

Section 1 – Introduction

Background

1.1 In accordance with section 21 of the Village Representative Election Ordinance, Cap 576 (“VREO”), after the ordinary election held in 2007, the Electoral Affairs Commission (“EAC”) made arrangements for the conduct of the sixth round of Village Representative By-election on 17 January 2010 to return 20 Village Representatives (“VRs”) for filling 10 Resident Representative (“RR”) and 10 Indigenous Inhabitant Representative (“IIR”) vacancies in 20 villages. The reasons for conducting the By-election is set out in paragraph 1.3 below.

1.2 The by-election was originally scheduled for November/December 2009, with reference to a recommendation made by the EAC in its *Report on the Village Representative By-election* held in March 2004, which stated that 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 Voting by Imprisoned Persons Ordinance (“VIPO”) and the related amendment regulations made by the EAC commenced operation on 30 October 2009 and the Village Representative Election Legislation (Miscellaneous Amendments) Ordinance 2009 also came into operation on 9 November 2009. In order to reflect these legislative amendments which mainly provided for the detailed arrangements for persons imprisoned, remanded or detained to vote and for the increase in the penalty on offences concerning order at polling and secrecy of votes in the VR election, the EAC updated the electoral guidelines in early December 2009 (please refer to paras. 2.1 – 2.3 below for details). Hence, the conduct of the By-election was re-scheduled for 17 January 2010 so that the updated electoral guidelines could be used in the election.

The Vacancies

1.3 After the conclusion of the fifth round of VR By-election in May 2009, a total of 20 vacancies comprising 10 RR and 10 IIR seats had arisen in 20 villages. These vacancies are classified into four different groups as follows:

- (a) **7 vacancies** – comprising 3 RR and 4 IIR vacant seats in 7 villages. These vacancies arose because the elected RRs and IIRs had resigned from their office after being elected;
- (b) **9 vacancies** – comprising 3 RR and 6 IIR vacant seats in 9 villages. These vacancies arose because the elected RRs and IIRs had passed away;
- (c) **1 vacancy** – 1 RR vacant seat in 1 village. The vacancy arose because the elected RR was no longer qualified for holding the office as he had moved out of the village; and
- (d) **3 vacancies** – comprising 3 RR vacant seats in 3 villages. Upon the completion of the 2009 voter registration cycle in October 2009, these villages were 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 (who should be an elector) must be subscribed by 5 other electors. In this connection, elections could be held to fill the vacancies of these villages.

1.4 Seven Districts of the New Territories, namely North, Sai Kung, Sha Tin, Tai Po, Tsuen Wan, Tuen Mun and Yuen Long, were involved in this By-election. A list showing the details of the vacancies and the dates on which the vacancies were declared in the Gazette notice is at **Appendix I**.

Section 2 – Amendments to Electoral Legislation and Guidelines

Amendments to Electoral Legislation

Voting by Imprisoned Persons Ordinance

2.1 The Administration introduced the Voting by Imprisoned Persons Bill (“VIPB”) into the Legislative Council (“LegCo”) in May 2009 to remove the disqualification of imprisoned persons and persons convicted of certain election-related or bribery offences from being registered as electors and from voting in the LegCo, District Council, Chief Executive, Election Committee Subsector and VR elections. The VIPB was passed through the LegCo on 24 June 2009. The EAC subsequently made eight amendment regulations to provide for the detailed practical arrangements for imprisoned persons to register as electors and for registered electors imprisoned, remanded or detained to vote. The VIPO and the amendment regulations made by the EAC came into operation on 30 October 2009.

Village Representative Election Legislation (Miscellaneous Amendments) Ordinance 2009

2.2 To take forward the proposals put forward by the Rural Elections Review Working Group (formed jointly by the Home Affairs Department (“HAD”) and the Heung Yee Kuk), the HAD introduced the Village Representative Election Legislation (Miscellaneous Amendments) Bill 2009 in the LegCo in May 2009. The Bill proposed to include two villages in the relevant Schedules to the VREO for 2011 VR Election; change the names of some villages; revise time limits for lodging/handling claims, objections and reviews; and increase the penalty on offences concerning order at polling station and secrecy of votes. The Bill passed through the LegCo on 21 October 2009 and the Village Representative Election Legislation (Miscellaneous Amendments) Ordinance 2009 came into operation on 9 November 2009.

