

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 third round of Village By-election on 22 April 2012 to return 6 Village Representatives (“VRs”) for filling 3 Resident Representative (“RR”) and 3 Indigenous Inhabitant Representative (“IIR”) vacancies in 6 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 third round of Village By-election on 22 April 2012.

The Vacancies

1.3 After the conclusion of the second round of Village By-election in November 2011, a total of six VR vacancies comprising three RR and three IIR seats had arisen in six VR villages. These vacancies are classified into four different groups as follows:

- (a) **2 vacancies** – comprising 2 IIR vacant seats in 2 villages.

These vacancies had arisen because the elected IIRs had resigned from their office;

- (b) **2 vacancies** – comprising 2 RR vacant seats in 2 villages. These vacancies had arisen because the elected RRs had passed away; and
- (c) **1 vacancy** – comprising 1 IIR vacant seat. This vacancy had arisen because the elected IIR was disqualified from holding office in accordance with section 9 of the VREO.
- (d) **1 vacancy** – comprising 1 RR vacant seat. This vacancy had arisen because the elected RR had resigned but the last By-election held on 27 November 2011 for filling the RR vacancy had failed because no nomination was received.

1.4 Four Districts of the New Territories, namely Kwai Tsing, North, Tuen Mun and Tai Po, 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 9 March 2012, appointing 22 April 2012 as the polling day of the By-election and specifying the period from 15 March to 28 March 2012, both dates inclusive, as the nomination period. The By-election aimed at returning VRs to fill three RR and three IIR vacancies in six 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 four New Territories District Offices concerned as Returning Officers (“ROs”), four 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 Government Counsel was appointed as ARO(Legal). The appointment of ROs was published in the Gazette on 9 March 2012. 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 clear that setting up a BPSS was not necessary. 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 to encourage the registered electors of the villages concerned to participate in the By-election.

Section 4 – Nomination of Candidates

The Nomination Period

4.1 The nomination period started on 15 March 2012 and ended on 28 March 2012. 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 8 nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the 8 nominations were valid.

Uncontested elections

4.3 Having examined the nominations, the ROs declared that two candidates for the IIR elections for Fung Hang and Tsung Pak Long in North District and three candidates for the RR elections for Kau Wah Keng San Tsuen (also known as Kau Wah San Tsuen) in Kwai Tsing District, Muk Min Tau and Tsiu Hang in North District and Kwong Shan Tsuen in Tuen Mun 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 5 April 2012.

Contested election

4.4 As the number of validly nominated candidates for San Tau Kok, an Indigenous Village (“IV”) in Tai Po District, exceeded the number of IIR to be returned for the village, a poll was arranged to be held on 22 April 2012 for the village. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 5 April 2012.

The Briefing for Candidates

4.5 As the candidates for the IIR election for San Tau Kok indicated that they would not attend the briefing session for candidates scheduled for 30 March 2012, the briefing session was cancelled.

4.6 The RO concerned drew lots to allocate candidate numbers and designated spots for displaying election advertisements to candidates at Tai Po District Office on 30 March 2012.

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 17 April 2012 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, operational procedures and their respective tasks.

Polling and Counting Stations

5.2 The RO identified the Joint Village Office for Villages in Shuen Wan, Tai Po, N.T., as the polling-cum-counting station for the IIR election for San Tau Kok.

Dedicated Polling Stations

5.3 To enable registered electors of the contested village 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 21 April 2012 (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 village, 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 the counting station were gazetted by the DHA on 5 April 2012.

Introduction to Candidates 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 Candidates and ICAC leaflet were sent to each of the electors of San Tau Kok, notifying them of the date, time and location of the polling station. Notices were also sent to the electors of the uncontested villages informing them that no poll would be conducted for their villages on 22 April 2012.

The Contingency Plan

5.8 To cope with any unforeseeable situations in which the poll at the designated polling station could not proceed smoothly for one reason or another (e.g. inclement weather conditions), the HAD had identified a venue for use as an alternative polling station. The notice of the location of the alternative polling station was gazetted by the DHA on 5 April 2012. This venue, together with Mei Tin Community Hall, which was designated

as a DPS, were also reserved for the fallback dates on 24 April and 29 April 2012. 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, 22 April 2012. According to established arrangement for VR Election, the polling hours were from 12:00 noon to 7:00 p.m.

Logistical Arrangements

6.2 The designated polling station 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 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 San Tau Kok was 169. A total of 102 IIR electors (i.e. 60.36%) cast their votes on the

polling day. A detailed breakdown of the turnout rates of the IIR election is shown in **Appendix IV**.

Section 7 – The Count

Counting Station and Ballot Paper Sorting Station

7.1 The polling station at Joint Village Office for Villages in Shuen Wan, Tai Po, N.T. was converted into a counting station for counting of votes after the close of the poll. The counting station was supervised by the RO concerned.

7.2 As polling was required for only one village, it was not necessary to set up a BPSS to sort the ballot papers cast at the DPS at Mei Tin Community Hall before sending them to the counting station for counting.

Counting Method

7.3 As in the past elections, manual counting was adopted.

Counting Arrangements

7.4 After the close of poll, the polling station was converted into a counting station. No vote was cast in the DPS at Mei Tin Community Hall. The empty ballot box thereat was delivered to the counting station for opening. The conversion of the polling station into a counting station was completed at around 7:20 p.m. Subsequently, the RO

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 no invalid ballot paper nor questionable ballot paper.

Declaration of Result

7.6 The election result was declared at the counting station by the RO after the completion of the count at about 7:45 p.m. The result of the contested election was promulgated in the Gazette notice published on 27 April 2012.

7.7 The lists of successful and unsuccessful candidates (including those uncontested) are shown in **Appendices V(A) - (B)**.

EAC Visits

7.8 Mr Justice Fung, the EAC Chairman and Mr Lawrence Lok, EAC Member, visited the DPS at Mei Tin Community Hall and the polling station at Joint Village Office for Villages in Shuen Wan, Tai Po, N.T.. They also observed the count at the same venue after the polling station was converted into a counting station. They found the polling and counting arrangements generally satisfactory.

7.9 Ms Mimi Lee, Deputy Director of Home Affairs (1) and Mr

Andy Chan, Assistant Director of Home Affairs (1) also joined Mr Justice Fung and Mr Lawrence Lok in visiting the DPS at Mei Tin Community Hall and polling-cum-counting station mentioned above.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 15 March 2012, when the nomination period commenced, and ended on 6 June 2012 (i.e. 45 days after the polling day on 22 April 2012).

Complaints-handling Parties

8.2 The parties involved in handling complaints relating to the By-election included the EAC, the ROs, the Police and the ICAC. The EAC, supported by the EAC Secretariat, dealt with cases that were within its jurisdiction and not covered by any statutory provisions involving criminal sanction.

8.3 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, no complaint had been received by all the complaints-handling parties.

Section 9 – Review and Recommendation

9.1 There were two IIRs and three RRs returned uncontested in this By-election as only one valid nomination was received for each of the five vacancies. 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 where it becomes necessary. 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 station 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 December 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.