converted into the counting station after the close of poll. The Commission found this arrangement convenient to all concerned and cost-effective and adopted it again for this by-election. The polling-cum-counting station was set up at the Holy Carpenter Primary School at 14 Kwei Chow Street in Tokwawan. The designation of this venue was published in the Gazette on 10 January 2003.

2.10 The station was set up in the morning on the day preceding the polling day. It was partitioned into two separate sections with wooden boards. One section was to serve as the polling station, with polling booths, ballot papers-issuing desks and the polling staff's working tables. Polling activities were confined to this section. The other section was reserved as the counting station where counting tables and other equipment were stored and markings were made on the floor to show the counting zone. A corner was set aside for the RO to determine questionable ballot papers. The counting station would not be opened until the poll had been closed.

### ***The contingency plan***

2.11 To cope with the unexpected situation when the by-election could not be held as scheduled owing to unforeseeable circumstances, such as inclement weather conditions, the REO made reservation with the school management for using the venue as the polling/counting station on the following Sunday, ie 16 February 2003.

## ***Publicity***

2.12 The major activities of the by-election (eg the Chairman's briefing for the candidates, the polling-cum-counting arrangements, the EAC and VIP visits to the station, etc) were widely covered by both the print and electronic media. The relevant information relating to the by-election was conveniently accessible on the EAC and REO websites. The REO also issued press releases on the by-election.

## **Section 3 – The Poll**

### ***Polling hours***

3.1 As in all previous DC elections, the poll of this by-election started from 7.30 am and ended at 10.30 pm on the polling day. The polling hours were announced in Gazette on 10 January 2003.

### ***Logistics***

3.2 A command centre was set up in the REO's office in Guardian House and manned by the REO's staff for overseeing the operation of the poll and providing logistical support whenever necessary. The centre also collated statistical information (eg hourly turnout rates and number and types of complaints received) for dissemination to the media. This centre operated from the start to the close of poll.

3.3 At the same time, a complaints-handling centre was set up in the REO's office in Harbour Centre and manned by staff of the Complaints Unit of the EAC Secretariat for receiving and processing complaints lodged with the EAC over the phone or by fax from the start to the close of poll.

3.4 The Police and the Civil Aid Service ("CAS") contributed their assistance in maintaining order in the no canvassing zone ("NCZ"), no staying zone and the station.



### ***Turnout of electors***

3.5 Of the 7,008 registered electors of the constituency, 2,563 turned up on the polling day to cast their vote. This was about 36.57% of the total electorate of the constituency. This was higher than the turnout rate of 29.36% in the 1999 ordinary election for this constituency. The higher turnout rate might be attributable to the relatively larger number of candidates and the canvassing efforts rendered by their campaigning teams. A breakdown of the hourly turnout rates is shown in **Appendix II**.

### ***EAC visit***

3.6 The Chairman and Members of the Commission visited the polling station at about 11.40 am on the polling day to observe the poll. On the whole they found the operation of the poll and the set-up of the station satisfactory. After the visit they met the media outside the no staying zone.

### ***Visits by other VIPs***

3.7 Mr Stephen LAM, the Secretary for Constitutional Affairs (“SCA”), visited the polling station at about 10 am on the polling day. He met the media after his visit. Mr Clement MAK, the Permanent Secretary for Constitutional Affairs, visited the polling station in the afternoon.

*The lion dance staged at the fringe of the NCZ*

3.8 At the time when the Commission was visiting the polling station, there was a lion dance performance on the fringe of the NCZ outside the polling station accompanied by a clamorous display of drums and cymbals. It was associated with the campaigning team of one of the candidates, though no verbal canvassing message was delivered. The troupe left the scene after the Police had advised them to do so on the grounds that they were causing noise nuisances.

## **Section 4 – The Conversion**

4.1 The poll closed at 10.30 pm, when the entrance to the polling station was also closed. A notice was instantly put up at the entrance to inform the general public and the other parties concerned that the polling station was being converted into a counting station. The approximate time when the station would be re-opened to the public was also mentioned in the notice. This arrangement was made following a recommendation in the EAC's report on the Kai Tak Constituency By-election. At the same time inside the station, while the Presiding Officer ("PRO") was sealing the ballot box, the other working staff proceeded to convert the polling station into a counting station. In less than half an hour the conversion process was completed. The polling area was cleared to become the area for accommodating members of the public and the media.

4.2 The polling team was re-deployed to counting duties upon the completion of the poll. The PRO had been appointed as Counting Supervisor.

4.3 The Commission arrived at the station before the close of poll to observe the conversion process and was satisfied with the outcome.

## **Section 5 – The Count**

### ***Commencement of the count***

5.1 The station was re-opened at 11 pm when the candidates, their agents, members of the media and public entered to observe the count. In the presence of all those present, the PRO and Deputy PRO moved the sealed ballot box to one of the counting tables, where the EAC Chairman and Members, the SCA and the RO opened and emptied the box. The count then started.

### ***Questionable ballot papers***

5.2 After counting the 2,563 ballot papers that had been cast into the ballot box, 18 were identified as questionable. The RO, in the presence of all parties concerned and accompanied by the ARO(Legal), went through these 18 questionable ballot papers one by one to determine their validity. At the end seven were determined not valid and rejected and the other 11 were determined valid and accepted. A detailed account of these rejected ballot papers is shown in **Appendix III**.

