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Mr R Lam
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Dear Mr Lam,

**Re: Follow-up Issues of the
Meeting of the LegCo Panel on Security on 1 November 2001**

Thank you for the Minutes of the above Meeting you sent us on 10 December 2001.

During the meeting, in response to the Chairman's request, representative from the Immigration Department undertook to verify with the relevant Mainland authorities the policy quoted in the submission from the Society for Community Organization (SOCO) (please refer to paragraph 24 of the Minutes of Meeting). The Immigration Department has consulted the relevant Mainland authorities and our response is as follows:

Question (a) **The policy announced on 1 October 2001 has yet to be implemented**

Although the Mainland public security bureaux have announced that with effect from 1 October (2001), adopted children can apply for One-way Permits (OWPs), recently (in late October 2001) when the families concerned checked with the Mainland authorities, some public security bureaux indicated that they had not yet received such a policy instruction. Some stated that the policy only applied to children adopted from orphanages and that applications from those who have reached the age of majority would not be accepted. Thus, the families concerned have no channel to submit their applications.

Response (a) In late September 2001, the Bureau of Exit-Entry Administration (BEEA) of the Ministry of Public Security announced that with effect from 1 October 2001, they would start processing applications from Mainland adopted children of Hong Kong residents for settlement in Hong Kong.

All the public security authorities were informed of this measure by the BEEA, and the application procedures were published in Hong Kong and Mainland newspapers.

As far as we know, the BEEA issued a notice in September last year, announcing that they would process applications from Mainland adopted children of Hong Kong residents for settlement in Hong Kong. The notice sets out detailed requirements concerning the basis of accepting and vetting the applications, application procedures and verification of the adoptive relationship. Mainland adopted children of Hong Kong residents can apply for settlement in Hong Kong at exit and entry administration offices under the public security authorities of their respective household areas. No particular age limit of the applicants is laid down. So long as they satisfy the conditions for entering Hong Kong for settlement and the relevant requirements, the exit and entry administration offices of the public security authorities would accept their applications.

If applicants encounter any difficulties, they should approach their respective municipal or provincial public security authorities for assistance.

Question (b) **Unclear policy on applications of adopted children to come to Hong Kong**

The Mainland Adoption Law, enacted in 1992, is enforced by the civil affairs bureau (adoption was notarised by the notary agency before 1992), while the public security bureau processes the applications for family reunion. The policies of the two bureaux, however, have been inconsistent. So long as the case proves to be true, the civil affairs bureau would assist in the formalities of adoption in accordance with the laws, irrespective of whether the children are abandoned in the streets or in the hospitals or are placed out for adoption. Initially, the public security bureaux allowed these children to apply to come to Hong Kong, but in 1996 it was announced that they were no longer eligible. Later, in 1997, it was again announced that only orphans with nobody to depend on possessing supporting documents issued by the civil affairs bureau and the orphanage were eligible to apply to enter Hong

Kong. Since the policies have been constantly changing, there are no channels for these children to apply to come to Hong Kong despite the fact that their adoption status has been established.

Response (b) All along, the civil affairs authorities have been responsible for application procedures and registration of adoption in the Mainland, while the public security authorities are responsible for processing applications for settlement in Hong Kong. Both authorities have their respective jurisdictions. People who are eligible to apply for OWPs can submit their applications to the relevant public security authorities. The decision to process applications from Mainland adopted children of Hong Kong residents for settlement in Hong Kong with effect from 1 October 2001 was also made by public security authorities.

Question (c) **Inconsistency in the eligibility of application and the categories under the Adoption Law**

Starting from 1 October, under the new policy on application, only children adopted from orphanages can apply to come to Hong Kong. Abandoned infants or children whose biological parents could not be ascertained or found are not allowed to apply.

Response (c) With effect from 1 October 2001, children in the Mainland who are lawfully adopted by Hong Kong residents can apply for OWP to come to Hong Kong for settlement. Lawful adoption means adoption in compliance with the provisions of the Adoption Law of the People's Republic of China which covers the requirements of adoptees, the persons placing out the child for adoption and adopters. Adoptees must be minors under the age of 14 when being adopted. The other relevant conditions are set out briefly as follows:

Adoptees shall meet the requirements of being:

- a. orphans bereaved of parents
- b. abandoned infants or children, under the care of a social welfare institution, whose biological parents could not be ascertained or found
- c. abandoned infants or children whose biological parents could not be found
- d. children whose biological parents are unable to rear them due to exceptional difficulties
- e. children belonging to a collateral relative by blood of the same generation and up to the third degree of kinship (with no age limit)

- f. step-children who are placed out for adoption by their step-father or step-mother with the consent of their biological parents (with no age limit)

Adopters shall meet the requirements of being:

- a. childless
- b. someone capable of rearing and educating the adoptee
- c. someone having reached the age of 35

The persons/organisations placing out a child for adoption must either be the guardian of the orphan, a social welfare institution or the biological parents who are not capable of rearing the child due to exceptional difficulties.

