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Subcommittee to Study Issues Relating to Mainland-HKSAR Families

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 15 January 2011**

Immigration arrangements relating to Mainland-HKSAR families

Purpose

This paper summarizes members' views and concerns on the impact of the immigration arrangements on families with members from the Mainland as well as members' proposals to refine the One Way Permit ("OWP") and the Two Way Permit ("TWP") Schemes.

Background

2. Since its appointment in January 2009, the Subcommittee has held seven meetings (19 February, 19 March, 17 April, 29 May and 5 November 2009, 26 April and 29 June 2010) to discuss with the Administration the immigration arrangements which have impact on families with members from the Mainland. The Subcommittee also received views from deputations on the subject.

3. At the meeting on 17 April 2009, members agreed that the Subcommittee should draw up specific recommendations to refine the OWP and TWP Schemes to facilitate the reunion of Mainland residents with their families in Hong Kong for the Administration's consideration and response.

Immigration arrangements for entry of Mainland residents

4. Article 22(4) of the Basic Law stipulates that "For entry into the Hong Kong Special Administrative Region ("HKSAR"), people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region."

5. Mainland residents who wish to settle in Hong Kong must apply for a OWP from the Public Security Bureau Offices of the Mainland where their household registrations are kept. The existing OWP quota is 150 places per day, of which 60 are allocated to persons holding Certificates of Entitlement¹ ("CoE"), and the rest for application by other Mainland residents for family reunion in Hong Kong, including separated spouses and their accompanying children, unsupported children who need to join their relatives in Hong Kong (unsupported children), persons coming to Hong Kong to take care of their unsupported aged parents, and unsupported elderly people coming to join their relatives in Hong Kong.

6. The Mainland authorities have since May 1997 applied the "Points System" to assess and determine the eligibility of applicants and the order in which they may settle in Hong Kong. Except for CoE holders, the main considerations in examining and approving OWP applications include the separation time and the age of the applicants or their Hong Kong relatives.

7. Apart from entering Hong Kong for settlement on the strength of OWP, Mainland residents can apply for an Exit-Entry Permit (commonly known as TWP) from the Exit and Entry Administration Offices of the Public Security Bureau of the Mainland for entering Hong Kong. Their limits of stay in Hong Kong depend on the type of exit endorsements they hold.

Members' major views and concerns

8. Most members took the view that the reunion of family members should be a priority area in the Administration's population policy. Given that the OWP Scheme had been in place for more than a decade, the Administration should liaise with the Mainland authorities to refine the mechanism for allocation and distribution of the 150 daily places for OWP to expedite the reunion of those families with members from the Mainland and earlier arrival of Mainland children born to Hong Kong residents so that these children could integrate into the community and the education system at a young age.

9. The Administration advised that the OWP Scheme aimed to facilitate the reunion of Mainland residents with their families in Hong Kong in an orderly manner. The Mainland authorities had from time to time refined the system. For instance, the "eligibility points" for OWP applications of separated spouses were further relaxed in 2009, thereby shortening the waiting time from five

¹ Persons claiming right of abode under paragraph 2(c) of Schedule 1 to the Immigration Ordinance (Cap. 115) have to apply for a CoE from the Immigration Department ("ImmD"). Mainland residents holding a CoE issued by ImmD and affixed onto an OWP issued by the Mainland authorities can enter Hong Kong to exercise their right of abode.

years in 2005 to four years. In addition, the unused places under the sub-quota for long-separated spouses had since 2001 been allocated to spouses separated for a shorter period and their accompanying children. In 2003, the age limit for OWP applications of accompanying children of separated spouses was relaxed from 14 to 18; the restriction of only one accompanying child was also discarded.

10. In the light of the under-utilisation of the overall daily OWP places in the past few years, in particular the sub-quota for CoE holders and spouses separated for 10 years or above and their accompanying children (the relevant statistics are in **Appendix I**), members generally considered that the unused places should be allocated to applications of other categories. Consideration could be given to allocating the unused places for Mainland adult children born to Hong Kong residents and further shortening the waiting time for separated spouses.

11. The Administration advised that the processing and assessment of applications for the issue of OWPs were governed by the respective Mainland authorities. The Security Bureau ("SB") had on occasions reflected the views of the public to the Mainland authorities for them to consider a channel for Mainland adult children under the OWP Scheme. In the meantime, Mainland adult children could, under the existing mechanism, apply for OWPs for the reasons of taking care of their unsupported aged parents in Hong Kong, or apply for TWPs to visit their relatives in Hong Kong. On the suggestion to further shorten the waiting time for separated spouses under the OWP Scheme to facilitate family reunion, the Administration pointed out that it was equally important to uphold effective immigration control, for instance, measures to prevent Mainland residents from enter Hong Kong by means of bogus marriages.

