

## **Section 1 – Introduction**

### ***Background***

1.1 The 2007 Village Representative (“VR”) Election, the second village ordinary election, was held on the Saturdays and Sundays in five consecutive weeks during the period from 6 January to 4 February 2007 with a view to returning 1,480 VRs for filling 693 Resident Representative (“RR”) and 787 Indigenous Inhabitant Representative (“IIR”) vacancies in 707 villages. A total of 1,320 candidates were returned from the election, comprising 550 RRs and 770 IIRs. In respect of the remaining 160 vacant VR seats (to be filled by 143 RRs and 17 IIRs) in 158 villages, no nomination was received after the close of nominations or the prospective candidates had failed to secure the requisite number of subscribers for their nominations.

1.2 Section 29(2) of the Village Representative Election Ordinance (Cap 576) (“VREO”) provides that the Returning Officer (“RO”) shall declare that an election has failed if no candidate was validly nominated for election after the close of nominations. The declaration that elections had failed for the 158 villages concerned was published in the Gazette on 20 December 2006.

1.3 3 RRs resigned from the office of VR in 3 villages after the conclusion of the 2007 VR Election. Pursuant to section 12 of the VREO, the Director of Home Affairs (“DHA”) declared the existence of these vacancies by a notice published in the Gazette on 19 January 2007, 2 February 2007 and 30 March 2007 respectively.

### ***The Vacancies***

1.4 A total of 163 vacancies comprising 146 RR and 17 IIR seats had arisen in 161 villages after the conclusion of the village ordinary election held in January and February 2007. These vacancies are classified into 3 different groups as follows –

- (a) **65 vacancies** – comprising 56 RR and 9 IIR vacant seats in 64 villages. These vacancies had arisen because no one sought candidature for these seats;
- (b) **95 vacancies** – comprising 87 RR and 8 IIR vacant seats in 94 villages. Although there might be prospective candidates for these vacant seats, they could not secure the requisite number of subscribers (ie 5) for their nominations because the total number of registered electors of the village was less than 6; and
- (c) **3 vacancies** – comprising 3 RR vacant seats in 3 villages. These vacancies had arisen because 3 elected representatives (3 RRs) resigned from office after being elected.

1.5 Under section 21 of the VREO, a by-election had to be held to return candidates to fill the above vacancies. With the agreement of the Electoral Affairs Commission (“EAC” or “the Commission”), the Home Affairs Department (“HAD”), which is responsible for the conduct of VR elections, decided that a by-election should be held to return candidates to fill the 68 vacancies in groups (a) and (c) above in the first instance. A second round of by-election would be held in December 2007 to fill the vacancies in group (b) above after the completion of the 2007 voter registration cycle in October 2007, which would hopefully produce a sufficient number of electors for subscribing candidate(s) for a

by-election, because as required by the law, the nomination of a candidate must be subscribed by 5 electors.

1.6 Pursuant to section 21 of the VREO, the EAC arranged for the conduct of the first round of VR by-election on 27 May 2007 to return 68 VRs for filling 59 RR and 9 IIR vacancies in 67 villages. The timing of this by-election was scheduled according to a recommendation made by the EAC in its Report on the VR By-election held in March 2004. In that report, the Commission considered 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.

1.7 8 Districts were involved in this by-election, namely, Islands, North, Sai Kung, Sha Tin, Tai Po, Tsuen Wan, Tuen Mun 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**.

#### ***Polling Day and Nomination Period***

1.8 Pursuant to section 6 of the Electoral Procedure (Village Representative Election) Regulation (Cap 541L), the DHA published a notice in the Gazette on 13 April 2007, appointing 27 May 2007 as the polling day of the by-election and specifying the period from 19 April 2007 to 2 May 2007, both dates inclusive, as the nomination period. A breakdown of the number of RRs and IIRs to be returned by District is shown in **Appendix II**.

## **Section 2 – Appointments**

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

2.1 In accordance with section 54 of the VREO, the Commission appointed 8 District Officers and 8 Senior Liaison Officers of the District Offices concerned as ROs and Assistant Returning Officers (“AROs”) respectively. A Senior Government Counsel of the Department of Justice was appointed as ARO(Legal). The appointment of ROs was published in the Gazette by the Secretary for Home Affairs on 13 April 2007. A list of the ROs and AROs is shown at **Appendix III**.

### ***Appointment and Training of Polling and Counting Staff***

2.2 Staff of the HAD were deployed as polling and counting staff for the by-election. A training session was organised on 26 May 2007 for the staff who had been engaged to perform polling and counting duties and manning the command centre. It aimed at familiarising the staff concerned with the rules and operational procedures and their respective tasks.

2.3 To familiarise all parties concerned 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.

## **Section 3 – Nomination of Candidates**

### *The Nominations*

3.1 At the close of nomination on 2 May 2007, the ROs concerned received a total of 12 nominations for 11 villages, all of which were confirmed valid. Of the 12 valid nominations, 9 were for the RR seats, and 3 for the IIR seats.