Question (d) **Giving priority to adopted children applying for OWPs**

The transparency of the existing assessment mechanism for OWP applications is rather low. The governments of both sides have never promulgated the details of the Points System for adoption, such as the scores gained and the waiting time required. Moreover, since orphans adopted generally lack care and attention, the Government should give priority to adopted children applying for settlement in Hong Kong. Once the adoptive parents have completed the formalities of adoption, the adopted children should be allowed to enter Hong Kong directly.

Response (d) The Mainland public security authorities have been striving to enhance the transparency of their immigration management, so that the various sectors of the community and the general public can have a better understanding of their operation. They have adopted measures such as posting up lists of successful applicants in various places, printing publicity leaflets, installing electronic touch screens and uploading information onto the Internet. Such measures aim to publicize the laws and regulations governing exit and entry administration, and to inform the public of the eligibility, procedures, processes and fees regarding the application for immigration documents and progress of their applications, etc. In addition, lists of people whose applications for settlement in Hong Kong or Macau to be approved are published in the newspaper for public scrutiny. Hotlines have been set up to deal with enquiries or complaints about exit and entry matters from the public.

Moreover, the qualifying scores for OWP applications for settlement in Hong Kong and Macau are announced in the Mainland and Hong Kong newspapers.

Mainland children adopted by Hong Kong residents could settle in Hong Kong under two categories i.e. they are either minors with nobody to depend on in the Mainland coming to join their adoptive parents, or adopted children coming to take care of their adoptive parents who have nobody to depend on in Hong Kong. To be fair, impartial and open, the procedures and assessment criteria for applications from adopted children are fully consistent with those applicable to natural children entering Hong Kong to depend on or take care of their parents. Accordingly, OWP applications from adopted children should be orderly processed in accordance with the established Points System. On 10 January 2002, the Mainland public security authorities indicated that they believe eligible minors coming to depend on their parents should be able to enter Hong Kong for settlement in a year's time.

Question (e) **Exercising discretion to allow the children to remain in Hong Kong by discretion**

As for adopted children who have already entered Hong Kong and are allowed to stay here temporarily, it would be inhumane if they were to be repatriated to the Mainland to apply for OWP since there is no definite answer as to when their applications for coming to Hong Kong would be approved and there is no one to take care of them in the Mainland. The Immigration Department should help these orphans with nobody to depend on to remain in Hong Kong by exercising its discretion or in the same way as it has handled the TAM Nga-yin case.

Response (e) All Mainlanders who wish to enter Hong Kong for settlement have to apply for OWPs under the law. The Director of Immigration, in individual cases with very exceptional circumstances, could consider exercising his discretion to allow a person to remain in Hong Kong on humanitarian grounds. Nevertheless, it should be noted that in exercising such a discretion, apart from the circumstances of individual applicants, the overall stability of the community and the principle of fairness have to be observed. If discretion were exercised in every single case, it would be unfair to those applicants who have lawfully submitted their OWP applications and are patiently waiting for their turn. This would also jeopardize our immigration system. The Director of Immigration has to weigh all the factors carefully when he

considers whether he should exercise any discretion. Moreover, with effect from 1 October 2001, the Mainland public security authorities have started to process OWP applications submitted by Mainland children lawfully adopted by Hong Kong residents to join their adoptive parents. Adopted children could, just as other Mainland children who wish to come to Hong Kong to join their parents, apply for OWP to come to Hong Kong in accordance with the law of the Mainland.

Question (f) **Depriving the right of the abode-seeking children to receive education**

At present, some abode-seeking children are waiting for the Immigration Department's assessment on their applications for approval to stay in Hong Kong on a discretionary basis. Since the Immigration Department has not given permission for them to go to school, these school-age children are being deprived of the right to receive education and to enjoy community life. Their psychological development and learning opportunity are thus seriously affected.

Response (f) Given the passage of time since some of the cases were first examined, we are now reviewing each of the cases in which the application of a child on recognizance for admission into school has not been supported. Pursuant to the existing arrangement, all the applications will be processed strictly on a case-by-case basis. The Director of Immigration will give his views to the Director of Education who will, having regard to the views of the Director of Immigration and any other relevant considerations, consider whether arrangement can be made to admit an applicant to schools in Hong Kong.

However, we must stress that any admission arrangements should not be construed as implying that permission has been granted by the Director of Immigration for the Mainland children concerned to remain in Hong Kong for education, or an undertaking by the Director of Immigration that removal proceedings would not be instituted or continued.

Yours sincerely,

(Linda K P So)
for Secretary for Security

cc D of Imm (Attn : Mr C K Siu)
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