12. Pointing out that some Mainland mothers were coming to Hong Kong on strength of a TWP with "visiting relatives" exit endorsement to take care of their young children in Hong Kong, some members expressed grave concern about the difficulties faced by these families. As the holders could only stay in Hong Kong for up to 90 days, they had to return to the Mainland and re-apply for a fresh TWP for visiting Hong Kong. The young family members who were attending schools would be left unattended in Hong Kong upon their mothers' return to the Mainland. These members took the view that Mainland mothers visiting Hong Kong on the strength of a TWP should be allowed to stay for a longer period of time to take care of their young children in Hong Kong.

13. The Administration responded that it was essential to strike a balance between travel facilitation and effective immigration control in considering the proposal to allow TWP holders to stay for a longer period of time. The Exit and Entry Administration Offices of some provinces had offered facilitation to

applicants applying for visiting Hong Kong. Those applying for the same type of exit endorsement might authorise another person to apply on their behalf, and they might also opt to collect the TWP by means of speed post. With these facilitations, the applicants did not have to return to their place of household registration to make applications in person. Nonetheless, the Administration would conduct further study, with a view to exploring the further facilitations which could be provided to those with genuine difficulties, having regard to the facilitations currently in place and the need to uphold effective immigration control.

14. The Administration further advised that to facilitate its consideration of the way forward, it welcomed specific recommendations from the Subcommittee. It would study the suggestions and its implications, and exchange views with the Mainland authorities as appropriate.

Recommendations of the Subcommittee

15. The Subcommittee has agreed on the following recommendations for the Administration's consideration –

- (a) further shortening the waiting time for the issue of OWPs to separated spouses from four years to three years or less, and the waiting time for spouses separated for 10 years or above should be shortened to less than one year;
- (b) opening a channel for Mainland adult children of Hong Kong residents to come to Hong Kong under the OWP Scheme, with priority given to the right of abode claimants and those with unsupported parents in Hong Kong;
- (c) opening a channel for Mainland parents of Hong Kong residents under the OWP Scheme, and allowing Hong Kong children born to Mainland residents to apply for household registration so that the former can choose to return to and live with their parents in the Mainland;
- (d) allocating the unused sub-quota to Mainland spouses of Hong Kong residents who have applied for OWPs but become ineligible for applying for OWPs due to the passing away of their spouses (who are Hong Kong residents) or divorce, with priority given to Mainland single mothers with children in Hong Kong;

- (e) lifting the restriction for only one Mainland adult child to come to Hong Kong to take care of their unsupported parent(s) aged 60 or above;
- (f) giving more weighting to the "eligibility points" for OWP applications of –
 - (i) separated spouses with young children aged below 12 in Hong Kong; and
 - (ii) Mainland adult children with unsupported parents aged 60 or above/frail parents in Hong Kong;
- (g) allowing Mainland mothers visiting Hong Kong on the strength of a TWP with "visiting relatives" exit endorsement to stay for a longer period of time, say, from three months to six months or to tie in with the school term breaks, so as to enable them to take care of their children attending school in Hong Kong; and
- (h) setting up a joint liaison working group comprising representatives of the HKSAR Government and the Mainland authorities to review the immigration arrangements and deal with complaints and appeals relating to the issue of OWPs and TWPs.

16. Members generally consider that the daily OWP quota of 150 places should be fully utilised. To this end, the unused places of individual sub-quota should be allocated flexibly to applications of other categories.

17. The Subcommittee's recommendations (LC Paper No. CB(2)1792/08-09(01)) were forwarded to the Administration for consideration and follow-up on 12 June 2009. Members were advised that the Administration would reflect the suggestions of the Subcommittee to the Mainland authorities, and would revert to the Subcommittee on the progress in three months' time.

The Administration's preliminary response to suggestions of the Subcommittee

18. At the meeting on 5 November 2009, members were advised that the Administration's exchanges with the Mainland authorities were on-going, and it was not in a position to provide conclusive response to the suggestions of the Subcommittee. The Administration provided its preliminary responses as below –

