

Section 1 – Introduction

Background

1.1 Subsequent to the first round of Village Representative (“VR”) by-election in March 2004, the second round of by-election was held on 28 November 2004 with a view to returning 19 VRs for 19 villages as required under section 21 of the Village Representative Election Ordinance, Cap 576 (“VREO”). The details and causes of these vacancies are set out in paragraph 1.3 below.

1.2 The timing of this by-election was scheduled according to a recommendation made by the Electoral Affairs Commission (“EAC” or “the Commission”) after the first round of VR by-election held on 28 March 2004 was declared uncontested. The EAC recommended that any VR by-elections conducted thereafter should be held twice a year in April/May and November/December, unless there are special circumstances that warrant a departure from the scheduled time.

The Vacancies

1.3 A total of 19 vacancies comprising 8 Resident Representative (“RR”) and 11 Indigenous Inhabitant Representative (“IIR”) seats had arisen in 19 villages after the conclusion the first round of VR by-election in March 2004. These vacancies are classified into three different groups as follows: –

- (a) ***4 vacancies*** – comprising 3 RR and 1 IIR vacant seats in 4 villages. These vacancies arose because no one sought candidature for these seats and the election to fill such vacancies in the VR by-election held in March 2004 had failed;

- (b) **9 vacancies** – comprising 3 RR and 6 IIR vacant seats in 9 villages. These vacancies arose because 3 elected representatives (1 RR and 2 IIRs) resigned from office after being elected; 5 elected representatives (2 RRs and 3 IIRs) passed away and one IIR was disqualified under section 9(1)(d) of the VREO; and

- (c) **6 vacancies** – comprising 2 RR and 4 IIR vacant seats in 6 villages. Upon the completion of the 2004 voter registration cycle in October 2004, each of these 6 villages was able to secure 6 registered electors, thus meeting the requirement in section 25(1) of the VREO, which stipulates that the nomination of a candidate must be subscribed by 5 electors.

1.4 Six districts of the New Territories were involved in this by-election, namely, North, Islands, Tai Po, Tuen Mun, Sai Kung and Yuen Long. A list showing details of the vacancies and the dates on which the vacancies were declared in the Gazette notice is at **Appendix I**.

Section 2 – Registration of Electors

The Registration Period

2.1 The period for registration of electors in 2004 was from 22 March to 30 July 2004, as stipulated in section 8(1) of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation, Cap 541K (“EAC (ROE) (VRE) Regulation”). During this period, the Home Affairs Department (“HAD”) received a total of 2,146 applications (986 for the RR election and 1,160 for the IIR election).

Publication of Provisional Register and Objections and Claims

2.2 After the end of the registration period, a provisional register (“PR”) for the Existing Villages (“EVs”) and the Indigenous Villages (“IVs)/Composite Indigenous Villages (“CIVs”), recording the personal particulars of 80,382 electors of EVs and 79,119 electors of IVs/CIVs, was published on 10 September 2004 for public inspection until 23 September 2004. For this purpose, a full copy of the PR was kept in the office of the Director of Home Affairs (“DHA”) (who is the Electoral Registration Officer (“ERO”) for VR elections) and the relevant “section” of the PR (ie, the part of the PR relating to the district concerned) was kept in the respective District Offices. Details were announced in a notice in the Gazette published by the ERO on 10 September 2004.

2.3 As provided for in sections 23 to 25 of the EAC (ROE) (VRE) Regulation, any person who considers that a registered person is not eligible to be registered as an elector may serve a notice of objection in a specified form in person at the office of the ERO or the office of the relevant Assistant ERO (ie the District Officer (“DO”)). Any person whose principal residential address is in Hong Kong and who has applied

for registration as an elector but whose name is not recorded in the PR or who has a claim regarding his particulars in the PR may serve a notice of claim in the specified form in person at the office of the ERO or the office of the relevant Assistant ERO. However, for a person whose principal address is not in Hong Kong and who wishes to lodge a claim, he may serve the notice of claim in a specified form in person, by post, facsimile transmission, electronic means (within the meaning of section 2(1) of the Electronic Transactions Ordinance) authenticated by a digital signature within the meaning of that section, or authorising another person in writing to serve the notice on his behalf. Copies of the specified forms can be obtained from the office of the ERO or relevant Assistant ERO, or downloaded from the VR elections website. These arrangements were announced by the ERO in the notice in the Gazette published on 10 September 2004. Such objections and claims should be lodged during the public inspection period, ie from 10 to 23 September 2004.

