

Section 1 – Introduction

Background

1.1 In accordance with section 21 of the Rural Representative Election Ordinance (Cap. 576) (“RREO”), after the ordinary election held in 2015, the Electoral Affairs Commission (“EAC”) made arrangements for the conduct of the sixth round of Rural By-election on 10 December 2017 to return eight Rural Representatives (“RRs”) for filling Resident Representative (“ReR”) vacancies and Indigenous Inhabitant Representative (“IIR”) vacancies in eight villages.

1.2 The Rural By-elections should normally be conducted twice a year. In accordance with the established practice, the EAC arranged for a Rural By-election on 10 December 2017. The reasons for conducting the By-election are set out in paragraph 1.3 below.

The Vacancies

1.3 After the conclusion of the fifth round of Rural By-election in April 2017, a total of eight RR vacancies, comprising six ReR and two IIR seats, arose in six Existing Villages (“EVs”) and two Indigenous Villages (“IVs”) respectively. These vacancies are classified into two different groups as follows:

- (a) **two** ReR vacant seats in two EVs arose because the elected ReRs had resigned from their office. One of the vacancies arose since 30 November 2016 but the total number of registered electors of the concerned EV has just increased from five to seven upon the completion of the recent 2017 voter registration exercise (the requisite

number of subscribers for a nomination is five registered electors excluding the candidate himself/herself). Hence, a By-election could be arranged for the EV this time; and

- (b) **six vacancies** comprising four ReR vacant seats in four EVs and two IIR vacant seats in two IVs arose because the elected ReRs and IIRs had passed away.

1.4 Five Districts, namely Islands, Sai Kung, Tai Po, Yuen Long and North, 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 (Rural Representative Election) Regulation (Cap. 541L), the Director of Home Affairs (“DHA”) published a notice in the Gazette on 20 October 2017, appointing 10 December 2017 as the polling day of the By-election and specifying the period from 2 November 2017 to 15 November 2017, both days inclusive, as the nomination period. The By-election was held to return six ReRs and two IIRs to fill the vacancies in six EVs and two IVs respectively. A breakdown of the number of ReRs and IIRs to be returned by District is shown at **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 RREO, the EAC appointed four District Officers and three Assistant District Officers of the five District Offices concerned as the Returning Officers (“ROs”), six members of their staff as the Assistant Returning Officers (“AROs”) and a staff from the Home Affairs Department Headquarters (“HAD HQs”) as the ARO (Ballot Paper Sorting Station) (“BPSS”) to take charge of the operation of the BPSS. A Government Counsel was also appointed as the ARO (Legal). The appointment of ROs was published in the Gazette on 20 October 2017. A list of the ROs and AROs is shown at **Appendix III**.

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, HAD prepared and issued operational manuals to the ROs and 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 11 October 2017 at the conference room of the HAD HQs in Wan Chai to draw their attention to the major provisions in the relevant electoral legislation and guidelines. Representatives of the Independent Commission Against Corruption (“ICAC”) were also present to brief ROs and AROs on subjects within their purview.

Section 3 – Publicity

3.1 Information on the By-election was published on the websites of the EAC, HAD and the ICAC throughout the election period for general reference of candidates, electors and members of the public. Press releases were also issued to publicise the major events of the By-election such as 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, 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 2 November 2017 and ended on 15 November 2017. Candidates were required to hand in their nomination forms to the relevant ROs in person. At the close of the nomination period, the ROs had received a total of nine nominations.

Validly Nominated Candidates

Validity

4.2 After vetting the nominations, the relevant ROs determined that all the nine nominations (six for the ReR elections and three for the IIR elections) were valid.

Uncontested elections

4.3 Having examined the nominations, the ROs declared that a candidate for the ReR election for Kwan Tei in the North District, a candidate each for the ReR elections for Tai Po Mei and Yuen Leng Yip Uk in the Tai Po District, a candidate for the ReR election for Lam Che and Nim Un and a candidate for the IIR election for Ham Tin, both in the Islands District were elected uncontested as there was only one validly nominated candidate for each vacancy. There were in total five candidates returned uncontested in the By-election and their names were published in the Gazette on 24 November 2017.

