

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 eighth round of Village By-election on 5 October 2014 to return four Village Representatives (“VRs”) for filling one Resident Representative (“RR”) and three Indigenous Inhabitant Representative (“IIR”) vacancies in four 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. The polling day of this By-election was brought forward to 5 October 2014 to avoid clashing with the nomination period of the 2015 Rural Ordinary Election (“ROE”) which commenced in November 2014.

The Vacancies

1.3 After the conclusion of the seventh round of Village By-election in May 2014, a total of four VR vacancies including one RR and three IIR seats have arisen in four villages. These vacancies are classified into four different groups as follows:

- (a) 1 IIR vacancy arose because an elected IIR had resigned from the office;
- (b) 1 IIR vacancy arose because an elected IIR had passed away;
- (c) 1 IIR vacancy arose because an elected IIR was disqualified from holding office in accordance with section 9 of the VREO; and
- (d) 1 RR vacancy had arisen since 1 March 2014 when an elected RR resigned from the office but no one sought candidature for this vacant seat in the last By-election held on 25 May 2014.

1.4 Two Districts of the New Territories, namely Sha Tin 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 22 August 2014, appointing 5 October 2014 as the polling day of the By-election and specifying the period from 28 August 2014 to 10 September 2014, both days inclusive, as the nomination period. The By-election was held to return VRs to fill one RR and three IIR vacancies in four villages. A breakdown of the number of RR 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 two New Territories District Offices concerned as the Returning Officers (“ROs”), two members of their staff as the Assistant Returning Officers (“AROs”) and a staff from the Home Affairs Department (“HAD”) as the ARO (Ballot Paper Sorting Station) (“BPSS”) to take charge of the operation of the BPSS¹. A Government Counsel was appointed as the ARO (Legal). The appointment of ROs was published in the Gazette on 22 August 2014. A list of the ROs and AROs is shown at **Appendix III**.

¹ The ARO (BPSS) was eventually not required to carry out the relevant duties as after the close of nomination, it was clear that setting up of 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, by virtue of their previous experience and work knowledge, 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 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 28 August 2014 and ended on 10 September 2014. Candidates were required to hand in their nomination forms to the relevant ROs in person. At the close of the nomination period, the RO had received a total of three nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the relevant RO determined that all the three nominations were valid.

Uncontested election

4.3 Having examined the nomination, the RO declared that a candidate for the IIR election for Tai Wai in Sha Tin District was elected uncontested as there was only one validly nominated candidate for the vacancy. The name of the aforesaid candidate who was returned uncontested in the By-election was published in the Gazette on 19 September 2014.

Contested election

4.4 As the number of validly nominated candidates for Shan Ha Wai, an Indigenous Village in Sha Tin District, exceeded the number of

IIR to be returned for the village, a poll was arranged to be held on 5 October 2014 for the village. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 19 September 2014.

Elections that failed

4.5 As for Ho Lek Pui in Sha Tin District and Tong Sheung Tsuen in Tai Po District, the ROs concerned declared that the IIR and RR elections had failed because no nomination had been received by the close of the nomination period. The notices of failure of election for these two villages were also published in the Gazette on 19 September 2014.

The Briefing for Candidates

4.6 As the validly nominated candidates for the contested election indicated that they would not attend the briefing session for candidates scheduled for 15 September 2014, the briefing session was cancelled.

4.7 The RO concerned drew lots at Sha Tin District Office to allocate candidate numbers and designated spots for displaying election advertisements to the candidates on 15 September 2014.

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 26 September 2014 for the staff who would perform polling and counting duties and operate 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 the Pok Hong Community Hall as the polling-cum-counting station for the IIR election for Shan Ha Wai.

Dedicated Polling Stations

5.3 To enable registered electors of Shan Ha Wai who were imprisoned or remanded by the Correctional Services Department (“CSD”) to cast their votes on the polling day, dedicated polling stations (“DPSs”) would be set up in penal institutions for this By-election as needed. As advised by the CSD on 4 October 2014, no registered elector of Shan Ha Wai would be in their custody on the polling day. Hence, there was no need to set up a DPS in any 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 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 DPS) and the counting station was gazetted by the DHA on 19 September 2014.

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 an ICAC leaflet were sent to each of the electors of the contested village, notifying them of the polling date, polling hours and location of the polling station. A notice was also sent to each of the electors of the uncontested village informing them that no poll would be conducted for their village on 5 October 2014.

The Contingency Plan

5.8 To cope with any unforeseeable situations (e.g. inclement weather conditions, occurrence of public danger, etc.), in which the poll at the designated polling station could not be carried out as scheduled, 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 19 September 2014. This venue, together with Mei Tin Community Hall, which was designated as a DPS, were also reserved for use on the fallback day on 12 October 2014. The arrangements in case of emergencies or inclement weather on the polling day were included in the Operational Manual for ROs and AROs and that for Polling and Counting Staff for reference.

Section 6 – The Poll

Polling Date and Polling Hours

6.1 The poll was held on Sunday, 5 October 2014. According to the established arrangement for VR Election, the polling hours for the polling station at Pok Hong Community Hall 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 station at Pok Hong Community Hall 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, operated 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 Shan Ha Wai was 116. A total of 61 IIR electors (i.e. 52.59%) 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 Pok Hong Community Hall 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 in the DPS at Mei Tin Community Hall before sending them to the counting station for counting.

7.3 After the close of poll, the Presiding Officer (“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 Manual counting was adopted in the By-election. Ballot papers were separated with reference to the candidate for whom the vote had been recorded and placed into the relevant box, and then the valid ballot papers were counted.

Counting Arrangements

7.5 After the close of poll, the polling station at Pok Hong Community Hall was converted into a counting station. The conversion was completed at around 7:15 p.m. 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 first ballot box opened thereat was jointly emptied by Mr Justice Fung Wah, Barnabas, the EAC Chairman, Professor Fanny Cheung, EAC Member, and the concerned RO. The RO also unsealed the empty ballot box from the DPS at Mei Tin Community Hall. After verifying that there was no ballot paper contained therein, which tallied with the ballot paper account of the DPS, the count commenced immediately.

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 identified at the counting station.

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 7:30 p.m. The result of the contested election was promulgated in the Gazette notice published on 10 October 2014.

7.8 The lists of successful and unsuccessful candidates (including those uncontested) are shown in **Appendix V**.

EAC Visits

7.9 Mr Justice Fung, the EAC Chairman and Professor Cheung, EAC Member, conducted a visit to the polling station at Pok Hong Community Hall. They also observed the count at the aforesaid venue after the polling station was converted into a counting station. They considered 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 Cheung in visiting the polling/counting station at Pok Hong Community Hall.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 28 August 2014, when the nomination period commenced, and ended on 19 November 2014 (i.e. 45 days after the polling day on 5 October 2014).

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 The EAC reviewed the electoral procedures and arrangements made for the By-election. Overall, the EAC considered the polling and counting arrangement smooth and satisfactory.

9.2 No BPSS was needed in the by-elections held after the 2011 Village Ordinary Election. Given the large number of registered electors and Rural Areas involved for the coming 2015 ROE, a BPSS will have to be set up on the polling days. As such, prudent planning is called for to ensure its smooth operation. The EAC recommends that the HAD should draw up a detailed operational plan for the BPSS and provide a comprehensive operation manual with detailed guidelines and sufficient training for the counting staff to follow.

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 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 for the operation of the DPSs. 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 the ROE scheduled for January 2015 to return 789 IIRs, 695 RRs and 56 Kaifong Representatives for 709 Villages and two Market Towns for Cheung Chau and Peng Chau.

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.