2.4 By 5:00 pm on 23 September 2004, 117 objections had been received by the ERO. These cases were heard in the Fanling Magistrates' Court by a team of four Revising Officers from 24 to 30 September 2004. The outcome was that 4 objections were allowed and 113 dismissed. A detailed breakdown is shown in **Appendix II**.

2.5 Under sections 27 and 28 of the EAC (ROE) (VRE) Regulation, the ERO may make corrections to entries in the PR before compiling the final register ("FR"). Those made under section 27 of the regulation concern requests from electors to alter their personal particulars or the part of the register in which they should be recorded. They need not be approved by the Revising Officer. Those made under section 28 of the regulation concerning the removal, addition or correction of entries require the Revising Officer's approval. A detailed breakdown of the corrections made by the ERO in the 2004 PR under section 28 of the regulation is at **Appendix III**.

Publication of the Final Register

2.6 After the Revising Officers' rulings and the relevant corrections to the entries in the PR had been made, the ERO published the 2004 FR on 20 October 2004. The number of electors of EVs and those of IVs/CIVs shown in the 2004 FR is 80,354 and 79,119 respectively. As in the case of the PR, a full copy of the FR is kept in the ERO's office and the relevant "section" of the FR is kept in the respective District Offices.

Outcome of the Registration Exercise

2.7 Upon the completion of the annual voter registration exercise in 2004, 6 villages which previously could not attain a sufficient number of electors for subscribing candidates for an election had secured sufficient registered electors to meet the statutory requirement. A by-election was held for these villages in November 2004. As for the other villages which still have not attained the minimum requirement, a by-election for them would be held if they could do so after the next or subsequent voter registration exercises.

Section 3 – Appointments

Polling Date and Nomination Period

3.1 Pursuant to section 6 of the Electoral Procedure (Village Representative Election) Regulation, Cap 541L, the DHA published a notice in the Gazette on 15 October 2004, appointing 28 November 2004 as the polling day of the by-election and specifying the period from 23 October to 5 November 2004, both dates inclusive, as the nomination period. The by-election aimed at returning candidates to fill 8 RR and 11 IIR vacancies in 19 villages. A breakdown of the number of RRs and IIRs to be returned by district is shown in **Appendix IV**.

Appointment of Returning Officers, Assistant Returning Officers and Assistant Returning Officer (Legal)

3.2 In accordance with section 54 of the VREO, the Commission appointed the DOs of the six New Territories District Offices concerned as Returning Officers (“ROs”) and 10 Assistant Returning Officers (“AROs”) from among their staff and a Senior Government Counsel as ARO(Legal) on 11 October 2004. The appointment of ROs was published in the Gazette on 15 October 2004. A list of the ROs and AROs is shown at **Appendix V**.

The Briefing for Returning Officers and Assistant Returning Officers

3.3 To enable all parties concerned to be familiarised with the rules and operation of the by-election, the HAD prepared and issued operational manuals to the ROs/AROs as well as the polling and counting staff for reference.

3.4 A briefing for ROs and AROs was held on 12 October 2004 at

the HAD Headquarters. The EAC Chairman, accompanied by the Deputy Director of Home Affairs, representatives from the Independent Commission Against Corruption (“ICAC”) and Department of Justice (“DoJ”) and the Senior Electoral Officer of the Registration and Electoral Office (“REO”) briefed those present on the electoral arrangements and reminded them of the salient provisions of electoral legislation and guidelines. About 12 staff members from the six District Offices attended the briefing. At the end of the briefing, there was a “Questions and Answers” session.

Training Session for Polling and Counting Staff

3.5 As in the 2003 VR Election, staff of the HAD were deployed as polling and counting staff for the by-election. A training session was organised on 22 November 2004 for all staff to be engaged in polling and counting duties and manning the command centre. It aimed at familiarising the staff with the rules and operational procedures and their respective roles.

Section 4 – Preparation Work

Amendment of the Guidelines

4.1 To facilitate the supervision and conduct of this by-election, the EAC updated the electoral guidelines for the VR Elections in October 2004, with reference to the latest amendments made to the guidelines for the Legislative Council Elections published in July 2004, and also taking into account the operational experience as well as complaints and suggestions in that election. The major changes to the guidelines included the following:

- (a) requirement for each elector subscribing a nomination to sign the nomination form personally;
- (b) more details on how election expenses should be counted for prejudicing the election of a candidate, and how the value of a commercial or non-commercial space for display of election advertisements (“EAs”) and joint advertisements should be accounted for;
- (c) RO to issue a notice to candidates requiring them to remove their EAs posted at the private premises within the No Canvassing Zone on the polling day;
- (d) requesting all management bodies of the organisations or buildings concerned to treat all candidates of each village fairly and equally;
- (e) requiring all persons who put up publicity materials, including those which do not appear election-related, in the nomination period on private premises to declare to the management body

concerned whether they are candidates or intend to stand as candidates in the election;

