

Section 1 – Introduction

Background

1.1 In accordance with section 21 of the Village Representative Election Ordinance, Cap 576 (“VREO”), the Electoral Affairs Commission (“EAC” or “the Commission”) arranged for the third round of village by-elections to be held on 8 May 2005 for the purpose of returning 3 Village Representatives (“VRs”) to fill 2 Resident Representative (“RR”) and 1 Indigenous Inhabitant Representative (“IIR”) vacancies in Yung Shue Long, Cheung Sha Upper Village and San Tsuen respectively. The reasons for conducting the by-elections are given in paragraphs 1.2 to 1.3 below.

1.2 The timing of this by-election was scheduled according to a recommendation made by the EAC in the *Report on the Village Representative By-election* held in March 2004, the Commission suggested 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 planned time.

The Vacancies

1.3 A total of 3 vacancies have arisen after the conclusion of the first two rounds of the VR by-elections in 2004. Details of these vacancies are as follows: –

- (a) **San Tsuen (an IIR seat) and Yung Shue Long (a RR seat)** - these vacancies arose upon the death of Messrs SUEN Nin-on and CHAU Shui-kan, the elected representatives in the villages concerned; and

- (b) **Cheung Sha Upper Village (a RR seat)** - this vacancy arose when Mr TSANG Kin-kwan, the elected representative resigned from his office.

1.4 The Tsuen Wan and Islands Districts were involved in this by-election. The Director of Home Affairs (“DHA”) declared the existence of the IIR vacancy for San Tsuen in Tusen Wan District by a Gazette notice on 5 November 2004. The existence of the 2 RR vacancies for the villages of Yung Shue Long, Lamma Island (North) and Cheung Sha Upper Village, South Lantao were declared by Gazette notices on 19 March 2004 and 10 December 2004 respectively.

Section 2 – Appointments

Polling Date and Nomination Period

2.1 Pursuant to section 6 of the Electoral Procedure (Village Representative Election) Regulation, Cap 541L, the Director of Home Affairs published a notice in the Gazette on 24 March 2005, appointing Sunday, 8 May 2005 as the polling day of the by-election and specifying the period from 2 to 15 April 2005 (both dates inclusive) as the nomination period for candidates.

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

2.2 In accordance with section 54 of the VREO, the Commission appointed Messrs Richard LUK and Owin FUNG, the District Officers of the Tsuen Wan and Island District Offices respectively as Returning Officers (“ROs”) and Mr TONG Wing-po, Ms Zorina WAN and Ms Michelle CHEUNG as Assistant Returning Officers (“AROs”). Besides, Ms Dorothy CHENG, a Senior Government Counsel from Department of Justice (“DoJ”) was appointed as ARO(Legal) on 4 March 2005. The appointment of the ROs was published in the Gazette on 24 March 2005.

Briefing for Returning Officers and Assistant Returning Officers

2.3 To familiarise all parties concerned with the rules and operation of the VR by-election, the Home Affairs Department (“HAD”) prepared and issued operational manuals to the ROs/AROs as well as polling and counting staff for reference in March 2005.

2.4 A briefing for ROs and AROs was also conducted on 21 March 2005 at the HAD Headquarters. The EAC Chairman, accompanied by the Deputy Director of Home Affairs, representatives from the Independent Commission Against Corruption (“ICAC”) and DoJ, and the Deputy Chief Electoral Officer of the Registration and Electoral Office (“REO”), briefed those present on the major electoral arrangements and reminded them of the important provisions in the electoral legislation and guidelines.

Section 3 – Preparation Work

Amendments of the Guidelines

3.1 To facilitate the supervision and conduct of the by-election, the EAC updated the electoral guidelines for the VR elections in February 2005 with reference to the latest amendments made to the guidelines for the other public elections and also taking into account the operational experience, complaints and suggestions received in past elections. The major changes to the guidelines included the following:

- (a) explaining the scope and definition of election advertisement in greater detail. To clarify that a printed performance report by an incumbent candidate during the election period would be treated as an EA, whether or not it has promoted his candidacy, whereas a performance report shown on a website of an incumbent candidate during or before the election will be treated as an EA if it is published for the purpose of promoting or prejudicing the election of a candidate;
- (b) adding a statement that service providers which are not licensees under the Broadcasting Ordinance should not be regarded as commercial broadcasters. They are allowed to carry election advertisements territory wide; and
- (c) adding a provision that before the issue of warning to a complainee, reasonable effort should be made to contact the

person and give him a reasonable opportunity to give explanations.

