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Tel : 3919 3308

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 13 June 2012

Immigration (Amendment) Bill 2011

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 13 June 2012. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Security to move amendments to the Bill at its Committee stage.

2. As directed by the President, the amendments are attached for Members' consideration.

(Ms Doris LO)
for Clerk to the Legislative Council

Encl.

Immigration (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Security

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 4(3) | In the proposed section 17I(2)(c), in the Chinese text, by deleting “時限屆滿” and substituting “失效”. |
| 7 | In the proposed section 37U(1), by deleting the definition of <i>revocation decision</i> and substituting—

“ <i>revocation decision</i> (撤銷決定) means—

(a) a decision made by an immigration officer under section 37ZL(1); or

(b) a decision made by the Appeal Board under section 37ZLA(1);”. |
| 7 | In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (a), by adding “and in respect of which no revocation decision has been made by an immigration officer” before “; or”. |
| 7 | In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (b)(i), by adding “and no revocation decision has been made by the Appeal Board” before “; or”. |
| 7 | In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (b)(ii), by adding “by an immigration officer” after “was made”. |

- 7 In the proposed section 37V(1), by deleting “(3) and (4)” and substituting “(3), (4) and (5)”.
- 7 In the proposed section 37V(3), by adding “by an immigration officer” after “is made”.
- 7 In the proposed section 37V, by adding—
- “(5) If a revocation decision is made by the Appeal Board in respect of a substantiated claim, the claim must be treated as finally determined on the making of that decision.”.
- 7 In the proposed section 37ZB(1), by deleting “may”.
- 7 In the proposed section 37ZB(1)(a), by adding “may” before “require”.
- 7 In the proposed section 37ZB(1)(a), by deleting “; or” and substituting “; and”.
- 7 In the proposed section 37ZB(1)(b), by adding “must” before “require”.
- 7 By deleting the proposed section 37ZE(4)(a) and (b) and substituting—
- “(a) the decision;
- (b) the reasons for the decision; and
- (c) the person’s right under section 37ZP to appeal against the decision.”.
- 7 By deleting the proposed section 37ZG(5)(a) and (b) and substituting—

- “(a) the decision;
- (b) the reasons for the decision; and
- (c) the person’s right under section 37ZP to appeal against the decision.”.

7 In the proposed section 37ZG(7), in the Chinese text, by adding “有關” after “適用於”.

7 In the proposed section 37ZG(8), in the Chinese text, by adding “有關” after “如就”.

7 By deleting the proposed section 37ZI(5) and substituting—

- “(5) In determining whether there are substantial grounds for the belief referred to in subsection (3), all relevant considerations are to be taken into account, including, where applicable, the following matters in relation to the conditions in the torture risk State—
 - (a) whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the torture risk State; and
 - (b) whether there is any region within the torture risk State in which the claimant would not be in danger of being subjected to torture.”.

7 In the proposed section 37ZL, in the heading, by deleting “**decision to accept torture claim etc.**” and substituting “**immigration officer’s decision to accept torture claim**”.

7 By deleting the proposed section 37ZL(1) and substituting—

- “(1) An immigration officer may, on a ground for a revocation decision specified in section 37ZLB, revoke a decision made by an immigration officer under section 37ZI(1)(a) accepting a torture claim as substantiated.”.

7 By deleting the proposed section 37ZL(2).

7 In the proposed section 37ZL(4)(a) and (b), by deleting “(1)(a) or (b)” and substituting “(1)”.

7 By deleting the proposed section 37ZL(5).

7 By adding—

“37ZLA. Revocation of Appeal Board’s decision to reverse decision rejecting torture claim

- (1) On an application made by an immigration officer, the Appeal Board may, on a ground for a revocation decision specified in section 37ZLB, revoke its decision that reversed a decision made by an immigration officer under section 37ZI(1)(b) rejecting a torture claim.
- (2) Before making an application under subsection (1), an immigration officer must give the claimant written notice of the intended application, and the notice must—
 - (a) state the reasons for the intended application; and
 - (b) state that the claimant may, within 14 days after the notice is given, inform the immigration officer by written notice of the claimant’s objection to the intended application and the reasons for the objection (*objection notice*).
- (3) If—
 - (a) the claimant has not given an objection notice in accordance with subsection (2)(b) and an immigration officer decides to make an application under subsection (1); or
 - (b) after having considered the claimant’s objection notice, an immigration officer

decides to make an application under subsection (1),

the immigration officer must make the application by filing with the Appeal Board a notice of application in a form specified by the Chairperson of the Appeal Board.