- (f) adding a statement to remind candidates to consider the public's concern over the noise level of loudspeakers on broadcasting vans;
- (g) further clarifying as to why prior written consent of support was needed and as to the use of title of office bearer in such support, and whether a candidate needed to share the expenses for the EAs if he appeared in another candidate's EAs to indicate his support;
- (h) a new provision introducing the addition of a caption to a photograph in an EA as a means to minimise misunderstanding regarding consent of support;
- (i) advising candidates not to distribute their EAs together with any materials published by any person, organisation, or government agency or department;
- (j) clarification that materials published by any person, including a candidate, for the purpose of prejudicing a candidate or candidates are treated as EAs, if reference could be made from the materials to identify the candidate(s) being prejudiced;
- (k) a new provision to specify that for current affairs or other programmes on TV and radio which were not election-related, candidates might take part as guests in these programmes insofar as their participation was pertinent; and
- (l) elaboration that comments made by broadcasters for the

purpose of promoting or prejudicing a candidate would be treated as EAs, if reference could be made from the materials to identify the candidate being promoted or prejudiced. If such comments were determined by the Commission as EAs, the Commission would refer the matter to the Broadcasting Authority for appropriate action.

4.2 The amendment sheets containing the revised guidelines were sent to all parties concerned in October 2004. The revised guidelines were issued to the candidates of the by-election during the nomination period.

Publicity

4.3 Information on the by-election was published in the websites of the EAC and the HAD throughout the election period for general reference of candidates, electors and the public. Press releases were also issued to publicise the major events of the by-election, eg the nomination period and date of the poll. These measures helped to enhance transparency of the by-election.

Section 5 – Nomination of Candidates

The Nomination Period

5.1 The nomination period started on 23 October and ended on 5 November 2004. Candidates handed in their nomination forms to the relevant RO in person. At the close of nomination, the ROs received a total of 16 nominations.

Validly Nominated Candidates

Validity

5.2 After vetting the nominations, the ROs confirmed that all the nominations were valid. Of the 16 nominations received, 4 were for the RR elections, and 12 for the IIR elections.

Uncontested elections

5.3 Having examined the nominations, the ROs found and declared that 12 candidates were uncontested (4 for the RR elections and 8 for the IIR elections), as there was only one validly nominated candidate for each of these villages. The lists of uncontested candidates who were returned in the by-election were published in the Gazette on 12 November 2004 and are shown at **Appendix VI**.

Contested elections

5.4 As the number of validly nominated candidates for two IVs was more than the number of IIR to be returned for these villages (two candidates contesting for one seat in each of the two IVs), a poll was held on 28 November 2004 for these two IVs, namely, the Ham Tin IV in the

Islands district and the Fanling IV in the North district. The names and relevant particulars of the validly nominated but contesting candidates were published in the Gazette on 12 November 2004.

Elections that failed

5.5 The ROs also declared that the elections of 4 RR and 1 IIR had failed because there was no validly nominated candidate. The lists of villages where the elections had failed were also published in the Gazette on 12 November 2004 (**Appendix VII**).

The Briefing for Candidates

5.6 The EAC Chairman hosted a briefing for candidates of the by-election in the Conference Room of Sha Tin District Council at Sha Tin Government Office on 8 November 2004. Also present with the EAC Chairman were the Deputy Director of the HAD, representatives of the ICAC, DoJ and the Chief Electoral Officer of the REO.

5.7 The EAC Chairman briefed candidates on the major provisions of the electoral legislation and guidelines and on the electoral arrangements. Two candidates of the Fanling IV (one of the two contested villages) attended the briefing. The EAC Chairman also answered the questions raised by the candidates and their supporters.

5.8 After the briefing session came the session for drawing lots, during which the candidates were allocated their candidate numbers and designated spots for displaying their EAs.

Section 6 – The Poll

Polling Date and Polling Hours

6.1 The poll was held on 28 November 2004 (Sunday). The polling hours were from 12 noon to 7 pm, as in the 2003 VR Election.

The Contingency Plan

6.2 To cope with any unforeseeable situations in which the poll at a polling station could not be proceeded smoothly for one reason or another, eg inclement weather conditions, the HAD had, for each contested village, arranged for an alternative polling station apart from the designated polling station. The location of all polling and counting stations was gazetted by the DHA on 12 November 2004. These venues were also reserved for the same purpose on the Sunday following the polling day, ie 5 December 2004, which was the fallback date. A manual setting out the arrangements in case of emergencies or inclement weather on the polling day was also prepared for reference of the officers concerned.