3.2 The updated guidelines were issued to the candidates concerned in April 2005.

Publicity

3.3 Information and reference materials on the by-election were uploaded on the EAC and the HAD websites throughout the election period for public information. Press releases were also issued to cover the major events of the by-election, such as the nomination period and date for the poll.

Briefing for Candidates

3.4 A briefing for candidates, hosted by the EAC Chairman, with representatives from HAD, ICAC, DoJ and the REO was scheduled for 18 April 2005. All validly nominated candidates were invited to attend the briefing. The briefing was subsequently cancelled as the candidates had been returned uncontested and they indicated they would not attend the briefing.

Section 4 – Nominations and Election Results

The nominations

4.1 By the close of the nomination, the ROs received a total of 2 nominations. The nominees were Messrs SUEN Loi-on and WONG King-chuen, candidates for San Tsuen (IIR election) and Yung Shue Long (RR election) respectively. There were no nominees for the RR by-election of Cheung Sha Upper Village.

4.2 Having carefully considered all the nominations, the ROs confirmed that they were valid.

Uncontested elections

4.3 In accordance with section 29(1) of the VREO, when the number of validly nominated candidate for the village is no more than the number of VR to be returned for the village concerned, the RO for the village should publicly declare the candidate to be duly elected as a VR for the village. As there was only one candidate for each of the vacant IIR and RR seats, Mr SUEN Loi-on was declared duly elected as the IIR for San Tsuen and Mr WONG King-chuen as an RR for Yung Shue Long.

4.4 The election result for the by-election was published by a notice in the Gazette on 22 April 2005 (**Appendix**).

Election that failed

4.5 At the close of nominations for the Cheung Sha Upper Village by-election, no candidates were validly nominated, the RO concerned therefore declared that the RR election for the village had failed. A Gazette notice declaring the failure of the election was published on 22 April 2005.

4.6 A notice was issued to notify the electors concerned that no poll would be conducted on 8 May 2005 as scheduled. An introductory leaflet on Messrs SUEN and WONG, the duly elected candidates, were sent to the electors together with the notices.

Section 5 – Complaints

5.1 The complaint-handling period was originally scheduled to end on the 45th day after the polling day. Since the by-elections were uncontested, the ending date of the complaint-handling period was brought forward to 30 May 2005, ie the 45th day after the close of the nomination period.

5.2 As in the VR ordinary election in 2003 and the two VR by-elections in 2004, complaints were handled by the EAC, the ROs, the Police and the ICAC in relation to the VR by-election.

5.3 According to the records of the complaint handling bodies, no complaint was received during the complaint-handling period.

Section 6 – Review and Recommendation

6.1 Since the VREO was enacted in February 2003 and the conduct of the VR elections was brought under a statutory framework, this was the third by-election conducted under the supervision of the Commission. Having carefully reviewed all preparation work for conducting the VR by-election, the EAC is satisfied that the electoral arrangements were smoothly conducted and the principle of fairness, openness and honesty had been upheld.

6.2 The fact that only 2 nominations were received in the by-election, as against 3 vacant seats, has once again indicated the lack of enthusiasm among villagers in seeking candidature.

6.3 **Recommendation:** The Commission is of the view that continuous efforts should be made by the HAD to further strengthen the publicity for VR elections and to encourage villagers to participate either as an elector or candidate of the election for serving their community.

Section 7 – Acknowledgement

7.1 Although the by-elections were uncontested, the Commission would like to thank all those involved in making the necessary preparations, particularly the HAD Officers who had served as ROs and AROs.

7.2 The Commission is also thankful to the REO for preparing this report.

Section 8 – The Way Ahead

8.1 The HAD is planning another by-election in November/December 2005 for returning candidates to fill vacancies which arose subsequent to this VR by-election, including the resignations of Messrs HO Chung-wing and TSANG Kin-kwan, the RRs in Ta Tit Yan and Cheung Sha Upper Village respectively, the death of Mr. CHAN Hoi-kwan, a RR in Shung Ching San Tsuen (I) and the disqualification of Mr. Mok Kwong-ming, an IIR in Mok Ka.

8.2 Before the next round of VR by-election which will be held in November/December 2005, the imminent task for the Commission is the conduct of the Chief Executive Election on 10 July 2005. Preparation work is underway. The Commission will continue with its mission of ensuring that all public elections are conducted in an open, fair and honest manner. It will remain, as always, open to views from the public on what measures should be taken to improve future electoral arrangements.

8.3 The Commission would like to recommend this report be made public, at a time the Chief Executive thinks appropriate, to enhance the transparency of the Commission's work in the conduct and supervision of the elections under the Electoral Affairs Commission Ordinance (Cap 541).