Contested elections

4.4 As the number of validly nominated candidates for Wu Shek Kok, an EV in the North District, and Sha Po Tsuen, an IV in the Yuen Long District, exceeded the number of ReR and IIR to be returned for the respective villages, a poll was arranged to be held on 10 December 2017 for each of these villages. The names and relevant particulars of the validly nominated candidates were published in the Gazette on 24 November 2017.

Election that failed

4.5 As for the ReR vacancy for Main Street (East) in the Sai Kung District, the RO concerned declared that the ReR election had failed due to no nomination received by the close of the nomination period. The notice of failure of election for this village was also published in the Gazette on 24 November 2017.

The Briefing for Candidates

4.6 For the contested elections, all the validly nominated candidates indicated that they would not attend the briefing session. So, the briefing session for candidates originally scheduled for 20 November 2017 was cancelled.

4.7 The ROs for Wu Shek Kok and Sha Po Tsuen drew lots to allocate candidate numbers and designated spots for displaying election advertisements to the candidates at the North District Office and the Yuen Long District Office respectively on 20 November 2017.

Section 5 – Preparatory Work

Appointment and Training of Polling and Counting Staff

5.1 Staff of HAD were deployed as polling and counting staff for the By-election. A training session was held on 6 December 2017 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 HAD identified the International College Hong Kong (NT) as the polling-cum-counting station for the ReR election for Wu Shek Kok in the North District and the S.K.H. Kam Tin St. Joseph's Primary School as the polling-cum-counting station for the IIR election for Sha Po Tsuen in the Yuen Long District.

Dedicated Polling Stations

5.3 To enable registered electors of the contested villages 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 CSD on 9 December 2017, one registered elector of Sha Po Tsuen would be in their custody in the Stanley Prison on the polling day. Hence, a DPS was set up at the Stanley Prison. Owing to security considerations, the poll at the DPS in penal institution was conducted from 1:00 pm to 4:00 pm.

5.4 Mei Tin Community Hall in the Sha Tin District was designated as the DPS for registered electors of the contested villages who were remanded or detained by law enforcement agencies (“LEAs”) (other than 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 for this DPS were the same as those of an ordinary polling station, i.e. from 12:00 noon to 7:00 pm.

5.5 A notice of designation of the polling stations (including the DPSs) and the counting stations was gazetted by the DHA on 24 November 2017.

Introduction to Candidates and Polling Notices to Electors

5.6 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 On 27 November 2017, a polling notice, together with the relevant “Introduction to Candidates”, voting guide, location map of polling station and an 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. A notice was also sent to each of the electors of the uncontested villages informing them that no poll would be conducted for their villages.

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 stations could not be conducted as scheduled, HAD identified venues for use as the alternative polling stations. The designation of the alternative polling stations was also gazetted by the DHA on 24 November 2017. The designated polling stations, together with the Mei Tin Community Hall, which was designated as a DPS, were also reserved for use on the fallback day on 17 December 2017. 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, 10 December 2017. According to the established arrangement for the RR election, the polling hours for the polling stations at the contested villages and the DPS at the Mei Tin Community Hall were from 12:00 noon to 7:00 pm, whereas the polling hours for the DPS situated in penal institution were shorter, from 1:00 pm to 4:00 pm.

Logistical Arrangements

6.2 The designated polling stations, the DPSs at Mei Tin Community Hall and the Stanley Prison operated as scheduled on the polling day. A Central Command Centre was set up at HAD HQs 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 office of the EAC Secretariat at the Harbour Centre, a Complaints Centre 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 the two contested villages was 493. Of these, 20 were electors of ReR election for Wu

Shek Kok and 473 were electors of IIR election for Sha Po Tsuen. A total of 15 ReR electors (i.e. 75%) and 266 IIR electors (i.e. 56.24%) cast their votes on the polling day. A breakdown of the turnout rates is shown at **Appendix IV**.

Section 7 – The Count

Counting Stations and Ballot Paper Sorting Station

7.1 Both polling stations at the International College Hong Kong (NT) and the S.K.H. Kam Tin St. Joseph's Primary School were converted into counting stations for counting of votes after the close of the poll. The counting stations were supervised by the ROs concerned.