Logistical Arrangements

6.3 On the polling day, two designated polling stations (one for each village) were open for operation as scheduled. The weather was fine and there was no unexpected incident to impede the conduct of the elections, and so it was not necessary to open any of the alternative polling station. A Central Command Centre was set up at the HAD Headquarters at Southorn Centre to oversee the operation of the polling and counting stations as well as district command centres and to co-ordinate the communication and dissemination of information for all parties concerned on the polling day.

6.4 In the REO headquarters at Harbour Centre, a complaints centre, manned by the staff of the Complaints Unit of the EAC secretariat, was set up to receive and handle complaints from members of the public throughout the polling hours.

6.5 There were also designated ICAC and Police officers on duty to attend to complaints on the polling day.

Introductory Leaflets and Polling Notices to Electors

6.6 The HAD has produced candidates' introductory leaflets to provide registered electors with information on the relevant personal particulars, election platform and photographs of candidates to enable electors to make an informed choice on the polling day. Introductory leaflets were produced for all the validly nominated candidates, except seven of them who had not provided information for the production of the leaflets.

6.7 Ten days before the polling day, a polling notice, together with the relevant candidates' introductory leaflet, was sent to each of the electors concerned, notifying them of the date, time and location of the polling station. Notices were also sent to the electors in cases where the candidate was returned uncontested or where the election had been declared as having failed. In these cases the electors concerned were informed by the notice that they needed not attend the polling station to cast their votes.

6.8 A letter from the DO concerned appealing to electors to cast their votes on the polling day and a pamphlet prepared by the ICAC to promote clean elections were also sent to electors.

The New Arrangement

6.9 To address the public's concern on the illegal conduct of using mobile phones inside the polling stations during the poll, as in the case of the 2004 Legislative Council Election, the following measures were adopted for this by-election to safeguard the secrecy of vote.

- (a) more prominent signs were displayed outside and inside polling stations (including voting compartments) to remind electors that it was an offence for a person to use a mobile telephone, paging machine or any other device for electronic communication, or to film, take photographs or make any audio or video recording within a polling station without the express permission, in writing, of the Presiding Officer ("PRO"), RO or the EAC;
- (b) on issuing a ballot paper to an elector, the polling staff reminded the elector not to use mobile telephone or camera inside the polling station;
- (c) no curtain was provided 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 or camera inside the voting compartment; and
- (d) an enlarged restricted zone (1.5 metres and 1 metre for the two polling stations respectively) was designated outside the voting compartments and no person would be allowed to enter or stay in the zone when an elector was marking the ballot paper inside the voting compartment, so that the elector's choice on the ballot paper would not be seen by other

persons.

Voter Turnout Rates

6.10 The total number of registered electors of the contested elections was 1,277. Of these, 759 electors (ie about 59.44%) cast their votes on the polling day. A detailed breakdown of the turnout rates is shown in **Appendix VIII**.

Section 7 – The Count

Counting Stations

7.1 There was one counting station for each of the two contested villages. Each counting station was supervised by the RO.

Counting Method

7.2 As there was only one vacancy in each of the villages concerned, manual counting was adopted.

Counting Arrangements

7.3 After the close of the poll, the ballot boxes were transported from the polling stations to the counting stations for counting of votes. On the arrival of the ballot boxes at around 7:30 pm, the RO concerned opened and emptied the ballot boxes for the count to commence.

7.4 The counting tables were appropriately positioned for the sake of avoiding distraction and allegations of vote tinkering.

7.5 Questionable ballot papers were identified, and their validity was determined by the RO in front of candidates or their agents who were present at the counting station. The analyses of the ballot papers not counted and the invalid ballot papers kept by PROs are at **Appendices IX** and **X** respectively. Counting staff then sorted the ballot papers into different plastic boxes according to the votes marked thereon, before starting to count the number of votes obtained by each candidate.

Declaration of Result

7.6 The election result was declared at each counting station by the RO after the completion of the count at 8:15 pm. The results of these contested elections were promulgated in the Gazette published on 3 December 2004.

7.7 The full lists of successful and unsuccessful candidates including those uncontested and those villages where elections were declared as having failed are shown in **Appendices XI(A)-(B)**.

EAC Visits

7.8 The EAC visited the polling station in each of the two villages in the afternoon of the polling day, and observed the count for the Fanling IV at the counting station in the North District Office. They found the polling arrangements made at both stations generally satisfactory.

