

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 2011, the Electoral Affairs Commission (“EAC”) made arrangements for the conduct of the second round of Village By-election on 27 November 2011 to return 10 Village Representatives (“VRs”) for filling 5 Resident Representative (“RR”) and 5 Indigenous Inhabitant Representative (“IIR”) vacancies in 10 villages. The reasons for conducting the by-election are set out in paragraph 1.3 below.

1.2 According to a recommendation made by the EAC in its Report on the VR By-election held in March 2004, Village By-elections conducted thereafter should normally be held twice a year in April/ May and November/ December unless there are special circumstances that warrant a departure from the scheduled time. Hence, the EAC arranged for the conduct of the second round of Village By-election on 27 November 2011.

The Vacancies

1.3 After the conclusion of the first round of Village By-election in June 2011, a total of ten vacancies comprising five RR and five IIR seats had arisen in ten villages. These vacancies are classified into five different groups as follows:

- (a) **2 vacancies** – comprising 1 RR and 1 IIR vacant seats in 2 villages. These vacancies arose because the elected RR and IIR had resigned from their office after being elected;
- (b) **3 vacancies** – comprising 1 RR and 2 IIR vacant seats in 3

villages. These vacancies arose because the elected RR and IIRs had passed away;

- (c) **2 vacancies** – comprising 2 RR vacant seats in 2 villages. These vacancies arose because the 2 elected RRs were disqualified from holding offices in accordance with section 9 of the VREO;
- (d) **1 vacancy** – 1 IIR vacant seat in 1 village. This vacancy arose as a result of the ruling of the Court on an election petition as set out in its judgment handed down in April 2011 that the elected IIR was not duly elected in the 2011 Village Ordinary Election (“VOE”) in accordance with section 50(1) of the VREO; and
- (e) **2 vacancies** – comprising 1 RR and 1 IIR vacant seats in 2 villages. The election for these 2 villages had failed in the 2011 VOE held in January 2011 because the total number of registered electors of each of these villages was less than 6 (the requisite number of subscribers is 5 for a nomination). Upon completion of the 2011 voter registration exercise for the VR Elections in October 2011, these villages had secured more than 5 registered electors and hence a by-election could be arranged for each of them.

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

Section 2 – Appointments

Polling Day and Nomination Period

2.1 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 14 October 2011, appointing 27 November 2011 as the polling day of the By-election and specifying the period from 20 October to 2 November 2011, both dates inclusive, as the nomination period. The By-election aimed at returning VRs to fill five RR and five IIR vacancies in ten 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)

2.2 In accordance with section 54 of the VREO, the EAC appointed the District Officers (“DOs”) of six New Territories District Offices concerned as Returning Officers (“ROs”), seven members of their staff as Assistant Returning Officers (“AROs”) and a staff from the Home Affairs Department (“HAD”) as ARO(Ballot Paper Sorting Station) (“BPSS”) who was the officer-in-charge of the BPSS¹. A Deputy Principal Government Counsel was appointed as ARO(Legal). The appointment of ROs was published in the Gazette on 14 October 2011. A list of the ROs and AROs is shown at **Appendix III**.

¹ The ARO(BPSS) was eventually not required to carry out her duties as after the close of nomination, it was decided that it was not necessary to set up a BPSS. Please see paragraph 7.2 below.

Operational Manual for Returning Officers and Assistant Returning Officers

2.3 As the ROs and AROs were familiar with the electoral arrangements, it was considered unnecessary to conduct a briefing for them. Nevertheless, 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.

Section 3 – Publicity

3.1 Information on the By-election was published on the websites of the EAC, the HAD and the Independent Commission Against Commission (“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.

3.2 Apart from the publicity measures mentioned in paragraph 3.1 above, the HAD also placed advertisements on local newspapers to invite nominations for the By-election. Appeal letters were also issued to electors before the commencement of the nomination period.

Section 4 – Nomination of Candidates

The Nomination Period

4.1 The nomination period started on 20 October 2011 and ended on 2 November 2011. Candidates handed in their nomination forms to the relevant ROs in person. At the close of the nomination period, the ROs had received a total of 15 nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the 15 nominations were valid.