Amendments to Electoral Guidelines

2.3 In order to reflect the legislative amendments mentioned in paras 2.1 and 2.2 above and to set out the related electoral arrangements, the Guidelines on the Election-related Activities in respect of the Village Representative Elections was updated in early December 2009. The amendment sheets were sent to all parties concerned in early December 2009. The updated Guidelines were also uploaded to the websites of the EAC and HAD at the same time and issued to the candidates of the By-election during the nomination period, running from 10 to 23 December 2009.

Section 3 – Appointments

Polling Day and Nomination Period

3.1 Pursuant to section 6 of the Electoral Procedure (Village Representative Election) Regulation, Cap 541L, the Director of Home Affairs (“DHA”) published a notice in the Gazette on 4 December 2009, appointing 17 January 2010 as the polling day of the By-election and specifying the period from 10 to 23 December 2009, both dates inclusive, as the nomination period. The By-election aimed at returning VRs to fill 10 RR and 10 IIR vacancies in 20 villages. A breakdown of the number of RRs and IIRs to be returned by District is shown in **Appendix II**.

Appointment of Returning Officers, Assistant Returning Officers, Assistant Returning Officer (Ballot Paper Sorting Station) and Assistant Returning Officer (Legal)

3.2 In accordance with section 54 of the VREO, the EAC appointed the District Officers (“DOs”) of the seven New Territories District Offices concerned as Returning Officers (“ROs”) and seven members of their staff as Assistant Returning Officers (“AROs”). Starting from this VR By-election, a staff from the HAD Headquarters, was appointed as ARO(Ballot Paper Sorting Station) being the officer-in-charge of the Ballot Paper Sorting Station (“BPSS”) (please also see para. 6.5 below). A Senior Government Counsel was appointed as ARO(Legal). The appointment of ROs was published in the Gazette on 4 December 2009. A list of the ROs and AROs is shown at **Appendix III**.

The Briefing and Operational Manual for Returning Officers and Assistant Returning Officers

3.3 A briefing for ROs and AROs, hosted by the EAC Chairman, was held on 2 December 2009 at the HAD Headquarters. The EAC

Chairman, accompanied by the Assistant Director of the Home Affairs, and representatives from the Independent Commission Against Corruption (“ICAC”) and Department of Justice (“DoJ”), briefed those present on the electoral arrangements and drew their attention to the major provisions of the electoral legislation and guidelines.

3.4 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 for reference.

Section 4 – Publicity

4.1 Information on the By-election was published on the websites of the EAC, the HAD and the ICAC 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, e.g. the nomination period and the polling day. These measures helped enhance the transparency of and public interest in the By-election.

4.2 Apart from the publicity measures mentioned in paragraph 4.1 above, the HAD had also placed advertisements on local newspapers to invite nominations for the By-election. The efforts were made in response to the EAC's recommendation in its *Report on the Village Representative By-election* held in January 2006 advising the HAD to strengthen the publicity programme in order to encourage greater participation of the villagers in the VR elections.

Section 5 – Nomination of Candidates

The Nomination Period

5.1 The nomination period started on 10 December and ended on 23 December 2009. Candidates handed in their nomination forms to the relevant ROs in person. At the close of the nomination period, the ROs received a total of 21 nominations.

Validly Nominated Candidates

Validity

5.2 After vetting the nominations, the ROs determined that all the 21 nominations were valid. Of the 21 valid nominations, 10 were for the RR elections, and 11 for the IIR elections.

Uncontested elections

5.3 Having examined the nominations, the ROs found and declared that 17 candidates were uncontested (eight for the RR elections and nine for the IIR elections), as there was only one validly nominated candidate for each vacancy. The names of the uncontested candidates who were returned in the By-election were published in the Gazette on 31 December 2009.

Contested elections

5.4 As the number of validly nominated candidates for the RR election of Nam Wai in Sai Kung District and IIR election of Ma Wan Main Street in Tsuen Wan District exceeded the number of RR and IIR to be returned for these villages (two candidates contesting for one seat in each of these villages), a poll was held on 17 January 2010 for these villages. The names and relevant particulars of the validly nominated

candidates were published in the Gazette on 31 December 2009.

Election that failed

5.5 The RO declared that the RR election of Ma Tsuek Leng Ha had failed because no candidate was validly nominated. The notice of failure of election for the village was also published in the Gazette on 31 December 2009.