7.9 The Deputy Director of Home Affairs also joined the EAC in visiting the polling stations and the counting station at the North District Office on the polling day.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 23 October 2004 (ie the commencement of the nomination period) and ended on 12 January 2005 (ie 45 days after the polling day of 28 November 2004).

Complaints-handling Parties

8.2 The parties involved in assisting the EAC to handle complaints included the Complaints Unit of the EAC secretariat, the ROs, the Police, the ICAC and, on the polling day, the PROs.

8.3 The Complaints Unit of the EAC secretariat assumed the role of the co-ordinator for collating the complaint-related statistical information from the other parties and compiling a consolidated return for submission to the Commission on a weekly basis during the complaints-handling period.

Number and Nature of Complaints

8.4 The total number of complaints received during the complaints-handling period was three. The breakdown is as follows:

<u>Nature</u>	<u>Number</u>	<u>Received by</u>
Nomination and candidature	2	EAC and RO
Entitlement to vote	1	PRO

8.5 Out of the three complaints received, the one on entitlement to vote was received on the polling day.

Outcome of Investigations

8.6 Of the three cases received during the complaints-handling period, all of them were found not substantiated.

Election Petition

8.7 In relation to the by-election, one election petition has been made to the Court of First Instance. Mr PANG Cheung-yin, one of the two candidates of the Fanling IV, filed the election petition against Mr WONG Hon-ho, the RO for the village concerned, on 1 February 2005. The petitioner alleges that his opponent was not duly elected because the latter was ineligible for nomination as a candidate for the by-election. The case is pending determination by the Court.

Section 9 – Review and Recommendations

9.1 The Commission had made some observations during the visit to polling and counting stations and after reviewing the by-election. Details of the review and recommendations are in the paragraphs below.

(A) Inclusion of Candidates' Information in Polling Notices

9.2 In line with the EAC's recommendation in the report for the 2003 VR Election, introductory leaflets of candidates showing their personal particulars and election platform were printed and distributed to electors together with the polling notices by the HAD for this by-election. Although the arrangement had been adopted in the by-election held in March 2004 which was uncontested, it was the first time that such leaflets were produced for a contested VR by-election. This arrangement provided electors with more information about candidates contesting in their villages and facilitated electors in making an informed and considered choice of candidates when casting their votes, thereby enhancing the openness and fairness of the election.

9.3 **Recommendation:** The arrangement should be continued in future VR ordinary elections and by-elections, as it could help electors make a considered choice when exercising their right to vote.

(B) Set Up of Voting Compartments

9.4 It is noted that as no curtains were provided in front of the voting compartments, the marking of ballot paper by an elector inside his voting compartment might be seen by the other electors using the adjacent voting compartments.

9.5 **Recommendation:** To safeguard the secrecy of the vote when

electors are marking their choice of candidates inside voting compartments, the table on which the elector places his ballot paper to mark his vote should be set in such a position that would cause his body to block the marking from being visible to persons outside the compartment.

(C) Counting Procedures

9.6 While the counting process generally worked smoothly, there is room for improvement to speed up the process.

9.7 **Recommendation:** Questionable ballot papers can be identified at the same time when the number of ballot papers, as opposed to the number of votes marked on them, is verified against the ballot paper account. This will save one step and will substantially reduce the time needed for counting, particularly when a large number of ballot papers have to be counted.

Section 10 – Acknowledgement

10.1 The Commission wishes to extend its gratitude towards the HAD for conducting the by-election, particularly those serving as ROs, AROs, polling and counting officers. The Commission is also thankful to the various government bureau and departments for rendering their valuable assistance throughout the by-election, including the REO which was responsible for drafting this report, preparing the EAC visit programme and co-ordinating the handling of complaints for the by-election.

10.2 Last but not least, the Commission would like to express its appreciation to the electors who turned up to cast their votes at the polling stations and all those who complied with the electoral legislation and guidelines.

Section 11 – The Way Ahead

11.1 The HAD is planning another by-election in April/May 2005 to return candidates to fill vacancies which have arisen and may arise subsequent to the VR By-election (November 2004), such as resignation and death of incumbent VRs.

11.2 Before the next round of by-election in April/May 2005, the Commission is busily engaged in the preparation work for three District Council (“DC”) by-elections scheduled for March 2005, namely the by-elections for the Fort Street Constituency of the Eastern DC and the Nam Cheong Constituency of the Sham Shui Po DC, both scheduled to be held on 6 March 2005, to be followed by the by-election for the Ap Lei Chau North Constituency of the Southern DC on 20 March 2005.

11.3 The Commission would like to recommend that this report be made public, at a time when the Chief Executive thinks fit, to be in line with the long standing principle of maintaining transparency of elections.