- (4) As soon as practicable after the filing of a notice of application, an immigration officer must serve on the claimant a copy of the notice of application.

37ZLB. Grounds for revocation decision

A ground specified in any of the following paragraphs is a ground for a revocation decision mentioned in section 37ZL(1) or 37ZLA(1)—

- (a) any information or documentary evidence submitted in support of the claim is false or misleading and the false or misleading information or evidence is material to the substantiation of the claim;
- (b) information was not disclosed to an immigration officer or (on an appeal) the Appeal Board and the undisclosed information would undermine, to a material extent, the merits of the claim;
- (c) the torture risk giving rise to the claim has ceased to exist due to changes in circumstances of the claimant or the torture risk State.”.

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By deleting the proposed section 37ZO(2) and substituting—

- “(2) The function of the Appeal Board is to hear and determine—
- (a) an appeal made under section 37ZP; and
 - (b) an application for a revocation decision under section 37ZLA.”.

- 7 By adding before the proposed section 37ZP(a)—
- “(aa) section 37ZE(4) or 37ZG(5) (decision not to re-open a torture claim);”.
- 7 In the proposed section 37ZP(b), by adding “made by an immigration officer” after “decision”.
- 7 In the proposed section 37ZT(2), in the Chinese text, by deleting “經” and substituting “在以下時間”.
- 7 In the proposed section 37ZW, in the Chinese text, by deleting “為施行本條例，任何人不得只憑藉其酷刑聲請，而視為在該人留在香港的任何期間屬通常居於香港” and substituting “就本條例而言，任何人在只憑藉其酷刑聲請而留在香港的任何期間內，不得被視為通常居於香港”.
- 7 By adding—
- “37ZX. Savings and transitional arrangements**
- Schedule 4 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Immigration (Amendment) Ordinance 2012 (of 2012).”.
- 10 By deleting the proposed section 43A and substituting—
- “43A. Disrupting proceedings of Torture Claims Appeal Board**
- A person who, without reasonable excuse, disrupts the proceedings of the Torture Claims Appeal Board established by section 37ZO commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months.”.

- 12 In the proposed Schedule 1A, by deleting “[ss. 37U, 37ZL” and substituting “[ss. 37U”.
- 12 In the proposed Schedule 1A, in section 1(1), by adding—
“*appeal* (上訴) means—
(a) an appeal made under section 37ZP; or
(b) an application for a revocation decision under section 37ZLA;”.
- 12 In the proposed Schedule 1A, in section 2(5), by deleting “under section 37ZP”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 2(5), by deleting “訴。” and substituting “訴，”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 8(1), by deleting “在第(2)款的規限下” and substituting “除第(2)款另有規定外”.
- 12 In the proposed Schedule 1A, in section 8(1), by adding “filed under section 37ZQ(1)” after “notice of appeal”.
- 12 In the proposed Schedule 1A, in section 8(2), by adding “under section 37ZQ(1)” after “notice of appeal”.
- 12 In the proposed Schedule 1A, by renumbering section 9 as section 9(1).
- 12 In the proposed Schedule 1A, in section 9(1), by adding “and the person who has lodged the appeal” after “provide to the Appeal

Board”.

- 12 In the proposed Schedule 1A, in section 9(1)(a)(ii), by deleting “or”.
- 12 In the proposed Schedule 1A, in section 9(1)(b), by adding “of an immigration officer under section 37ZL(1)” after “revocation decision”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(ii), by adding “該” after “考慮”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(iii), by adding “該” after “接納”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(iv), by adding “該” after “撤銷”.
- 12 In the proposed Schedule 1A, in section 9(1)(b)(v), by deleting the full stop and substituting a semicolon.
- 12 In the proposed Schedule 1A, in section 9(1), by adding—
- “(c) if the decision being appealed against is a decision under section 37ZE(4) not to re-open a torture claim withdrawn by the person who made the claim—
 - (i) a copy of any completed torture claim form relating to the torture claim;
 - (ii) a copy of the written record of any interview of the person conducted by an immigration officer in considering the torture claim;
 - (iii) a copy of the person’s notice withdrawing the claim; and
 - (iv) a copy of any evidence in writing provided by the person under section 37ZE(2); or

- (d) if the decision being appealed against is a decision under section 37ZG(5) not to re-open a torture claim treated as withdrawn on a person's failure to return a completed torture claim form—
 - (i) a copy of the written notice under section 37ZG(2) informing the person that the claim is treated as withdrawn; and
 - (ii) a copy of any evidence in writing provided by the person under section 37ZG(3).”.