7.2 The Presiding Officer ("PRO") of the DPS at the Stanley Prison sealed the ballot box at the close of poll with an officer of the CSD present as the witness. Under the escort of the Police, the PRO delivered the sealed ballot box to the counting station at the S.K.H. Kam Tin St. Joseph's Primary School.

7.3 To enhance the efficiency of counting, HAD had made special arrangements in respect of the delivery of ballot papers for the DPS at the Mei Tin Community Hall as follows:

- (a) if no elector was to cast vote in the DPS at the Mei Tin Community Hall, the ballot box would be delivered to the BPSS. The ARO(BPSS) would open the empty ballot box from the DPS and inform the RO(s) of the result and that no ballot paper would be delivered to the counting station(s); or
- (b) if elector(s) did cast vote(s) in the DPS at the Mei Tin Community Hall, the ballot box would be delivered direct to the counting station(s) for counting of votes.

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 was recorded and placed into the relevant transparent plastic box, and then the valid ballot papers were counted.

Counting Arrangements

7.5 After the close of poll, the two polling stations were converted into counting stations. The conversion was completed at 7:20 pm for Wu Shek Kok and at 7:26 pm for Sha Po Tsuen. For the DPS at the Stanley Prison, the ballot box was sealed by the PRO and delivered to the counting station for Sha Po Tsuen under the escort of the Police. As for the DPS at the Mei Tin Community Hall, in accordance with the special arrangements stated in paragraph 7.3 above, since no vote was cast in that DPS, the ARO(BPSS) opened the ballot box from the DPS and confirmed that no ballot paper was therein. Then, the ARO(BPSS) informed both ROs of the result and that no ballot paper would be delivered from the Mei Tin Community Hall to their counting stations.

7.6 At the counting station for Sha Po Tsuen, the ballot box was jointly emptied by Mr Justice Fung, the EAC Chairman and the RO concerned. The RO then unsealed the ballot box received from the DPS at the Stanley Prison and verified the number of ballot paper contained therein against the ballot paper account of the DPS before starting the count. As for the counting station for Wu Shek Kok, the ballot box was jointly emptied by Professor Fanny Cheung, EAC Member, and the RO concerned. The count then commenced immediately.

7.7 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 were no invalid or questionable ballot papers identified in both counting stations during the sorting process.

Declaration of Result

7.8 The election results of both contested villages were declared at each counting station by the respective ROs after the completion of the count at 7:33 pm for Wu Shek Kok and 7:45 pm for Sha Po Tsuen. The results of these contested elections were promulgated in the Gazette notices on 15 December 2017.

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

EAC Visits

7.10 Mr Justice Fung, the EAC Chairman and Professor Fanny Cheung, EAC Member conducted visits to the polling station at S.K.H. Kam Tin St. Joseph's Primary School and the polling station at International College Hong Kong (NT) respectively. They also observed the count at the aforesaid venues separately after the polling stations were converted into counting stations. They considered the polling and counting arrangements generally satisfactory.

Section 8 – The Complaints

Complaints-handling Period

8.1 The complaints-handling period started on 2 November 2017 (i.e. commencement of the nomination period), and ended on 24 January 2018 (i.e. 45 days after the polling day on 10 December 2017).

Complaints-handling Parties

8.2 The parties involved in the handling of complaints relating to the By-election included the EAC, the ROs, Police, ICAC and, on the polling day, the PROs as well. 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 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 on 24 January 2018, one complaint about entitlement to vote was received by the PRO of the polling station for Wu Shek Kok. The complainant claimed that while 15 votes were counted for the ReR election for Wu Shek Kok, there should be only 14 electors residing in Wu Shek Kok who were eligible to vote at the By-election. Since the complaint might involve possible breach of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (“ECICO”), the case has been referred to the ICAC for investigation and to the Police for follow-up actions, if necessary. Other

complaints-handling parties did not receive any complaints.

Section 9 – Review and Recommendation

9.1 After reviewing the electoral procedures and arrangements made for the By-election, the EAC considers that the polling and counting has been conducted smoothly and satisfactorily.