### ***The election result***

5.3 The count took about 80 minutes to complete. At about 12.20 am the RO announced the election result. Mr PUN Kwok-wah was elected with 1,012 valid votes, representing about 39.59% of the total number of valid votes cast. Two of the candidates, ie Mr Guide LAM Hoi-sing and Ms WOO

Yan-yue (alias WOO Wai-hing), received 101 and 12 valid votes respectively. Their election deposits were forfeited in accordance with s 4(2) of the District Councils (Subscribers and Election Deposit for Nomination) Regulation because the number of valid votes they each obtained was less than 5% of the total number of valid votes cast (ie 2,556). The election result was published in the Gazette on 13 February 2003 and is now shown in **Appendix IV**.

### *Meeting the media*

5.4 After the election result had been announced, the Commission met the media in the counting station.

## Section 6 – Complaints

### *Complaints-handling period*

6.1 As in previous by-elections the Commission itself assumed the task of vetting the complaint cases received in this by-election, instead of forming a Complaints Committee as in ordinary elections.

6.2 The complaints-handling period started on 20 December 2002 (ie the commencement of nomination) and ended on 26 March 2003 (ie 45 days after the polling day). During this period the public could and did lodge complaints with the EAC, RO, Police and ICAC. A total of 31 complaints was received and processed. The majority of these cases (15 out of 31) concerned noise nuisances caused by the use of amplifying devices by the candidates in their canvassing activities. A detailed breakdown of all the complaints handled by these parties is shown in **Appendix V**.

### *Complaints received on the polling day*

6.3 On the polling day, altogether nine complaints were received, of which four were received by the REO's Complaints Centre, one by the RO and four by the Police. The ICAC and PRO received none.

6.4 As in previous elections all complaints received on the polling day were handled expeditiously. Eight of the nine cases were solved on the spot. The remaining one was referred to the ICAC by the RO on the following day.

The ICAC, after investigation, was of the view that the case was not within their purview and it should be dealt with by the EAC because it involved a breach of the electoral guidelines. The EAC, having vetted the case, found it substantiated and issued a written warning against the complainee. The majority of these cases (6 out of 9) also concerned noise nuisances caused by the use of amplifying devices by candidates in their electioneering activities. Details are shown in **Appendix VI**.

### *The outcome of investigations*

6.5 Of the 31 cases received and processed, 11 were found substantiated/partially substantiated and 19 unsubstantiated. The remaining one was still under investigation by the ICAC.

## **Section 7 – Review and Recommendations**

7.1 After this by-election the Commission has, as in previous elections, reviewed the electoral arrangements and procedures of this by-election to look for further improvements for future reference. The Commission's observations and recommendations are set out in the following paragraphs.

### **(A) The polling-cum-counting arrangement**

7.2 The Commission has observed the conduct of this new arrangement on two occasions. The first occasion was on the polling day of the Kai Tak Constituency By-election on 3 November 2002. When the Commission observed this arrangement again at the venue of the Hoi Sham Constituency By-election, they were certain that their aim for conducting elections more cost-effectively had been achieved. The arrangement of performing both polling and counting functions in the same venue obviously has its merits. Besides reducing manpower and financial resources, it saves time in transporting the ballot box and at the same time limits the security risk in the course of transportation. Most importantly, the waiting time for the election result has also been significantly shortened to the benefit of all concerned.

7.3 **Recommendation:** The Commission recommends that this arrangement be adopted for the 2003 DCs ordinary election and any other by-elections.



**(B) Noise-generating activities conducted at the fringe of the NCZ**

7.4 The Commission noted that the lion dance staged on the fringe of the NCZ outside the polling station on the polling day could have an implication of supporting a certain candidate, despite the fact that no explicit verbal message was transmitted through the loudspeaker or no written message was displayed.

7.5 **Recommendation:** The Commission is considering whether the electoral guidelines for the DCs elections need be amended to the effect that such activities should be prohibited as in the case of the use of loudspeakers outside the NCZ.

**(C) Use of loudspeakers in electioneering activities**

7.6 The Commission noted that the number of complaints against the use of the loudspeaker by the candidates in their electioneering activities remained high.

7.7 **Recommendation:** The Commission will continue to make it clear to the candidates on appropriate occasions the importance of exercising restraint in their use of amplifying devices for their electioneering activities, highlighting the fact that this may likely cause noise nuisances to electors, and would not only invite complaints from them but would also arouse their resentment towards the candidates using such devices.

## **Section 8 – Acknowledgement**

8.1 The by-election has been smoothly conducted. For this the EAC wishes to extend its gratitude towards the following government bureau and departments for their reliable support and co-operation: the Constitutional Affairs Bureau, CAS, D of J, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Government Land Transport Agency, Home Affairs Department, Highways Department, Hong Kong Police Force, Hongkong Post, ICAC, Information Services Department, Information Technology Services Department, Lands Department, Official Languages Agency, Transport Department and Printing Department.

8.2 The EAC is particularly thankful to the staff of the REO, officers serving as RO and AROs, and the legal practitioner serving on the NAC for the by-election.

8.3 The EAC would also like to thank the media for their wide coverage of the key events of the by-election.

8.4 Last but not least, the EAC is grateful to all those who complied with the electoral legislation and guidelines during the by-election and the electors who turned up in the station to cast their vote.

## **Section 9 – A Concluding Word**

9.1 The Commission will continue to make its best endeavour to look for improvements for the conduct of elections and ensure that the important principle of conducting all elections openly, fairly and honestly will be upheld all the time.

9.2 The Commission recommends that this report be made public, at a time the Chief Executive thinks fit, so as to render it fully transparent for the public to see how the Commission discharges its functions under the Electoral Affairs Commission Ordinance.