

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 fifth round of Village By-election on 26 May 2013 to return 13 Village Representatives (“VRs”) for filling seven Resident Representative (“RR”) and six 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 fifth round of Village By-election on 26 May 2013.

The Vacancies

1.3 After the conclusion of the fourth round of Village By-election in December 2012, a total of 13 VR vacancies comprising seven RR and six IIR seats had arisen in 13 VR villages. These vacancies are classified into four different groups as follows:

- (a) **5 vacancies** – comprising 2 IIR vacant seats in 2 villages and 3 RR vacant seats in 3 villages. These vacancies had arisen

because the elected IIRs and RRs had resigned from their office;

- (b) **6 vacancies** – comprising 4 IIR vacant seats in 4 villages and 2 RR vacant seats in 2 villages. These vacancies had arisen because the elected IIRs and RRs had passed away;
- (c) **1 vacancy** – 1 RR vacant seat in 1 village. This vacancy had arisen because the elected RR was disqualified from holding office in accordance with section 9 of the VREO; and
- (d) **1 vacancy** – 1 RR vacant seat in 1 village. This vacancy had arisen because the elected RR had passed away but no one sought candidature for this vacant seat in the last By-election held on 2 December 2012.

1.4 Eight Districts of the New Territories, namely Islands, 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 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 5 April 2013, appointing 26 May 2013 as the polling day of the By-election and specifying the period from 11 April 2013 to 24 April 2013, both dates inclusive, as the nomination period. The By-election aimed at returning VRs to fill seven RR and six 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 of eight New Territories District Offices concerned as Returning Officers (“ROs”), eight 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 5 April 2013. 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. A briefing session for ROs and AROs, hosted by the EAC Chairman was held on 9 April 2013 at the HAD Headquarters to draw their attention to the major provisions in the relevant electoral legislation and guidelines. Representatives of the Independent Commission Against Corruption (“ICAC”) and Department of Justice also attended the session to brief the ROs and AROs on subjects within their respective purview.

Section 3 – Publicity

3.1 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.

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 11 April 2013 and ended on 24 April 2013. 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 10 nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the 10 nominations were valid.

Uncontested elections

4.3 Having examined the nominations, the ROs declared that three candidates for the IIR elections for Tin Ha Wan in Sai Kung District, Kwan Mun Hau and Ting Kau in Tsuen Wan District and five candidates for the RR elections for Shung Him Tong (East) in North District, See Cheung Street in Sai Kung District, Tung Lo Wan in Sha Tin District, Kei Lun Wai in Tuen Mun District and Kong Tau in Yuen Long 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 3 May 2013.

Contested election

4.4 As the number of validly nominated candidates for Ma Wan Chung, an Indigenous Village (“IV”) in Islands District, exceeded the number of IIR to be returned for the village, a poll was arranged to be held on 26 May 2013 for the village. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 3 May 2013.

Election that failed

4.5 The ROs concerned declared that two IIR elections for Tai Po in Islands District and Kau Tam Tso in North District and two RR elections for Sham Shek in Islands District and Tin Liu Ha in Tai Po District had failed because no nomination had been received by the close of the nomination period. The notices of failure of election for these villages were also published in the Gazette on 3 May 2013.

The Briefing for Candidates

4.6 As the validly nominated candidates for the IIR election for Ma Wan Chung indicated that they would not attend the briefing session for candidates scheduled for 30 April 2013, 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 Islands District Office on 30 April 2013.

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 20 May 2013 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 AMS Tung Chung Office as the polling and counting station for the IIR election for Ma Wan Chung.

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 25 May 2013 (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 were remanded or detained by the law enforcement agencies (“LEAs”) (other

than the CSD) on the polling day 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 A notice of designation of the polling stations (including the DPSs) and the counting station was gazetted by the DHA on 3 May 2013.

Introduction to Candidates and Polling Notices to Electors

5.6 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.

5.7 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 Ma Wan Chung, 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 26 May 2013.

The Contingency Plan

5.8 To cope with any unforeseeable situations in which the poll at the designated polling station could not be carried out as scheduled (e.g. inclement weather conditions, occurrence of public danger, etc.), 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 3 May 2013. This venue, together with the Mei Tin Community Hall, which was designated as a DPS, were also reserved for the fallback dates on 28 May and 2 June 2013. 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, 26 May 2013. According to established arrangement for VR Election, the polling hours for the polling station at the AMS Tung Chung Office and the DPS at the Mei Tin Community Hall were from 12:00 noon to 7:00 p.m.

Logistical Arrangements

6.2 The designated polling station at the AMS Tung Chung Office 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 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 IIR electors of Ma Wan Chung was 22. A total of 15 IIR electors cast their votes on the polling day. The overall turnout rate was 68.18%. 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 the AMS Tung Chung 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 DPS at the Mei Tin Community Hall before sending them to the counting station for counting.

7.3 The PRO of the DPS at the Mei Tin Community Hall sealed the ballot box in the presence of a police officer. The PRO, under the escort of the Police, delivered the sealed ballot box 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 AMS Tung Chung Office was converted into a counting station. The conversion was completed at around 7:20 p.m. 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 at around 7:25 p.m. Subsequently,

the RO concerned opened and emptied the ballot boxes for the count to commence.

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. There was no invalid ballot paper or questionable ballot paper.

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 7:35 p.m. The result of the contested election was promulgated in the Gazette notice published on 31 May 2013.

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 and Professor Fanny Cheung, EAC Member, conducted a visit to the polling station at the AMS Tung Chung Office in the afternoon. Mr Lawrence Lok, EAC Member, visited the DPS at the Mei Tin Community Hall in the evening. Thereafter, he proceeded to the AMS Tung Chung Office to observe the count after the polling station was converted into a counting station. They found the polling and counting arrangements generally satisfactory.

7.10 Ms Leona Law, Assistant Director of Home Affairs (1) also joined Mr Justice Fung and Professor Fanny Cheung in visiting the polling station at the AMS Tung Chung Office.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 11 April 2013, when the nomination period commenced, and ended on 10 July 2013 (i.e. 45 days after the polling day on 26 May 2013).

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, would deal 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 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 Out of the 13 vacancies in 13 villages, three IIRs and five RRs were returned uncontested in this By-election as only one valid nomination was received for each of the 8 vacancies. Also, there were two Existing Villages and two IVs for which elections had failed because no nomination was received. The EAC recommends that the HAD should strengthen their efforts and publicity measures to encourage the registered electors of the villages concerned to participate in the VR elections.

9.2 The polling and counting station for the IIR election for Ma Wan Chung was set up at AMS Tung Chung Office. The EAC notes that the venue is easily accessible and therefore considers it a suitable venue for the electors to cast vote in future elections.

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 December 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.

