

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 conducting the fourth round of village representative by-election on 8 January 2006 for the purpose of returning 10 Village Representatives (“VRs”) to fill 6 Resident Representative (“RR”) and 4 Indigenous Inhabitant Representative (“IIR”) vacancies in 10 villages. The reasons for conducting the by-election are given in paragraph 1.3 below.

Date of By-election

1.2 The by-election was originally scheduled for 11 December 2005, with reference to the recommendation made by the EAC in the Report on the Village Representative By-election held in March 2004, which stated that any VR by-elections conducted after the ordinary election held in 2003 should be held twice a year in April/May and November/December, unless there were special circumstances that warranted a departure from the scheduled time. The polling date was subsequently postponed to 8 January 2006 to avoid clashing with the Ministerial Conference of the World Trade Organisation which would be held in Hong Kong from 13 to 18 December 2005. The EAC had agreed to the postponed date suggested by the Home Affairs Department (“HAD”) because it would enable the Hong Kong Police Force to deploy sufficient manpower for the maintenance of law and order on the polling day of the by-election.

The Vacancies

1.3 A total of 10 vacancies comprising 6 Resident Representative and 4 Indigenous Inhabitant Representative seats had arisen in 10 villages after the conclusion of the third round of VR by-election in May 2005. These vacancies are classified into three different groups as follows: –

- (a) *1 vacancy* – 1 RR vacant seat in Cheung Sha Upper Village. The vacancy arose because the elected RR resigned and the election to fill such a vacancy in the VR by-election held in May 2005 had failed;
- (b) *8 vacancies* – comprising 4 RR and 4 IIR vacant seats in 8 villages. These vacancies arose because 1 elected RR resigned from office after being elected; 6 elected representatives (3 RRs and 3 IIRs) passed away and 1 IIR was disqualified under section 9(1)(d) of the VREO; and
- (c) *1 vacancy* – 1 RR vacant seat in Tei Tong Tsai. Upon the completion of the 2005 voter registration cycle in October 2005, the village was able to secure more than 5 registered electors as required under section 25(1) of the VREO, which stipulates that the nomination of a candidate must be subscribed by 5 electors.

1.4 Five districts of the New Territories were involved in this by-election, namely, 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 During the 2005 registration exercise for electors of the VR Election from 27 June to 30 July 2005, the HAD received a total of 1,358 applications (634 for the RR election and 724 for the IIR election).

Publication of Provisional Register and Objections and Claims

2.2 At the close of registration, a provisional register (“PR”) for the Existing Villages (“EVs”) and the Indigenous Villages (“IVs)/Composite Indigenous Villages (“CIVs”), recording the personal particulars of the electors of EVs and IVs/CIVs, was published on 10 September 2005 for public inspection until 23 September 2005. 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 2005.

2.3 As provided in sections 23 to 25 of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation, Cap 541K (“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 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. Such objections and claims should be lodged during the public inspection period from 10 to 23 September 2005. 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 Gazette notice published on 10 September 2005.

2.4 By 5:00 pm on 23 September 2005, 5 claims and 45 objections were received by the ERO. These cases were heard in the Fanling Magistrates' Court by a team of four Revising Officers from 26 to 29 September 2005. The outcome was that 4 claims and 14 objections were allowed, while 1 claim and 31 objections were 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 2005 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 2005 FR on 20 October 2005. The number of electors of EVs and those of IVs/CIVs shown in the 2005 FR is 79,757 and 79,335 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 2005, one village which previously could not acquire 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 therefore held for the village (together with those with vacancies to fill) on 8 January 2006. As for the other villages which still have not attained the minimum requirement, an 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 25 November 2005, appointing 8 January 2006 as the polling day of the by-election and specifying the period from 2 to 15 December 2005, both dates inclusive, as the nomination period. The by-election aimed at returning candidates to fill 6 RR and 4 IIR vacancies in 10 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 five 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). The appointment of ROs was published in the Gazette on 25 November 2005. A list of the ROs and AROs is shown at **Appendix V**.