9.2 As mentioned in paragraph 8.4 above, on the polling day, one complaint about entitlement to vote was received in respect of the ReR Election for Wu Shek Kok. The complainant claimed that during the counting of votes, the total number of votes counted exceeded the number of eligible electors who are allegedly now residing in Wu Shek Kok according to her knowledge. In view that there might be any person who has ceased to be residing in Wu Shek Kok did vote at the election which would possibly constitute breaching of section 16 of the ECICO, the complaint has been referred to the ICAC for investigation.

9.3 According to the existing legislation, a registered elector for the ReR election of an EV must have been a resident of that Village for the three years immediately before registration. A registered elector is disqualified from voting if he/she has ceased to be eligible to be so registered. So, if an elector for the ReR election has ceased to be residing in the Village, he/she is no longer eligible to be so registered and is therefore disqualified from voting. To ensure that the concerned electors understand the law requirements, the HAD has prepared in the ReR election a white cardboard notice for every ballot paper issuing desk for showing to each elector a reminding message that if any registered elector, even though he/she is an indigenous inhabitant or his/her spouse, no longer resides in the Village for which he/she is registered, or his/her residential address in the Village is no longer his/her sole or main home, he/she is no longer eligible to remain registered as an elector. It is an offence if he/she votes in an election. However, in the court case about the then Village Representative Election of an EV, Nga Yiu Village in

2011 (Case No.: FLCC 440/2013), the court noted that some villagers did not have a clear understanding of the difference between IIR and ReR elections and related eligibility for registration and voting. Since then, the HAD has coordinated with ICAC to launch publicity activities including Announcements in the Public Interest (“APIs”) on television and radio, posters, banners, website, etc. to promote the electors’ awareness of their eligibility for registration and voting in the ReR election.

9.4 Under the existing legislation, it will not be necessary for a registered elector to re-apply for registration every year. However, if a registered elector has changed his/her residential address and therefore ceased to be a resident of the EV concerned, he/she should report to the HAD so that his/her name will be removed from the next register of electors for the EV. To enhance the accuracy of the register of electors, the HAD has conducted comprehensive verification exercise in each election cycle and put in place a series of address checking measures similar to those adopted by the Registration and Electoral Office (“REO”).

9.5 **Recommendations:** The EAC notes that the complainant alleged voting by ineligible person based on her belief that a registered elector of an EV might have ceased to be a resident therein, and investigation is still under way by the ICAC. Be that as it may, in view of the upcoming 2019 Rural Ordinary Election, the EAC considers it necessary for the HAD to launch a more extensive publicity campaign particularly on the special registration requirements for the ReR election which are different from the registration as an elector in a District Council election and the Legislative Council geographical constituency election, as well as that for the IIR election. Apart from broadcasting APIs before the election and sending polling notices with a message to remind the electors that they are not eligible to vote in the ReR election of

EV if their residential address in the Village concerned is no longer their sole or main home, the HAD may consider reinforcing the above message through routine district liaison work. In order to ensure that the register of electors is accurate and up-to-date, more thorough checking measures should be implemented, for example, to increase the sample size of electors for conducting annual data matching exercise with relevant authorities. For doubtful cases, the electors may be required to provide address proof or other relevant documents for verification of their eligibility. However, as the final register of electors shall remain valid until the publication of the next register in the following year notwithstanding changes in circumstances affecting the eligibility to vote, consideration should be given to introduce changes to the present system of registration in the long run so as to make the final register more up-to-date. Such changes may include shortening the publication cycle of final register or conducting annual re-registration or revision of the final register to reflect change in the residency, subject to the consensus reached in society and the availability of resources.

Section 10 – Acknowledgement

10.1 The EAC wishes to extend its gratitude to HAD, particularly those serving as ROs, AROs, PROs, polling and counting staff 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 CSD, Police and other LEAs for their assistance provided to 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 stations and all those who complied with the electoral legislations and guidelines.

Section 11 – The Way Ahead

11.1 HAD is planning the conduct of another round of By-election in May 2018 to fill RR vacancies that 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.