

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 sixth round of Village By-election on 15 December 2013 to return 15 Village Representatives (“VRs”) for filling eight Resident Representative (“RR”) and seven Indigenous Inhabitant Representative (“IIR”) vacancies in 15 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 sixth round of Village By-election on 15 December 2013.

The Vacancies

1.3 After the conclusion of the fifth round of Village By-election in May 2013, a total of 15 VR vacancies comprising eight RR and seven IIR seats had arisen in 15 villages. These vacancies are classified into five different groups as follows:

- (a) **5 vacancies** – comprising 3 IIR vacant seats in 3 villages and

2 RR vacant seats in 2 villages. These vacancies had arisen because the elected IIRs and RRs had resigned from their office;

- (b) **4 vacancies** – comprising 1 IIR vacant seat in 1 village and 3 RR vacant seats in 3 villages. These vacancies had arisen because the elected IIR and RRs had passed away;
- (c) **2 vacancies** – comprising 1 IIR vacant seat in 1 village and 1 RR vacant seat in 1 village. These vacancies had arisen because the elected IIR and RR was disqualified from holding office in accordance with section 9 of the VREO; and
- (d) **3 vacancies** – comprising 2 IIR vacant seats in 2 villages and 1 RR vacant seat in 1 village. These vacancies had arisen because the elected IIRs and RR had either passed away or resigned from office but no one sought candidature for these vacant seats in the last By-election held on 26 May 2013.
- (e) **1 vacancy** – 1 RR vacant seat in 1 village. The election for this village failed in the last Village Ordinary Election held in January 2011 because the total number of registered electors was less than 6 (the requisite number of subscribers is 5 for a nomination). Upon completion of the 2013 voter registration exercise, this village had secured more than 5 registered electors and hence a by-election could be arranged for it.

1.4 Six Districts of the New Territories, namely Islands, Kwai Tsing, North, Sai Kung, Tai Po 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 25 October 2013, appointing 15 December 2013 as the polling day of the By-election and specifying the period from 31 October 2013 to 13 November 2013, both days inclusive, as the nomination period. The By-election aimed at returning VRs to fill eight RR and seven IIR vacancies in 15 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 six New Territories District Offices concerned as Returning Officers (“ROs”), six 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”) to take charge of the operation of the BPSS¹. A Government Counsel was appointed as ARO (Legal). The appointment of ROs was published in the Gazette on 25 October 2013. A list of the ROs and AROs is shown at **Appendix III**.

¹ The ARO (BPSS) was eventually not required to carry out his 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 24 October 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 (“DoJ”) 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 31 October 2013 and ended on 13 November 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 19 nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the ROs determined that all the 19 nominations were valid.

Uncontested elections

4.3 Having examined the nominations, the ROs declared that five candidates for the IIR elections for Tai Po and Mok Ka in Islands District, Ha Kwai Chung in Kwai Tsing District, Kau Tam Tso in North District and Hang Hau in Sai Kung District and five candidates for the RR elections for Leung Uk in Islands District, Fu Tei Pai in North District, Tin Ha Wan and Main Street (West) in Sai Kung District and Wing Lung Wai 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 22 November 2013.

Contested election

4.4 As the number of validly nominated candidates for two Indigenous Villages (“IVs”) (i.e. Chuk Yuen in North District and Sai O in Tai Po District) and two Existing Villages (“EVs”) (i.e. Pak Kong in Sai Kung District and Mong Tseng Tsuen in Yuen Long District) exceeded the number of IIR or RR to be returned for the respective villages, a poll was arranged to be held on 15 December 2013 for each of these villages. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 22 November 2013.

Election that failed

4.5 The RO concerned declared that the RR election for Sham Shek in Islands 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 22 November 2013.

The Briefing for Candidates

4.6 The EAC Chairman conducted a briefing session for candidates on 19 November 2013 at the Conference Room of the HAD Headquarters in Wan Chai. Also present with the EAC Chairman were the Assistant Director of the HAD, representatives of the ICAC, DoJ and the Registration and Electoral Office (“REO”).

4.7 The EAC Chairman briefed the candidate on the major

provisions of the electoral legislation and guidelines on the electoral arrangements.

4.8 The ROs concerned drew lots to allocate candidate numbers and designated spots for displaying election advertisements to candidates at their respective offices on 18 November 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 6 December 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 HAD identified four polling-cum-counting stations for the four contested villages in four districts (i.e. Pak Kong in Sai Kung District, Mong Tseng Tsuen in Yuen Long District, Chuk Yuen in North District and Sai O in Tai Po District).