Uncontested elections

4.3 Having examined the nominations, the ROs declared that two candidates for the IIR elections for Cheung Sha Lower Village in Islands District, Leng Pei Tsuen in North District and three candidates for the RR elections for Long Keng in Sai Kung District, Mui Shue Hang and Ha Hang in Tai Po District were elected uncontested as there was only one validly nominated candidate for each vacancy. The names of the aforesaid candidates who were returned in the By-election were published in the Gazette on 11 November 2011.

Contested election

4.4 As the number of validly nominated candidates for three Indigenous Villages (“IVs”) (i.e. Luk Keng Chan Uk in North District, Ping Chau Tai Tong in Tai Po District and Yuen Kong San Tsuen in Yuen Long District) and one Existing Village (“EV”) (i.e. Tong Hang (Upper)

in North District) exceeded the number of IIR or RR to be returned for the respective villages, a poll was arranged to be held on 27 November 2011 for each of these villages. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 11 November 2011.

Elections that failed

4.5 The RO declared that the RR election of Kwong Shan Tsuen in Tuen Mun District had failed because no nomination had been received by the close of the nomination period. The notice of failure of election for this village was published in the Gazette on 11 November 2011.

The Briefing for Candidates

4.6 The EAC Chairman conducted a briefing session for candidates on 8 November 2011 in the Conference Room at the HAD Headquarters in Wan Chai. Also present with the EAC Chairman were the Assistant Director of the HAD, representatives of the ICAC, Department of Justice (“DoJ”) and the Registration and Electoral Office (“REO”).

4.7 The EAC Chairman briefed the candidates on the major provisions of the electoral legislation and guidelines on the electoral arrangements.

4.8 After the briefing session, the respective ROs drew lots to allocate candidate numbers and designated spots for displaying election advertisements to candidates.

Section 5 – Preparation Work

Appointment and Training of Polling and Counting Staff

5.1 Staff of the HAD were deployed as polling and counting staff for the By-election. A training session was held on 21 November 2011 for the staff who would perform polling and counting duties and man 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

5.2 The HAD headquarters and the ROs identified three polling-cum-counting stations and one polling station for the four contested villages in three districts (Tai Po, North and Yuen Long districts).

Dedicated Polling Stations

5.3 To enable registered electors of the contested villages who might be imprisoned or remanded by the Correctional Services Department (“CSD”) on the polling day to vote, dedicated polling stations (“DPSs”) were planned to be set up in penal institutions in this By-election. The CSD advised the HAD on 26 November 2011 (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.

5.4 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.

5.5 The notices of the location of the polling stations (including the DPS) and counting station were gazetted by the DHA on 11 November 2011.

Introduction to Candidate and Polling Notices to Electors

5.6 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.

5.7 Ten days before the polling day, polling notice, together with the relevant Introduction to Candidate and ICAC leaflet were sent to each of the electors of the contested villages, notifying them of the date, time and location of the polling station. Notices were also sent to the electors of the uncontested villages and the village for which the election had failed informing them that no poll would be conducted for their villages on 27 November 2011.

The Contingency Plan

5.8 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 identified venues for use as alternative polling stations. The notice of the location of the alternative polling stations was gazetted by the DHA on 11 November 2011. These venues, together with Mei Tin Community Hall, which was designated as a DPS, were also reserved for the fallback dates on 29 November and 4 December 2011. 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 6 – The Poll

Polling Date and Polling Hours

6.1 The poll was held on Sunday, 27 November 2011. The polling hours were from 12:00 noon to 7:00 p.m. in line with the arrangements for the 2011 VOE.

Logistical Arrangements

6.2 The designated polling stations and the DPS at Mei Tin Community Hall operated 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.

6.3 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.

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

Voter Turnout Rates

6.5 The total number of registered electors of all the contested villages was 709. Of these, 95 were electors of RR election and 614 were electors of IIR elections. A total of 52 RR electors (i.e. 54.74%) and 347 IIR electors (i.e. 56.51%) cast their votes on the polling day. A detailed breakdown of the turnout rates of both the RR and IIR elections is shown in **Appendices IV**.