- (a) the Central Government had announced that a new policy initiative would be implemented to cater for Mainland adult children of Macao residents to settle in the Macao Special Administrative Region ("MSAR"). The Central Government had indicated to the HKSAR Government that the policy, in general, would be applicable to Hong Kong. The arrangements had yet to be finalised and announced, and the Administration was actively discussing with the Mainland authorities on the arrangements;
- (b) as far as OWPs were concerned, the waiting time for separated Guangdong spouses had been shortened from six to seven years prior to 2005 to four years currently. As the average utilisation of OWPs had been as high as 140 from January to September 2009, the suggestion for further shortening the waiting time required thorough consideration;
- (c) opening a channel for Mainland parents of Hong Kong residents (including children born to Mainland parents in Hong Kong) under the OWP Scheme would have profound long-term effects on many fronts and required thorough deliberations. These included whether this would induce more Mainland pregnant women to enter Hong Kong through various channels for delivery and whether HKSAR could cope with this, whether this would impact on the waiting time of other eligible OWP applicants, etc; and
- (d) opening a channel for Mainland single mothers to settle in Hong Kong was a complicated issue that required further consideration, whereas allowing the second Mainland adult child to come to Hong Kong to take care of their unsupported parent(s) should be dealt with in the light of the new arrangements pertaining to Mainland adult children, the details on which had yet to be finalised.

19. Members expressed regret that the Administration had failed to report concrete progress in respect of the suggestions of the Subcommittee. Members urged the Administration to provide more details of the new policy initiative to be implemented to cater for Mainland adult children of Macao residents to settle in MSAR and its applicability to Hong Kong.

20. The Administration reiterated that it had reflected the suggestions of the Subcommittee to the Mainland authorities, and the exchanges with the Mainland authorities were on-going. The Secretary for Security had exchanged views with the officials of the Public Security Bureau of the Mainland on the matter during his visit to Beijing in September 2009, and officials of SB and the ImmD had also liaised with the relevant Mainland

authorities. It would revert to the Subcommittee and make public announcement on the details as soon as there were more concrete developments.

21. Noting from the media reports that new arrangements would be implemented for TWP holders, i.e. multiple-entry "visiting relatives" exit endorsements with validity for one year, members enquired about the details of the new arrangements. Specifically, members sought clarification as to whether Mainland single mothers with young children in Hong Kong and Mainland adult children with old parents in Hong Kong fell into the category of "special circumstances" under the new arrangements.

22. The Administration responded that the new arrangements for multiple-entry "visiting relatives" exit endorsements with validity for one year would be implemented in late December 2009. While the details were yet to be finalised, the Administration's understanding was that Mainland residents with spouses and young children in Hong Kong could apply for such exit endorsements. Other types of applicants, such as Mainland single mothers who had young children in Hong Kong and whose spouses (who were Hong Kong residents) were either dead or divorced, would be considered on individual merits.

23. The Subcommittee passed a motion moved by Ms Audrey EU at the meeting on 5 November 2009, as follows –

"That this Subcommittee requests Mr Ambrose LEE Siu-kwong, Secretary for Security, to immediately set up a joint liaison working group with the Mainland authorities pursuant to paragraph 15(h) of LC Paper No. CB(2)1792/08-09(01) to hold regular meetings to follow up the eight recommendations contained in the Subcommittee paper, and revert to this Subcommittee or the Legislative Council on the progress."

24. The Administration undertook to have further exchanges with the Mainland authorities and would revert to the Subcommittee on further developments relating to the recommendations of the Subcommittee in early 2010.

Latest developments

OWP application of "overage children"

25. At the meeting on 26 April 2010, members were advised that the Central Government had already made clear to the HKSAR Government that the arrangements to cater for Mainland "overage children" of Macao residents to settle in MSAR would also be applicable to Hong Kong. Under such

arrangements, "overage children" eligible for settlement in Hong Kong would be those Mainland persons who were under the age of 14 at the time when their blood fathers or mothers obtained Hong Kong resident status (i.e. the date they were issued with their first Hong Kong identity card) before 1 November 2001.

26. Noting that the Administration was discussing with the relevant Mainland authorities the implementation arrangements, members urged the Administration to expedite the discussion and make public announcement of new arrangements. Some members took the view that applications should be vetted and approved based on objective criteria, such as separation time and the special circumstances of each case.

27. The Administration advised that it had held a number of meetings with the relevant Mainland authorities regarding the implementation arrangements and exchanged views on certain principles, including no deadline being set for application, vetting of applications in order of priority based on objective criteria (such as the date when the father or mother was issued with his/her Hong Kong identity card), etc. The Administration assured members that once there were more concrete developments in respect of the OWP application of Mainland "overage children" of Hong Kong residents, it would promptly inform the Subcommittee and make a public announcement.

28. At the meeting on 29 June 2010, the Subcommittee was advised that the Administration was still in discussion with the Mainland authorities on the implementation arrangements, despite the fact that the Administration had since November 2009 advised that the Central Government had announced the arrangements. Members took a strong view that it was the HKSAR Government's responsibility to honour and implement the Central Government's policy. The Administration should actively follow up the matter with the Mainland authorities. The Administration advised that given that tens of thousands of Mainland adult children of Hong Kong residents were involved, both the HKSAR Government and the Mainland authorities had to work out the arrangements to help ensure their orderly arrival.

