

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 151 - GOVERNMENT SECRETARIAT : SECURITY BUREAU

Subhead 000 Operational expenses

HEAD 70 - IMMIGRATION DEPARTMENT Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee (FC) the creation of the following supernumerary posts –

- (a) for about three years to March 2019 with immediate effect upon approval of FC –

Security Bureau

1 Administrative Officer Staff Grade C (D2)
(\$154,950 - \$169,450)

Immigration Department

1 Assistant Director of Immigration
(GDS(C)2) (\$154,950 - \$169,450)

- (b) for about two years to May 2018 with immediate effect upon approval of FC –

Immigration Department

1 Assistant Director of Immigration
(GDS(C)2) (\$154,950 - \$169,450)

/PROBLEM

PROBLEM

To contain and reverse the growing number of non-refoulement claimants stranded in Hong Kong, we need to launch a comprehensive review on the strategy of handling non-refoulement claims. The Security Bureau (SB) and the Immigration Department (ImmD) need dedicated directorate support to steer the review and expedite screening of the non-refoulement claims respectively.

2. Separately, to ensure smooth, timely and successful implementation of the Next Generation Smart Identity Card System (SMARTICS-2) and the launch of a one-off territory-wide replacement exercise for the new Hong Kong Identity Card (HKIC) from 2018 to 2022, ImmD needs dedicated directorate support to steer the project team.

Encl. 1 3. Further details on background of the above are summarized at Enclosure 1.

PROPOSAL

4. We propose to create the following supernumerary posts –

- (a) one Administrative Officer Staff Grade C (AOSGC) (D2) post in SB, to be designated as Principal Assistant Secretary for Security (Review) (PAS(S)Review) and one Assistant Director of Immigration (AD of Imm) (GDS(C)2 or D2 equivalent) post in ImmD, to be designated as Assistant Director (Removal Assessment and Litigation)(AD(RAL)), both for about three years to March 2019 with immediate effect upon approval of FC to steer and support the review, as well as to step up relevant enforcement measures and expedite screening of non-refoulement claims in the meantime; and
- (b) one Assistant Director of Immigration (AD of Imm) (GDS(C)2 or D2 equivalent) post in ImmD, to be designated as Assistant Director (Identity Card) (AD(ID)), for about two years to May 2018 with immediate effect upon approval of FC to provide dedicated directorate steer for the SMARTICS-2 project.

/JUSTIFICATIONS

JUSTIFICATIONS

Comprehensive Review of the Strategy of Handling Non-refoulement Claims

5. Since 2014, there has been a continuous and worsening influx of illegal immigrants¹ lodging non-refoulement claims to resist removal from Hong Kong. The public expenditure and the social and public order implications arising from illegal immigration, their abuse of our screening system and the worsening crime situation have caused considerable public concern. Injecting further resources to enhance screening output alone is unable to contain and reverse the situation. As reported to the Legislative Council (LegCo) Panel on Security on 2 February 2016, the Government will launch a comprehensive review on the strategy of handling non-refoulement claims.

Encl. 2

6. The comprehensive review will address fragilities in our present system in four main dimensions, namely (i) pre-arrival control, (ii) screening procedures, (iii) detention and (iv) removal and enforcement. An outline of the review is at Enclosure 2. To effectively deter illegal immigration, and to ensure that the non-refoulement screening procedures can effectively screen out unmeritorious claims as early as possible and can at the same time meet with the high standards of fairness required by law, a full range of measures in all these four dimensions have to be implemented.

Creation of the PAS(S)Review post in SB

7. Review measures in the four dimensions in paragraph 6 above are intertwined, and would involve legislative and policy changes to multiple areas of work. There is a need for careful and detailed analysis, with reference to overseas and local jurisprudence as appropriate. This will require the efforts of multiple government departments in addition to ImmD (e.g. Police, other law enforcement agencies (LEAs), etc.). Given the breadth and complexity of the review, the number of stakeholders involved and the need to come up with practical and effective measures (including legislative amendment proposals) as soon as possible, we propose creating a new supernumerary AOSGC post, designated as PAS(S)Review in SB for about three years (until March 2019), to spearhead the review with dedicated directorate efforts.

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¹ Including non-ethnic Chinese illegal immigrants (NECIIs) who smuggled into Hong Kong, and visitors who overstayed their limit of stay allowed by ImmD or are refused permission to land by ImmD upon arrival.

8. PAS(S)Review will lead a new Review Division in SB. The main tasks of the Division will include monitoring and analysing the latest trends in illegal immigration and non-refoulement claims, providing strategic steer to LEAs in curbing illegal immigration based on such latest trends, developing strategic proposals to minimize the chance of visitors with high immigration risks arriving at Hong Kong, as well as devising proposals on necessary systemic changes in areas of screening procedures, handling of appeals, providing legal assistance to claimants, detaining claimants and removing rejected claimants. PAS(S)Review will need to ensure that measures in all dimensions would be complementary and effective in plugging all current loopholes in the system; all relevant departments are equipped with the necessary legislative power and resources to implement the new measures; and stakeholders will be consulted as appropriate during the review.