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 25 October 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 Department of Justice (“DoJ”) and the Chief 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 9 staff members from the five 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 Staff of the HAD were deployed as polling and counting staff for the by-election. A training session was organised on 29 December 2005 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 September 2005, with reference to the latest amendments made to the guidelines for the District Councils Elections, and also taking into account the operational experience as well as complaints and suggestions in previous elections. The major changes to the guidelines included the following:

- (a) the addition of a “Prologue” setting out the aim and purpose for producing the guidelines.
- (b) the inclusion of a note setting out clearly the legal provisions against pressurising electors not to nominate a particular candidate by way of either intimidation or bribery.
- (c) updating the information regarding the regional offices and telephone hotline of the ICAC.

4.2 The amendment sheets containing the revised guidelines were sent to all parties concerned in October 2005. 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 the transparency of the by-election.

Section 5 – Nomination of Candidates

The Nomination Period

5.1 The nomination period started on 2 December and ended on 15 December 2005. Candidates handed in their nomination forms to the relevant RO in person. At the close of nomination, the ROs received a total of 13 nominations.

Validly Nominated Candidates

Validity

5.2 After vetting the nominations, the ROs determined 11 nominations valid and 2 nominations invalid. Of the 11 valid nominations, 5 were for the RR elections, and 6 for the IIR elections. Two nominations were ruled as invalid by the RO concerned on the ground of inadequate subscribers and that not being an indigenous inhabitant of the relevant IV, as respectively required under sections 25(1) and 22(2)(a) of the VREO.

Uncontested elections

5.3 Having examined the nominations, the ROs found and declared that 5 candidates were uncontested (3 for the RR elections and 2 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 23 December 2005 and are shown at **Appendix VI**.

Contested elections

5.4 As the number of validly nominated candidates for 2 IVs and 1 EV was more than the number of IIR and RR to be returned for these villages (two candidates contesting for one seat in each of these villages), a poll was held on 8 January 2006 for these villages, namely, the She Tau IV in the Sai Kung district and the Tung Tau Tsuen IV and Shung Ching San Tsuen (I) EV in the Yuen Long district. The names and relevant particulars of the validly nominated but contesting candidates were published in the Gazette on 23 December 2005.

Elections that failed

5.5 The ROs also declared that the elections of 2 RR 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 23 December 2005 (**Appendix VII**).

Briefing for Candidates

5.6 The EAC Chairman hosted a briefing for candidates of the by-election in the Conference Room of HAD Headquarters on 19 December 2005. 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. Three candidates attended the briefing. The EAC Chairman also answered the questions raised by the candidates.

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 election advertisements.

Section 6 – The Poll

Polling Date and Polling Hours

6.1 The poll was held on 8 January 2006 (Sunday). The polling hours were from 12 noon to 7 pm, as in the 2003 VR Election and the by-election in November 2004.

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 notice of the locations of all polling and counting stations was gazetted by the DHA on 23 December 2005. These venues were also reserved for the same purpose on the Sunday following the polling day, ie 15 January 2006, which was the fallback date. The arrangements in case of emergencies or inclement weather on the polling day were included in the Operational Manual for ROs and AROs as well as the Operational Manual for Polling and Counting Staff for reference of the officers concerned.

Logistical Arrangements

6.3 On the polling day, three 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 stations. 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 four of them who had not provided information for the production of the leaflets.

6.7 Over 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 In response to the recommendation made in paragraph 9.5 of the report on the VR By-election held in November 2004, to safeguard the secrecy of the vote when electors were marking their choice of candidates inside voting compartments, the table on which the elector places his ballot paper to mark his vote was set in such a position that would cause his body to block the marking from being visible to persons outside the compartment.

Voter Turnout Rates

6.10 The total number of registered electors of the contested elections was 678. Of these, 443 electors (ie about 65.34%) cast their votes on the polling day. A detailed breakdown of the turnout rates by village and by hour is shown in **Appendix VIII**.

Section 7 – The Count

Counting Stations

7.1 There was one counting station for each district, and each counting station was supervised by the RO concerned. For the village in the Sai Kung district, both the polling and the counting station were situated inside one community hall. The hall concerned was partitioned into one polling station and one counting station. As for the two villages in the Yuen Long district, the count was centrally conducted in one school classroom, while the polls were conducted respectively in another classroom of the same school and in a classroom of a nearby school. The venues were chosen to minimise the time for transporting the ballot boxes from the polling station to the counting station, thereby ensuring the efficient start and completion of the counting process.

