

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 fourth round of Village By-election on 2 December 2012 to return 13 Village Representatives (“VRs”) for filling eight Resident Representative (“RR”) and five Indigenous Inhabitant Representative (“IIR”) vacancies in 13 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 fourth round of Village By-election on 2 December 2012.

The Vacancies

1.3 After the conclusion of the third round of Village By-election in April 2012, a total of 13 VR vacancies comprising eight RR and five IIR seats had arisen in 13 VR villages. These vacancies are classified into two different groups as follows:

- (a) **4 vacancies** – comprising 3 IIR vacant seats in 3 villages and

1 RR vacant seat in 1 village. These vacancies had arisen because the elected IIRs and RR had resigned from their office; and

- (b) **9 vacancies** – comprising 2 IIR vacant seats in 2 villages and 7 RR vacant seats in 7 villages. These vacancies had arisen because the elected IIRs and RRs had passed away.

1.4 Seven Districts of the New Territories, namely Islands, North, Sai Kung, Sha Tin, Tai Po, Tsuen Wan and Yuen Long, 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 19 October 2012, appointing 2 December 2012 as the polling day of the By-election and specifying the period from 25 October 2012 to 7 November 2012, both dates inclusive, as the nomination period. The By-election aimed at returning VRs to fill eight RR and five IIR vacancies in 13 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 seven 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 Government Counsel was appointed as ARO(Legal). The appointment of ROs was published in the Gazette on 19 October 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 To enable all parties concerned to familiarise 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. As the ROs and AROs were familiar with the electoral arrangements, it was considered unnecessary to conduct a briefing for them.

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 25 October 2012 and ended on 7 November 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 13 nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the 13 nominations were valid.

Uncontested elections

4.3 Having examined the nominations, the ROs declared that five candidates for the IIR elections for Tai Tsing Chau and Ham Tin in Tsuen Wan District, Ma Tseuk Leng Sheung in North District, Tai Wai in Sha Tin District and Ha Wun Yiu in Tai Po District and six candidates for the RR elections for Mo Tat, Pui O Lo Uk Tsuen and Shap Long in Islands District, Ha Tsuen Shi and Hong Mei Tsuen in Yuen Long District and Hang Hau in Sai Kung 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 16 November 2012.

Contested election

4.4 As the number of validly nominated candidates for Tseung Kong Wai, an Existing Village (“EV”) in Yuen Long District, exceeded the number of RR to be returned for the village, a poll was arranged to be held on 2 December 2012 for the village. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 16 November 2012.

Election that failed

4.5 The RO concerned declared that the RR election of Tin Liu Ha in Tai Po 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 also published in the Gazette on 16 November 2012.

The Briefing for Candidates

4.6 As the validly nominated candidates for the RR election for Tseung Kong Wai indicated that they would not attend the briefing session for candidates scheduled for 12 November 2012, the briefing session was cancelled.

4.7 The RO concerned drew lots to allocate candidate numbers and designated spots for displaying election advertisements to candidates at Yuen Long District Office on 12 November 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 27 November 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 concerned identified the Tseung Kong Wai Village Office as the polling and counting station for the RR election for Tseung Kong Wai.

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. As advised by the CSD on 1 December 2012, two registered electors of the contested village would be in their custody in the Hei Ling Chau Addiction Treatment Centre on the polling day. Hence, a DPS was set up at the Hei Ling Chau Addiction Treatment Centre. Owing to security considerations, the poll at the DPS in penal institution was conducted from 1:00 p.m. to 4:00 p.m.

5.4 A DPS was also set up on the polling day at the Mei Tin Community Hall in Sha Tin District for the registered electors of the contested village who were remanded or detained on the polling day by the law enforcement agencies (“LEAs”) (other than the CSD) to cast votes. Since the LEAs might arrest persons who happened to be registered electors of the contested village at any time on the polling day, the polling hours of this DPS were the same as those of an ordinary polling station, that is, from 12:00 noon to 7:00 p.m..

5.5 The set-up at all the DPSs was basically the same as that of an ordinary polling station, except that some of the polling materials were specially designed for security reasons.

5.6 Notice of designation of the polling stations (including the DPSs) and the counting station were gazetted by the DHA on 16 November 2012.