9. As regards pre-arrival control over claimants who entered as visitors but subsequently overstayed in Hong Kong or were refused landing on their arrival, we have started our review on the feasibility of introducing a pre-arrival registration (PAR) system that would prevent visitors of high immigration risks from embarking on their journey to Hong Kong. Upon creation of the post, PAS(S)Review will lead the Review Division to develop detailed strategic proposals to introduce the PAR system, including its target jurisdictions.

10. Separately, we have already briefed the LegCo Panel on Security on our proposal to amend the Immigration (Unauthorized Entrants) Order (Cap. 115D) to impose stiffer penalties against syndicates smuggling non-ethnic Chinese illegal immigrants into Hong Kong. PAS(S)Review will monitor effectiveness of the amendment and, if required, propose further amendments to strengthen deterrence against human smuggling activities as necessary.

11. Effective on-going enforcement is also key to the success of the strategy to deter illegal immigration. PAS(S)Review will monitor effectiveness of enforcement actions currently undertaken by various agencies including the Police, ImmD and the Customs and Exercise Department and, when required, provide strategic and directional steer on liaison with Mainland authorities for effective and sustained enforcement efforts to curb illegal immigration.

12. As regards screening procedures, PAS(S)Review will lead the Review Division to work out effective proposals to plug loopholes under existing legislation and screening procedures that are prone to abuse. The proposals to revamp the screening mechanism aim to prohibit abusive behaviours demonstrated under existing procedures and seek to screen out unfounded claims as early as

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possible, while ensuring that the revamped mechanism would meet the requirement of high standards of fairness, taking into account relevant local and overseas court judgments over the years. He will also lead the review on the existing law (including statute and case laws) governing ImmD's existing detention powers, to develop proposals to enhance ImmD's power in this regard that would conform to legal and practical requirements. Should the Government eventually decide to implement such proposals, PAS(S)Review will identify suitable facilities for such purpose. Necessary legislative amendments would also be introduced in the amendment bill mentioned above. He will consolidate the findings within 2016-17, and work on the necessary legislative amendments with a view to introducing an amendment bill in 2017-18. Subject to the progress of scrutiny of the relevant legislation by LegCo, PAS(S)Review will also be responsible for leading ImmD to implement the revamped screening procedures, which are targeted for commencement in 2018-19 or earlier. For measures which do not require legislative backing, PAS(S)Review will ensure that they would be implemented as soon as possible.

13. At the same time, PAS(S)Review will lead the Review Division to review the operation of the publicly-funded legal assistance scheme² within 2016-17 to ensure that it is capable of providing efficient and effective support in accordance with the law under the revamped screening procedures. If legislative amendments are considered necessary for bringing enhancements to the scheme, they will be introduced in the same amendment bill as mentioned in paragraph 12 above in 2017-18. Enhanced legal assistance scheme will be implemented in 2018-19 or earlier.

14. PAS(S)Review will also lead the Review Division to review the procedures of the Torture Claims Appeal Board (TCAB)³ to ensure that appeals are handled fairly and effectively, and to ensure that TCAB has the necessary capacity to handle additional appeals in a timely manner so as not to delay the removal of failed appellants.

15. The effective discharge of the above duties will require dedicated and full-time directorate attention and input in SB. Given the magnitude and volume of work involved, the solid policy formulation experience and political acumen

/required

² In December 2008, the Court of First Instance ruled in *FB vs Director of Immigration and Secretary for Security* [2009] 2 HKLRD 346 that the Government must, amongst other things, provide publicly-funded legal assistance to claimants in need during the torture claim screening process in order to meet the high standards of fairness required. Since December 2009, such assistance has been provided to claimants, on public funds, through the publicly-funded legal assistance scheme operated by the Duty Lawyer Service.

³ TCAB is established under section 37ZQ of the Immigration Ordinance to hear and determine appeals against ImmD's decision to reject a claim.

Encl. 3

required, we consider it necessary and appropriate to create an AOSGC (D2) post to monitor the work of various departments, consult various stakeholders and see through the legislative exercise during the coming three years. The proposed job duties of the post are at Enclosure 3.

Creation of the AD(RAL) post in ImmD

16. Separately, there is an imminent need for ImmD to speed up screening of claims before the legislative amendments mentioned in paragraph 12 above come into effect. In this regard, ImmD will create 82 new posts to enhance its screening capacity in 2016-17. Apart from increasing manpower resources, ImmD also needs to identify possible measures within the existing legal framework to enhance screening efficiency without delay.

17. To expedite screening of non-refoulement claims immediately, ImmD proposes to create a new Removal Assessment and Litigation (RAL) Branch focusing on the screening of claims, and to create a new supernumerary post of AD of Imm designated as AD(RAL) to provide dedicated directorate steer for the new RAL Branch.