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In the proposed Schedule 1A, in section 9, by adding—

- “(2) The Director must, as soon as practicable after filing with the Appeal Board a notice of application for a revocation decision under section 37ZLA(3), provide to the Appeal Board and the claimant—
 - (a) a copy of the completed torture claim form relating to the torture claim in respect of which the application is made;
 - (b) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the torture claim;
 - (c) a copy of the written notice under section 37ZJ(1) informing the claimant of an immigration officer's decision rejecting the torture claim;
 - (d) a copy of the written decision given under section 21(2) of this Schedule reversing an immigration officer's decision rejecting the torture claim;
 - (e) a copy of the written notice under section 37ZLA(2) informing the claimant of an intended application for a revocation decision to be made by the Board; and
 - (f) a copy of the claimant's objection notice (if any) referred to in section 37ZLA(2)(b).”.

- 12 In the proposed Schedule 1A, in the Chinese text, in section 14(1), by deleting everything after “送達” and before “的副本” and substituting “載有處長將會在聆訊中倚據的所有文件的文件冊(包括將會作出的陳述)，且須將該文件冊”.
- 12 In the proposed Schedule 1A, in section 18, in the heading, by adding “**in an appeal under section 37ZP**” after “**Board**”.
- 12 In the proposed Schedule 1A, in section 18(1), by adding “under section 37ZP” after “an appeal”.
- 12 In the proposed Schedule 1A, in section 18(2)(a), by deleting “or”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 18(2)(b), by deleting “按理並不可” and substituting “並非可在合理情況下”.
- 12 In the proposed Schedule 1A, in section 18(2)(b), by deleting “made.” and substituting “made; or”.
- 12 In the proposed Schedule 1A, in section 18(2), by adding —
- “(c) the Board is satisfied that exceptional circumstances exist that justify the consideration of the evidence.”.
- 12 In the proposed Schedule 1A, by deleting section 18(3).
- 12 In the proposed Schedule 1A, by adding —
- “19A. Evidence considered by Appeal Board in an application for revocation decision**
- In an application for a revocation decision under section 37ZLA, the Appeal Board—
- (a) has the power to review the merits of the case;
and

- (b) may consider any evidence that the Board considers relevant.

19B. Evidence on oath etc.

For the purposes of sections 18 and 19A of this Schedule, the Appeal Board may—

- (a) administer oaths and affirmations;
 (b) receive and consider any material by way of oral evidence (on oath or otherwise) or written statements or documents (by affidavit or otherwise).”.

12 In the proposed Schedule 1A, in section 21, by adding—

“(1A) On an application for a revocation decision under section 37ZLA, the Appeal Board may allow or refuse the application.”.

13 In the proposed Schedule 4, by deleting “**Schedule 4**” and substituting—

“**Schedule 4** [s. 37ZX]”.

13 In the proposed Schedule 4, in section 1, by adding—

“(4) To avoid doubt, nothing in this Schedule is to be construed as giving validity to anything done otherwise than in the lawful exercise of a power or performance of a duty.”.

13 In the proposed Schedule 4, in the Chinese text, by deleting section 2(4)(a) and substituting—

“(a) 須視為符合以下說明的酷刑聲請：該酷刑聲請遭根據第37ZI(1)(b)條作出的決定駁回，而該決定獲上訴委員會確認；及”。

- 13 In the proposed Schedule 4, in the Chinese text, in section 7, by deleting “就視為根據本附表提出及繼續的酷刑聲請” and substituting “就根據本附表視為酷刑聲請並得以繼續”.
- 13 In the proposed Schedule 4, in Table of Transitional Provisions, in item 10, by deleting “37ZL” and substituting “37ZLA”.
- 14 In the proposed Form No. 8, by deleting “36(1A)” (wherever appearing) and substituting “36(1)”.