Introduction to Candidates and Polling Notices to Electors

5.7 The HAD had produced the “Introduction to Candidates” to provide registered electors with information on the relevant personal particulars, election platform and photographs of the validly nominated candidates to enable electors to make an informed choice on the polling day.

5.8 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 Tseung Kong Wai, notifying them of the polling

date, polling hours 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 2 December 2012.

The Contingency Plan

5.9 To cope with any unforeseeable situations in which the poll at the designated polling station could not be held as scheduled (due to circumstances such as inclement weather conditions), the HAD had identified a venue for use as an alternative polling station. The designation of this alternative polling station was also gazetted by the DHA on 16 November 2012. This venue, together with the Mei Tin Community Hall, which was designated as a DPS, were also reserved for the fallback dates on 4 December and 9 December 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, 2 December 2012. According to established arrangement for VR Election, the polling hours for the polling station at the Tseung Kong Wai Village Office and the DPS at the Mei Tin Community Hall were from 12:00 noon to 7:00 p.m., whereas the polling hours for the DPS situated in penal institution were shorter, from 1:00 p.m. to 4:00 p.m.

Logistical Arrangements

6.2 The polling station at the Tseung Kong Wai Village Office and the DPSs at Mei Tin Community Hall and the Hei Ling Chau Addiction Treatment Centre 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 stations and counting station 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 Tseung Kong Wai was 102. A total of 66 RR electors (including two persons who were in the custody of the CSD) cast their votes on the polling day. The overall turnout rate was 64.71%. A detailed breakdown of the turnout rates of the RR election is shown in **Appendix IV**.

Section 7 – The Count

Counting Station and Ballot Paper Sorting Station

7.1 The polling station at the Tseung Kong Wai Village Office 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 DPSs at the Mei Tin Community Hall and the Hei Ling Chau Addiction Treatment Centre before sending them to the counting station for counting.

7.3 The PROs of the DPSs at the Mei Tin Community Hall and the Hei Ling Chau Addiction Treatment Centre sealed the respective ballot box in the presence of a police officer or an officer of the CSD. The PROs, under the escort of the Police, delivered the sealed ballot boxes to the counting station after the close of poll.

Counting Method

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

Counting Arrangements

7.5 After the close of poll, the polling station at the Tsueng Kong Wai Village Office was converted into a counting station. No vote was cast in the DPS at the Mei Tin Community Hall. The empty ballot box thereat was delivered to the counting station for opening. For the DPS

at the Hei Ling Chau Addiction Treatment Centre, the ballot box containing the votes cast at that DPS was delivered to the counting station for counting. The conversion was completed at around 7:15 p.m. Subsequently, the RO concerned opened and emptied the ballot boxes for the count to commence. The ballot papers cast at the DPS were then mixed with those at the polling station at the Tsueng Kong Wai Village Office before counting.

7.6 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. Two ballot papers were determined as invalid as they were unmarked. One ballot paper was identified as questionable. This questionable ballot paper was determined as invalid by the RO concerned as it was voided for uncertainty. All the invalid ballot papers were not counted.

Declaration of Result

7.7 The election result was declared at the counting station by the RO after the completion of the count at around 7:40 p.m. The result of the contested election was promulgated in the Gazette notice published on 7 December 2012.

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

EAC Visits

7.9 Mr Justice Fung, the EAC Chairman, Mr Lawrence Lok and Professor Fanny Cheung, the two EAC Members, conducted visits to the DPS at the Mei Tin Community Hall and the polling station at the Tseung Kong Wai Village Office. 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.

7.10 Ms Mimi Lee, Deputy Director of Home Affairs (1) and Ms Leona Law, Assistant Director of Home Affairs (1) also joined Mr Justice Fung, Mr Lawrence Lok and Professor Fanny Cheung in visiting the polling stations.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 25 October 2012, when the nomination period commenced, and ended on 16 January 2013 (i.e. 45 days after the polling day on 2 December 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 any of the complaints-handling parties.

Section 9 – Review and Recommendation

9.1 Five IIRs and six RRs were returned uncontested in this By-election as only one valid nomination was received for each of the 11 vacancies. Also, there was an EV for which election had failed because no nomination was received. 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 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, the Police and other LEAs for their assistance provided to the HAD in making necessary arrangements to facilitate registered electors of the village concerned who might be imprisoned, remanded or detained on the polling day to vote where it became 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 May 2013 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 transparency.