Section 7 – The Count

Counting Stations and Ballot Paper Sorting Station

7.1 There was one counting station for each district with contested elections (i.e. Tai Po, North and Yuen Long), and each counting station was supervised by the RO concerned. For the villages in Tai Po district and Yuen Long district, the respective polling station (i.e. Tai Wo Neighbourhood Community Centre in Tai Po District and the Yuen Kong San Tsuen Village Office in Yuen Long District) were converted into the counting station for the counting of votes after the close of the poll. As for the two villages in the North district, the count was centrally conducted at the Cheung Wah Community Hall, while the polls were held in the Cheung Wah Community Hall and the International College of Hong Kong (NT) respectively.

7.2 After the close of nomination, it was noted that polling was required for only four villages involving 709 electors. As it was expected that the number of ballot papers that would be cast at the aforesaid DPSs, would be very small and that they could be efficiently delivered to the respective counting stations directly, the HAD decided that it was not necessary to set up a BPSS to sort the ballot papers cast at the aforesaid DPS before sending them to the respective counting stations for counting.

Counting Method

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

Counting Arrangements

7.4 After the close of poll, all the polling stations, with the exception of the polling station at the International College of Hong Kong, were converted into counting stations. No vote was cast in the DPS at Mei Tin Community Hall. The ballot box containing ballot papers cast in the polling station at the International College of Hong Kong (NT) was transported to the counting station at the Cheung Wah Community Hall in North District for the counting of votes and the empty ballot box at the DPS at Mei Tin Community Hall was also delivered to the aforesaid counting station for opening. The conversion of the three polling stations into counting stations was completed at around 7:30p.m. Subsequently, the ROs concerned opened and emptied the ballot boxes for the count to commence.

7.5 Counting staff then sorted the ballot papers into different transparent plastic boxes according to the votes marked thereon, before starting the count of the number of votes obtained by each candidate. There was one invalid ballot paper identified for Yuen Kong San Tsuen.

Declaration of Result

7.6 The election result was declared at each counting station by the RO after the completion of the count at about 7:40 p.m. for Tong Hang (Upper), 7:55.p.m. for Luk Keng Chan Uk, 7:40 p.m. for Ping Chau Tai Tong and 7:45 p.m. for Yuen Kong San Tsuen. The results of these contested elections were promulgated in the Gazette notices published on 27 November 2011.

7.7 The lists of successful and unsuccessful candidates including those uncontested and the village where election was declared as having failed are shown in **Appendices V(A) and V(B)**.

EAC Visits

7.8 Mr Justice Fung, the EAC Chairman and Professor Andrew Chan, EAC Member, visited different polling stations according to their individual itineraries. Mr Justice Fung visited the DPS at Mei Tin Community Hall and the polling stations at the International College of Hong Kong (NT) and Cheung Wah Community Hall. Professor Chan visited the polling stations at the Tai Wo Neighbourhood Community Centre and Yuen Kong San Tsuen Village Office. Mr Justice Fung and Professor Chan observed the count at the counting stations at the Cheung Wah Community Hall and Yuen Kong San Tsuen Village Office respectively. They found the polling and counting arrangements generally satisfactory

7.9 The Deputy Director of Home Affairs (1) and the Assistant Director of Home Affairs (1) also joined Mr Justice Fung and Professor Chan respectively in visiting the polling stations and counting stations mentioned above.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 20 October 2011, when the nomination period commenced, and ended on 11 January 2012 (i.e. 45 days after the polling day on 27 November 2011).

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 concerned, the Police and the ICAC.

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 EAC on a weekly basis during the complaints-handling period.

Number and Nature of Complaints

8.4 By the end of the complaints-handling period, two complaints relating to nuisances and false statements in an election advertisement respectively had been received by the Police. No complaints had been received by other complaints-handling parties.

Section 9 – Review and Recommendation

9.1 There were five IIRs/RRs returned uncontested in this By-election as only one valid nomination was received for each of the five vacancies. Moreover, the election for 1 RR seat in an Existing Village had failed because no nomination had been received at the close of the nomination period. This indicates a possibility that the registered electors of the villages concerned were less than enthusiastic about competing as candidates for the vacant seats.

9.2 **Recommendation:** The EAC recommends that the HAD should make continuous efforts to encourage the registered electors of the villages concerned to participate in the VR elections as candidates through strengthened publicity measures.

Section 10 – Acknowledgement

10.1 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 villages concerned 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.

10.2 The EAC would also 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 round of By-election in May 2012 to return VRs to fill vacancies which have arisen and may arise subsequent to this By-election.

11.2 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.