### *Uncontested elections*

3.2 Having examined the nominations, the ROs declared that 10 candidates were returned uncontested (9 for the RR seats and 1 for the IIR seat) in 10 villages, as there was only 1 validly nominated candidate for each of these vacant seats. The list of uncontested candidates who were returned in the by-election was published in the Gazette on 11 May 2007 by the ROs concerned and is shown at **Appendix IV**.

### *Contested election*

3.3 As the number of validly nominated candidates for 1 Indigenous Village (“IV”), namely, Pai Tau in the Sha Tin District was more than the number of IIR to be returned for this village (2 candidates contesting for 1 seat in the village), a poll was held on 27 May 2007 for this village. The nominees were Messrs NAM Kwok-fai and NAM Yuk-tong. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 11 May 2007 by the RO concerned.

*Elections that failed*

3.4 The ROs also declared that the elections of 50 RR and 7 IIR in 56 villages had failed because there was no validly nominated candidate at the close of nominations. The list of villages where the elections had failed were also published in the Gazette on 11 May 2007 by the ROs concerned and is shown at **Appendix V**.

*Information for Candidates*

3.5 The candidates of the by-election had been provided with the key information on the electoral legislation and guidelines at the time when they submitted their nomination forms. Therefore they considered it unnecessary to attend the scheduled briefing session for candidates hosted by the HAD.

3.6 Arrangement was made by the RO (Sha Tin) for drawing of lots for the contested election in Pai Tau, through which the candidates were allocated their candidate numbers and designated spots for displaying their election advertisements (“EAs”). As a result of the lots drawing, Messrs NAM Kwok-fai and NAM Yuk-tong were allocated the candidate number 1 and 2 respectively. A total of 4 spots in Pai Tau were designated for the display of their EAs during the election period, and each candidate was equally allocated with 2 spots.

## **Section 4 – Preparation Work**

### ***Publicity***

4.1 Information on the by-election was published on 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 the polling date. These measures helped to enhance the transparency of and public interest in the by-election.

4.2 Apart from the above mentioned publicity measures, the HAD had also placed advertisements on local newspapers to invite nominations for the by-election. Appeal letters together with publicity leaflets were also issued to electors before the commencement of nomination period. The efforts were made in response to the EAC's recommendation in its Report on the VR By-election (January 2006) advising the HAD to strengthen the publicity programme in order to encourage greater participation of the villagers in the VR elections.

### ***The Contingency Plan***

4.3 To cope with any unforeseeable situations in which the poll at the designated polling station could not be proceeded smoothly for one reason or another, eg inclement weather conditions, the HAD had, for the contested village, arranged for an alternative polling station apart from the designated polling station. The notice of the locations of the polling and counting stations concerned was gazetted by the DHA on 11 May 2007. These venues were also reserved for the same purpose on the fall-back date on 3 June 2007, ie the Sunday following the polling day. The arrangements in case of emergencies or inclement weather on the polling day were included in the operational manuals for ROs and AROs

as well as for polling and counting staff for reference.

### ***Introductory Leaflets and Polling Notices to Electors***

4.4 The HAD had 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 those validly nominated candidates who had submitted their photographs and platforms.

4.5 Over 10 days before the polling day, a polling notice, together with the relevant candidates' introductory leaflet, was sent to each of the electors of Pai Tau, 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 did not need to attend the polling station to cast their votes.

4.6 A pamphlet prepared by the ICAC to promote clean elections was also sent to electors.

### ***EAC Guidelines on Election-related Activities***

4.7 The revised guidelines issued for the VR elections in October 2006 were used for this by-election.



## **Section 5 – The Poll**

### ***Polling Hours***

5.1 The poll was held on Sunday, 27 May 2007 in respect of Pai Tau, which was the only contested IV in the by-election. The polling hours were scheduled from 12:00 noon to 7:00 pm in line with the arrangements for the previous ordinary elections and by-elections. The DHA announced the polling hours of the by-election by a notice in the Gazette published on 11 May 2007.

### ***Polling station***

5.2 The Sha Tin Rural Committee in Pai Tau Village was designated as the polling station for the by-election. The designation of the polling station was published in the Gazette for public notice on 11 May 2007 by the DHA.

### ***Logistical Arrangements***

5.3 On the polling day, the designated polling station at Sha Tin Rural committee in Pai Tau Village was open for operation as scheduled. It was a rainy day but there was no unexpected incident to impede the conduct of the election, and it was not necessary to open 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 the district command centre and to co-ordinate the communication and dissemination of information for all parties concerned on the polling day.

5.4 In the Registration and Electoral Office (“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.

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

5.6 The Presiding Officer (“PRO”) of the polling station was responsible for ensuring the smooth and efficient operation of the polling station and to work closely with the RO. When the count started, the PRO assumed the role of counting supervisor in overseeing the counting process and the RO was responsible for determining the validity of any questionable ballot papers.

5.7 Outside the polling station, a No Canvassing Zone (“NCZ”) and a No Staying Zone (“NSZ”) were designated by the RO so that the electors could have a free and safe passage to the station. A notice was put up at a conspicuous spot outside the station, notifying the public of the delineation of the NCZ and NSZ.