29. Pursuant to the meeting on 29 June 2010, the Chairman wrote to the Secretary for Security ("S for S") and conveyed the Subcommittee's views on the matter, and requested the Administration to provide a concrete implementation timetable. In his reply, S for S assured members that the Government would spare no effort in continuing with the on-going discussions with a view to finalising the arrangements and promulgating such arrangements as soon as possible.

30. The Subcommittee discussed the progress again at the meeting on 26 October 2010. According to the Administration, although it was not in a position to pre-empt the Mainland authorities in committing to any detailed application arrangements or timetable, it believed that the discussions on the relevant arrangements were already at the final stage. Subject to the Mainland authorities' confirmation of the concrete details, eligible Mainland "overage children" of Hong Kong residents could start applying for OWP for settlement in Hong Kong in accordance with the arrangements to be promulgated by the Mainland public security authorities.

31. Members were dissatisfied at the slow progress made in respect of the implementation arrangements for eligible Mainland "overage children" to apply for OWP. Members took a strong view that the Administration should actively follow up the matter with the relevant Mainland authorities and make available the new arrangements as early as practicable. To expedite the ongoing discussions between the HKSAR Government and the relevant Mainland authorities, members agreed that the Chairman would on behalf of the Subcommittee write to the Hong Kong and Macao Affairs Office of the State Council requesting it to assist in expediting the discussions on the matter, with a view to commencing the OWP application procedure by 1 January 2011.

"One-year multiple" exit endorsement for visiting relatives

32. Members were told by deputations that although the Mainland authorities had since 25 December 2009 introduced a new measure to issue "one-year multiple" exit endorsement for visiting relatives, such endorsement was seldom approved for Mainland single mothers who had young Hong Kong resident children.

33. The Administration advised that in processing applications for the appropriate exit endorsement, the Mainland authorities would consider the individual circumstances of each case, and refer cases under the category of special family difficulty to the provincial public security bureaux for assessment. To its understanding, various applicants including single parents who had minor Hong Kong resident children had been approved for "one-year multiple" exit endorsement for visiting relatives in Hong Kong.

34. Members expressed grave concern about the difficulties faced by Mainland single mothers to enter Hong Kong on the strength of TWPs to take care of their young Hong Kong children. While recognising that the assessment of applications for and the issue of OWP and exit endorsement fell outside the remit of HKSAR Government, members considered that the departments concerned (such as the ImmD and the Social Welfare Department) should recommend cases under the category of special family difficulty to the Mainland authorities for compassionate consideration in processing application

for OWP and "one-year multiple" exit endorsement for visiting relatives. These members also strongly urged the Administration to actively discuss with the Mainland authorities the proposals of opening a channel for Mainland single mothers who had minor Hong Kong resident children to settle in Hong Kong, and setting up a joint liaison working group to review the immigration arrangements and deal with complaints and appeals relating to the issue of OWPs and exit endorsement.

35. As regards the proposal of setting up of a joint liaison working group for the two sides to review the OWP and TWP arrangements, the Administration pointed out that as stipulated under the Basic Law, the assessment of applications for and the issue of OWP, TWP and exit endorsement fell squarely within the remit of the relevant Mainland authorities. On this basis, the HKSAR Government would continue to exchange views with the Mainland authorities through the existing channels. Where necessary, the HKSAR Government would communicate and follow up with the Mainland authorities on individual cases. The setting up of a joint liaison group outside the current framework to review or handle individual cases or the assessment of applications was considered not feasible.

36. Regarding the proposal of allowing Mainland residents who did not meet the eligibility criteria for "reunion with spouses" but having young children in Hong Kong to apply for OWP, the Administration advised that this suggestion involved various considerations and must be handled very carefully. For example, the suggestion might have negative impact on the waiting time of those currently eligible for application of OWP. Members were also advised that ImmD would convey to the Mainland immigration authorities the exceptional circumstances of individual cases, such as OWP applicants whose Hong Kong spouse were deceased and had young children, together with the relevant case details and background information for their active consideration. The Administration also advised that some applications from Mainland single mothers for "one-year multiple" exit endorsement for visiting relatives in Hong Kong had been approved, while some applications were being processed.

37. In the meantime, members strongly urged ImmD to take into account the special circumstances of these families and exercise discretion within its remit to extend the limits of stay of these Mainland single mothers concerned till the commencement of school holidays so that they could bring their children along and return to the Mainland to renew their exit endorsement. The Administration advised that it had from time to time exercised discretion to allow TWP holders to extend their limits of stay having regard to individual circumstances. Each case was considered on its own merits.