The Briefing for Candidates

5.6 The EAC Chairman hosted a briefing for candidates of the By-election in the Conference Room at the HAD Headquarters on 28 December 2009. Also present with the EAC Chairman were the Acting Assistant Director of Home Affairs, RO of the Ma Wan Main Street and representatives of the ICAC and DoJ.

5.7 The EAC Chairman briefed those present on the electoral arrangements and drew their attention to major provisions of the electoral legislation and guidelines.

Section 6 – Preparation Work

Appointment and Training of Polling and Counting Staff

6.1 Staff of the HAD were deployed as polling and counting staff for the By-election. A training session was organised on 7 January 2010 for the staff who would perform polling and counting duties and manning the command centre on the polling day. It aimed at familiarising the staff concerned with the rules and operational procedures and their respective tasks.

Polling and Counting Stations

6.2 Nam Wai Village Office and CCC Kei Wai Primary School (Ma Wan) were designated as the polling and counting station for Nam Wai and Ma Wan Main Street respectively.

Dedicated Polling Stations

6.3 This was the first round of VR election held after the commencement of the operation of the VIPO and the related amendment regulations made by the EAC in October 2009. To enable registered electors of the contested villages who might be imprisoned or remanded by the Correctional Services Department (“CSD”) to vote on the polling day, dedicated polling stations (“DPSs”) were planned to be set up in penal institutions in this By-election. The CSD advised the HAD on 16 January 2010 (i.e. the day before the polling day) that no elector was imprisoned or remanded by the CSD. Hence, there was no need to set up DPSs in penal institutions.

6.4 Mei Tin Community Hall in Sha Tin District was designated as the DPS for the registered electors of the contested villages, who might be remanded or detained by the law enforcement agencies (“LEAs”) (other than the CSD) on the polling day. Since the LEAs might arrest

persons who happen to be registered electors of the contested villages any time on the polling day, the aforesaid DPS was required to be open.

Ballot Paper Sorting Station

6.5 To safeguard the secrecy of vote, a BPSS was set up at Lung Hang Estate Community Centre for sorting ballot papers received from the DPSs according to each village before the ballot papers were delivered to the respective counting station for counting of votes.

6.6 The notices of the location of polling and counting stations and the BPSS were gazetted by the DHA on 31 December 2009.

Introduction to Candidate and Polling Notices to Electors

6.7 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.

6.8 Over 10 days before the polling days, a polling notice, together with the relevant Introduction to Candidate, was sent to each of the electors of Nam Wai and Ma Wan Main Street, notifying them of the date, time and location of the polling station. The electors of the uncontested villages would also be informed that they needed not cast their votes.

6.9 In order to inform persons imprisoned, remanded or detained by the LEAs who might be registered electors of the contested villages that the VR By-election would be held on 17 January 2010, polling notices were displayed by the CSD in penal institutions during the period between 5 and 17 January 2010 and for other LEAs, polling notices were posted on 16 and 17 January 2010.

The Contingency Plan

6.10 To cope with any unforeseeable situations in which the poll at the designated polling stations could not proceed smoothly for one reason or another (e.g. inclement weather conditions), the HAD had kept two alternative polling stations, one for the RR election of Nam Wai and the other for the IIR election of Ma Wan Main Street, in reserve. The notices of the locations of the alternative polling stations were gazetted by the DHA on 31 December 2009. These venues, together with Mei Tin Community Hall and Lung Hang Estate Community Centre which were designated as a DPS and a BPSS respectively, were also reserved for the fallback date on 24 January 2010. 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.

Section 7 – The Poll

Polling Date and Polling Hours

7.1 The poll was held on Sunday, 17 January 2010. The polling hours were from 12:00 noon to 7:00 p.m. in line with the arrangements for the 2007 ordinary VR Election.

Logistical Arrangements

7.2 The polling stations at Nam Wai and Ma Wan Main Street and the DPS at Mei Tin Community Hall were in operation as scheduled on the polling day. A Central Command Centre was set up at the HAD Headquarters 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.

7.3 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.

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

Voter Turnout Rates

7.5 The total number of registered electors of the contested villages was 639. Of these, 376 electors (i.e. 58.84%) cast their votes on the polling day. A detailed breakdown of the turnout rates by hour and by village is shown in **Appendix IV**.