### ***Voter Turnout Rates***

5.8 Out of 143 registered electors for the village concerned, 86 electors (ie about 60.14%) turned up to cast their votes on the polling day. A detailed breakdown of the hourly turnout rates of electors in respect of the by-election is shown in **Appendix VI**.

## **Section 6 – The Count**

### ***Counting Station***

6.1 There was 1 counting station located at Sha Tin Rural Committee in Pai Tau Village for the purpose of counting the votes cast at the polling station concerned for Pai Tau (both the counting station and the polling station were adjacent to each other at the Sha Tin Rural Committee) and it was supervised by the RO. The designation of the counting station was published in the Gazette for public notice on 11 May 2007 by the DHA.

### ***Voting System and Counting Method***

6.2 As in the previous elections, the voting system was the simple or relative majority system, commonly known as the “first-past-the post” system. As there was only 1 vacancy in the village, manual counting was adopted.

### ***Counting Arrangements***

6.3 After the close of the poll, the ballot box was transported from the polling station to the counting station for the counting of votes. At around 7:15 pm, the RO opened the ballot box and poured the ballot papers from the ballot box for the count to commence.

6.4 The counting tables were appropriately positioned so as to avoid distraction and allegations of vote tinkering. The candidates, their agents and members of the public were able to observe the counting process.

6.5 Identification of questionable ballot papers was 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.

6.6 As no questionable ballot paper was identified, and there were also no invalid ballot papers (ie spoilt or unused ones) kept by the PRO, 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*

6.7 The count was completed at around 7:30 pm. The election result was declared at the counting station by the RO (Sha Tin) at about 7:35 pm. Mr NAM Yuk-tong was elected with 58 valid votes, representing 67.44 % of the total number of valid votes cast. The other candidate, Mr NAM Kwok-fai, received 28 votes. The result of this contested election was promulgated in the Gazette published on 1 June 2007.

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

### *EAC Visit*

6.9 Mr Justice PANG, EAC Chairman and Mr Lawrence LOK and Professor Andrew CHAN, Members of the Commission, visited the polling station in the afternoon of the polling day, and also observed the count at the counting station. They found the polling and counting arrangements made at the stations generally satisfactory.

6.10 Mr Gary YEUNG, the Deputy Director of Home Affairs, also joined the EAC in visiting the polling station and the counting station on the polling day.

## **Section 7 – The Complaints**

### ***Complaints-handling Period***

7.1 The complaints-handling period started on 19 April 2007 (ie the commencement of the nomination period) and ended on 11 July 2007 (ie 45 days after the polling day of 27 May 2007).

### ***Complaints-handling Parties***

7.2 The parties involved in assisting the EAC to handle complaints included the Complaints Unit of the EAC secretariat, the RO, the Police, the ICAC and, on the polling day, the PRO.

7.3 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***

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

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

8.1 This was the first VR by-election conducted under the supervision of the Commission after the second village ordinary election held in 2007. Having carefully reviewed the preparation work for conducting the VR by-election, the EAC was satisfied that the electoral arrangements were smoothly conducted in a fair, open and honest manner. The observations and recommendations made by the Commission after reviewing the by-election are set out in the ensuing paragraphs.

### ***Polling and Counting Arrangements***

8.2 The Commission noted that in this particular by-election, both the polling station and counting station were situated on the ground floor of the Sha Tin Rural Committee. The fact that the polling and counting stations were located at the same building had facilitated efficient completion of the counting process. The counting process for the village started at 7:15 pm, and the election result was declared about 20 minutes later. It was also noted that the counting station could comfortably accommodate a large number of attendants including the candidates, their supporters and the working staff.

8.3 **Recommendation:** It is recommended that in the selection of venues as polling stations and counting stations in future elections, consideration should be given to adopt similar arrangement of this by-election, ie to identify premises with spacious halls/rooms preferably on the same floor or different floors for use as polling and counting stations. This can reduce the time spent on, and avoid the problems associated with, the transportation of ballot boxes from the polling station to the counting station, thereby facilitating early commencement and completion of the count.

### ***Publicity Arrangements***

8.4 The fact that only 12 nominations were received in the by-election, as against 68 vacant seats, had once again indicated the lack of enthusiasm among villagers in seeking candidature.

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



## **Section 9 – Acknowledgement**

9.1 The Commission wishes to extend its gratitude towards the HAD for conducting the by-election, particularly those serving as ROs, AROs, PRO and other polling and counting officers. The Commission is also thankful to the various government departments, including the REO, for rendering their valuable assistance throughout the by-election. Each and every one of them contributed to making the by-election a success.

9.2 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 station and all those who complied with the electoral legislation and guidelines.

## **Section 10 – The Way Ahead**

10.1 The HAD is planning another VR by-election in December 2007 to return candidates to fill vacancies which have arisen and may arise subsequent to the VR By-election held in May 2007, such as resignation of incumbent VRs. Before the next round of VR by-election, the Commission will be busily engaged in the preparation work for the 2007 District Council Election scheduled for 18 November 2007.

10.2 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 in maintaining transparency of public elections in Hong Kong.