Relevant papers

38. Members are invited to access the Legislative Council website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meetings. A list of relevant papers is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
15 December 2010

Number of New Arrivals of OWP Holders *

Appendix I

Categories		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 (Jan-Sep)
Certificates of Entitlement Holders (60 places per day)		26 275 (72)	29 296 (80)	16 731 (46)	13 350 (37)	10 314 (28)	7 062 (19)	5 325 (15)	4 487 (12)	4 490 (12)	5 025 (14)	3 799 (14)
Spouses separated for 10 years or above and their accompanying children (30 places per day)	Spouses	13 093 (36)	3 129 (9)	2 846 (8)	4 149 (11)	2 909 (8)	1 497 (4)	684 (2)	582 (2)	731 (2)	589 (2)	368 (1)
	Children	371 (1)	200 (1)	264 (1)	818 (2)	773 (2)	489 (1)	261 (1)	241 (1)	310 (1)	240 (1)	155 (1)
Other Categories (60 places per day)												
(a) Spouses separated for less than 10 years and their accompanying children	Spouses	12 349 (34)	14 914 (41)	17 420 (48)	25 507 (70)	17 486 (48)	31 487 (86)	27 739 (76)	17 541 (48)	22 571 (62)	30 548 (84)	20 237 (74)
	Children	443 (1)	931 (3)	1 426 (4)	2 757 (8)	1 723 (5)	9 864 (27)	15 260 (42)	6 387 (17)	8 413 (23)	8 044 (22)	5 472 (20)
(b) Others ^		4 999 (14)	5 185 (14)	6 547 (18)	6 926 (19)	4 867 (13)	4 707 (13)	4 901 (13)	4 627 (13)	5 095 (14)	4 141 (11)	2 995 (11)
Total of the Year		57 530 (157)	53 655 (147)	45 234 (124)	53 507 (147)	38 072 (104)	55 106 (151)	54 170 (148)	33 865 (93)	41 610 (114)	48 587 (133)	33 026 (121)

Remark :

* The above statistics were compiled from the information collected by the Immigration Department from all OWP holders when they first entered Hong Kong via the Lo Wu Control Point.

() Average figure per day; less than one is counted as one.

^ Including unsupported children who need to join their relatives in Hong Kong, persons coming to Hong Kong to take care of their unsupported aged parents, and unsupported elderly people coming to join their relatives in Hong Kong.

Relevant Papers/Documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers</u>
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	19 February 2009	<p>Administration's Papers LC Paper Nos. CB(2)870/08-09(01) and CB(2)1070/08-09(05) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs520219cb2-870-1-e.pdf http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs520319cb2-1070-5-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)1211/08-09 http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/minutes/hs5220090219.pdf</p>
	19 March 2009	<p>Administration's Paper LC Paper No. CB(2)1070/08-09(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs520319cb2-1070-1-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)1395/08-09 http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/minutes/hs5220090319.pdf</p>
	17 April 2009	<p>Administration's Paper LC Paper No. CB(2)1232/08-09(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs520417cb2-1232-1-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)1594/08-09 http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/minutes/hs5220090417.pdf</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers</u>
	29 May 2009	<p>Paper entitled "Immigration policy relating to Mainland-HKSAR families" prepared by the Legislative Council Secretariat LC Paper No. CB(2)1792/08-09(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs520529cb2-1792-1-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)2096/08-09 http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/minutes/hs5220090529.pdf</p>
	5 November 2009	<p>Administration's Paper LC Paper No. CB(2)145/09-10(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs521105cb2-145-1-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)514/09-10 http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/minutes/hs5220091105.pdf</p>
	26 April 2010	<p>Administration's Paper LC Paper No. CB(2)1325/09-10(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs520426cb2-1325-1-e.pdf</p> <p>Minutes of meeting LC Paper No. CB(2)1800/09-10 http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/minutes/hs5220100426.pdf</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers</u>
	29 June 2010	Administration's Paper LC Paper No. CB(2)1884/09-10(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs520629cb2-1884-1-e.pdf Minutes of meeting LC Paper No. CB(2)2372/09-10 http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/minutes/hs5220100629.pdf
	26 October 2010	Administration's Paper LC Paper No. CB(2)81/10-11(01) http://www.legco.gov.hk/yr08-09/english/hc/sub_com/hs52/papers/hs521026cb2-81-1-e.pdf

Council Business Division 2
Legislative Council Secretariat
15 December 2010