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 the counting of the votes. On the arrival of the ballot boxes at the counting station of the villages in the respective districts (around 7:10 pm for the village in the Sai Kung district and around 7:25 pm to 7:50 pm for the villages in the Yuen Long district), 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. The candidates, their agents and members of the public were able to see the counting process.

7.5 In accordance with the recommendation made in paragraph 9.7 of the report on the VR By-election held in November 2004, identification of questionable ballot papers were made at the same time when the number of ballot papers, as opposed to the number of votes marked on them, was verified against the ballot paper account. This saved one step and reduced the time needed for counting.

7.6 With the exception of one unmarked ballot paper identified during the count for the village of Shung Ching San Tsuen (I) which was not counted, all other issued ballot papers were counted, and no questionable ballot papers were identified. There were also no invalid ballot papers (ie spoilt or unused ones) kept by Presiding Officers (“PROs”).

7.7 Counting staff then sorted the ballot papers into different transparent plastic boxes according to the votes marked thereon, before starting to count the number of votes obtained by each candidate.

Declaration of Result

7.8 The election result was declared at each counting station by the RO after the completion of the count at 7:20 pm, 7:50 pm and 8:10 pm for She Tau, Shung Ching San Tsuen (I) and Tung Tau Tsuen villages respectively. The results of these contested elections were promulgated in the Gazette published on 13 January 2006.

7.9 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 IX(A)-(B)**.

EAC Visits

7.10 The EAC visited all three polling stations in the two districts in the afternoon of the polling day, and observed the count for the Shung Ching San Tsuen (I) EV at the counting station in the Yuen Long district. They found the polling and counting arrangements made at the stations generally satisfactory.

7.11 The Deputy Director of Home Affairs also joined the EAC in visiting the polling stations and the counting station at the Yuen Long district on the polling day.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 2 December 2005 (ie the commencement of the nomination period) and ended on 22 February 2006 (ie 45 days after the polling day of 8 January 2006).

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 of Complaints

8.4 No complaint was received by any one of the parties during the complaints-handling period.

Section 9 – Review and Recommendations

9.1 This was the fourth VR by-election conducted under the supervision of the Commission after the first ordinary election held in 2003. Having carefully reviewed the preparation work for conducting the VR by-election, the EAC is satisfied that the electoral arrangements were generally smoothly conducted and the principle of fairness, openness and honesty had been upheld. Recommendations made by the Commission after reviewing the by-election are set out below.

Publicity for Voter Registration

9.2 Promotional leaflets and posters appealing to villagers to register as electors had been prepared by the HAD and put on the website of VR elections. After the voter registration cycle, one village which previously could not acquire the sufficient number of electors for subscribing candidates for an election was able to secure more than 5 registered electors, thereby meeting the minimum requirement for conducting a by-election for that village. There are, however, still 100 villages that fail to meet this requirement.

9.3 **Recommendation:** While it is encouraging that a village has attained the required number of electors and can thus elect its village representative after the last voter registration drive, the Commission is of the view that continuous efforts should be made by the HAD to 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.

Polling and Counting Arrangements

9.4 The Commission noted that although the polling cum counting arrangement was not adopted in VR elections due to resource constraints, in this particular by-election, the venues of the counting stations selected were situated at close proximity to the polling stations, or at different areas of the same location. This arrangement had facilitated efficient completion of the counting process. The counting process for the village at Sai Kung had started as early as 7:10 pm. The election results of all the contested villages were declared between 7:20 pm to 8:10 pm (details at paragraphs 7.1, 7.3 and 7.8 above).

9.5 **Recommendation:** It is recommended that in the selection of venues as counting stations in future elections, consideration should be given to adopt the arrangement in Sai Kung District, ie to partition a large venue into polling and counting stations. If such venues are not available, to choose locations which are at close proximity to the polling stations as far as possible, so as to reduce the time spent on, and avoid the problems associated with, the transportation of ballot boxes from polling stations to counting stations, thereby facilitating early commencement and completion of the count.

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. Special acknowledgement is also due to the Revising Officers who had dealt with the claims and objections so efficiently at the end of September 2005.

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 May 2006 to return candidates to fill vacancies which have arisen and may arise subsequent to the VR By-election (January 2006), such as resignation and death of incumbent VRs and where sufficient numbers of registered electors are attained.

11.2 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 practice to uphold the principle of maintaining transparency of elections.