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 for this By-election. The CSD advised the HAD on 14 December 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 villages 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 villages 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 DPS) and the counting stations was gazetted by the DHA on 22 November 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, a polling notice, together with the relevant Introduction to Candidates and ICAC leaflet were sent to each of the electors of the contested villages, 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 15 December 2013.

The Contingency Plan

5.8 To cope with any unforeseeable situations in which the poll at the designated polling stations could not be carried out as scheduled (e.g. inclement weather conditions, occurrence of public danger, etc.), the HAD had identified venues for use as alternative polling stations. The designation of these alternative polling stations was also gazetted by the DHA on 22 November 2013. These venues, together with Mei Tin Community Hall, which was designated as a DPS, were also reserved for the fallback dates on 17 and 22 December 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, 15 December 2013. According to established arrangement for VR Election, the polling hours for the polling stations at the contested villages and the DPS at Mei Tin Community Hall were from 12:00 noon to 7:00 p.m.

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 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 640. Of these, 294 were electors of RR elections and 346 were electors of IIR elections. A total of 172 RR electors (i.e. 58.5%) and 266 IIR electors (i.e. 76.9%) cast their votes on the polling day. A detailed breakdown of the turnout rates of both the RR and IIR elections is shown in **Appendix IV**.

Section 7 – The Count

Counting Station and Ballot Paper Sorting Station

7.1 For each of the contested villages, there was one counting station to be converted from the polling station after the close of the poll for counting of votes. Each counting station was supervised by the RO concerned.

7.2 After the close of nomination, it was noted that polling was required for only four contested villages involving 640 electors. As the expected number of ballot papers to be cast at the DPS would be very small and that the ballot papers cast could be efficiently delivered to the respective counting station directly, the HAD decided that it was not necessary to set up a BPSS to sort the ballot papers cast at the DPS before sending them to the respective counting station for counting.

7.3 After the close of poll, the PRO of the DPS at 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.

Counting Method

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

Counting Arrangements

7.5 After the close of poll, all the four polling stations (except for the DPS) were converted into counting stations. The conversion was completed at around 7:20 p.m. (for Sai O and Mong Tseng Tsuen) and 7:30 p.m. (for Chuk Yuen and Pak Kong) respectively. 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. Subsequently, the ROs of respective counting stations 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 one invalid ballot paper identified at the counting station for Pak Kong.

Declaration of Result

7.7 The election results were declared at each counting station by the respective RO after the completion of the count at around 7:40 p.m. for Sai O, 7:50 p.m. for Pak Kong, and 8:00 p.m. for Chuk Yuen and Mong Tseng Tsuen. The results of these contested elections were promulgated in the Gazette notice published on 20 December 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 visits to different polling stations according to their individual itineraries. Mr Justice Fung visited the polling station at T.K.L. Ling Ying Public School and observed the count at the counting station at Sai O Village Office. Professor Fanny Cheung visited the polling station at Pak Kong Village Office. They found the polling and counting arrangements generally satisfactory.

7.10 Mr Patrick Li, Deputy Director of Home Affairs (1) and Ms Leona Law, Assistant Director of Home Affairs (1) also joined Mr Justice Fung and Professor Fanny Cheung respectively in visiting the polling stations and counting station mentioned above.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 31 October 2013, when the nomination period commenced, and ended on 29 January 2014 (i.e. 45 days after the polling day on 15 December 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, only one complaint relating to entitlement to vote had been received by the RO for Pak Kong on the polling day. The complainant subsequently withdrew the complaint on the same day. No complaint had been received by other complaints-handling parties.

Section 9 – Review and Recommendation

9.1 The EAC reviewed the electoral procedures and arrangements made for the By-election and considered the overall polling and counting arrangement satisfactory. The EAC also noted that in this By-election, there were contested elections in four villages out of the 15 villages with VR vacancies, representing a contested rate of 26.7%. The rate compares favourably with that in the last two rounds of By-election conducted in December 2012 and May 2013. The EAC appreciates the effort made by the HAD through frequent appeals and local contacts to encourage electors to exercise their civic duty to participate in the VR elections. The EAC considers that the HAD should continue to encourage the registered electors to participate in future VR 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 villages 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 2014 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.