Section 8 – The Count

Counting Stations

8.1 After the close of poll, the polling station at Nam Wai Village Office was converted into the counting station for the counting of votes. As the polling station and counting station were located on different floors of the CCC Kei Wai Primary School (Ma Wan), the ballot box was transferred from the polling station to the counting station for counting of votes.

Counting Method

8.2 As there was only one vacancy in Nam Wai and Ma Wan Main Street respectively, manual counting was adopted.

Counting Arrangements

8.3 After the close of poll, the ballot boxes of the DPS at Mei Tin Community Hall were transferred to the BPSS at Lung Hang Community Centre in Sha Tin for opening and checking. Since no registered elector had cast vote in the DPS at Mei Tin Community Hall, the ARO(Ballot Paper Sorting Station), after opening and checking the ballot boxes, reported to the Central Command Centre that there was no need to send any ballot paper to the counting stations for counting of votes. The Central Command Centre then informed the concerned ROs of the same.

8.4 The ballot box for Ma Wan Main Street was transferred from the polling station to the counting station at 7:15 p.m. The conversion of the polling station into counting station for Nam Wai was completed at around 7:45 p.m. Subsequently, the ROs concerned opened and emptied the ballot boxes for the count to commence.

8.5 Counting staff at the counting stations for Nam Wai and Ma Wan Main Street then sorted the ballot papers into different transparent plastics boxes according to the votes marked thereon. Three questionable ballot papers were identified during the counting for Nam Wai. Among them, two ballot papers were voided for uncertainty and the other ballot paper contained votes for more than one candidates. The three ballot papers were ruled invalid and were not counted. No questionable or invalid ballot papers were identified in the counting of votes for Ma Wan Main Street.

Declaration of Results

8.6 The election result of Ma Wan Main Street was declared by the RO concerned at about 7:40 p.m. and the result of Nam Wai was announced at around 8:25 p.m. after the completion of count. The results of the contested elections were promulgated in the Gazette published on 22 January 2010.

8.7 The full lists of successful and unsuccessful candidates including the uncontested villages are shown in **Appendices V(A)-(B)**.

EAC Visits

8.8 The EAC visited the polling stations on the polling day, and also observed the count at the counting station for Ma Wan Main Street. They found the polling and counting arrangements generally satisfactory.

8.9 The Deputy Director of Home Affairs also joined the EAC in visiting the polling station for Nam Wai and the polling and counting station for Ma Wan Main Street on the polling day.

Section 9 – The Complaints

Complaints-handling Period

9.1 The complaints-handling period started on 10 December 2009, when the nomination period commenced, and ended on 3 March 2010 (i.e. 45 days after the polling day on 17 January 2010).

Complaints-handling Parties

9.2 The parties involved in assisting the EAC to handle complaints included the Complaints Unit of the EAC Secretariat, the ROs concerned, the Police and the ICAC. No complaint was received by any of the aforesaid parties during the complaints-handling period.

Section 10 – Review and Recommendation

10.1 This was the first round of VR By-election held after the commencement of the operation of the VIPO and the related amendment regulations made by the EAC in October 2009. It is also the first round of VR By-election in which a DPS and a BPSS were set up.

10.2 **Recommendation:** The EAC appreciates the efforts made by the HAD for putting in place arrangements in accordance with the aforesaid electoral legislation to enable registered electors of the contested villages who might be imprisoned, remanded or detained by the LEAs on the polling day to vote in this By-election. In light of the experience gained in this By-election, the HAD should review the voting arrangements to ascertain if refinements are required as permitted by the existing legislation.

Section 11 – Acknowledgement

11.1 The EAC wishes to extend its gratitude towards the HAD, particularly those serving as ROs, AROs, PROs, polling and counting officers for their part in validating nominations and in making the necessary preparations for the By-election. The EAC is thankful to the various government 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. The EAC would like to thank the CSD and other LEAs for their assistance provided to the HAD in making necessary arrangements to facilitate registered electors of the contested villages who might be imprisoned, remanded or detained on the polling day to vote. The EAC is also grateful to the Police officers who conscientiously performed their duties in maintaining law and order in the By-election.

11.2 The EAC would also 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 12 – The Way Ahead

12.1 The HAD is planning another By-election in May/June to return VRs to fill vacancies which have arisen and may arise subsequent to this VR By-election.

12.2 The EAC would like to recommend that this report be made public, at a time when the Chief Executive thinks appropriate, to uphold the principle of maintaining transparency of elections.