18. In 2016-17, AD(RAL) will ensure that the new and additional staff of the RAL Branch would be given sufficient and proper training required to perform screening duties as early as possible. He would also lead the RAL Branch to identify administrative measures that could be implemented to help improve output on screening, such as stepping up training and capacity building for case officers, strengthening capability in researching and collecting country of origin information that would assist in the screening of claims (including sending officers to source countries where needed), ensuring that sufficient supporting facilities (e.g. accommodation, qualified interpreters, etc.) are available to expedite output decisions, and identifying any other useful administrative measures (e.g. by aligning work priorities, simplifying the claim form, expediting scheduling of screening interviews, improving decision writing skills, etc.) with a view to increasing the number of claims determined as far as possible. He will also enhance the existing operational research capacity to identify emerging trends of abuse of the USM and formulate effective measures in response.

19. In 2017-18, AD(RAL) will start gearing up the RAL Branch to prepare for implementation of the revamped procedures expected to commence in 2018-19 or earlier, subject to enactment of the amendment bill by LegCo.

/These

These include revising all notices, forms, guidelines, letters to claimants, etc., making plans on effective deployment of financial and manpower resources under revamped procedures, making necessary transitional arrangements for existing claimants, ensuring complementary support (e.g. accommodation, qualified interpreters, etc.) is available for the revamped workflow, arranging sufficient and suitable training for case officers, etc. A critical aspect of the new AD(RAL)'s work is to ensure proper and legal transitional arrangements are in place in assessing the pending claims upon introduction of the revamped procedures. In 2018-19, AD(RAL) will ensure the smooth implementation of the revamped procedures.

Encl. 4 20. In addition, AD(RAL) will oversee civil litigation matters relating to non-refoulement claims, providing strategic recommendations and departmental policy steer to ensure that the screening procedures comply with the high standards of fairness required by law and the evolving jurisprudence. The proposed job duties of the post are at Enclosure 4. The timely, smooth and effective implementation of all the above tasks would require sufficient directorate guidance and steer in the process.

21. At present, duties relating to the handling of non-refoulement claims fall under the purview of Assistant Director (Enforcement and Removal Assessment) (AD(EA)) who is also responsible for all immigration-related investigation and enforcement, prosecution, as well as detention, deportation and removal of illegal immigrants. Following creation of the AD(RAL) post and the RAL Branch, AD(EA) will be re-designated as Assistant Director (Enforcement) and may then dedicate more focused efforts on strengthening enforcement against illegal immigration, unlawful employment, human smuggling syndicates and other immigration-related offences and prosecution. All these measures, properly steered by the retitled AD(Enforcement), would contribute to the overall policy objective of containing and reversing the trend of a growing number of claimants in Hong Kong. In particular, AD(Enforcement) would be able to give more focused efforts in leading the re-designated Enforcement Branch to step up detailed investigations of the background, profile, mode of entry, routing, etc. of illegal immigrants which would be conducive to devising targeted pre-arrival control measures and providing intelligence to other LEAs in support of their efforts in combating smuggling syndicates.

22. In the face of the increasing number of claims determined by the RAL Branch, AD(Enforcement) will also have to implement any renewed policy on detention (subject to review outcome), such as to ensure that sufficient training is given to more staff to be deployed to support the detention of more claimants. AD(Enforcement) will also lead the Enforcement Branch to step up enforcement efforts against unlawful employment, and to ensure that rejected claimants are

/removed

removed from Hong Kong as soon as possible. AD(Enforcement) will also need to strengthen liaison with local Consulates General with a view to expediting the removal process.

Implementation of SMARTICS-2 and Preparation for the Launch of a One-off Territory-wide Card Replacement Exercise for the new HKIC

23. SMARTICS-2 is a complex but mission-critical system, which supports all services relating to Registration of Persons (ROP). A time-limited project team, to be designated as the Identity Card Branch (ID Branch), will be established in the ImmD from 2016-17 to 2018-19. To ensure smooth, timely and successful implementation of the project, ImmD sees the need for creating an AD(ID) post to provide the necessary dedicated directorate steer to the project team.

Creation of the AD(ID) post in ImmD

24. To ensure that the project would be successfully implemented by the first quarter of 2018 as planned, dedicated directorate efforts of an AD(ID) is needed to steer the project team through project implementation and close monitoring of progress. Any delays will increase risks of system failure, which may in turn lead to serious and large-scale disruption of public services, including registration and production of smart HKICs, immigration clearance at e-Channels at control points, identity verification for HKSAR passport applicants, etc. Such delays would also jeopardize the timely provision of critical public services and adequate capacity for coping with new public service demands (e.g. enhancing the ROP process) in future .

25. Apart from replacing the computer system, ImmD will introduce a new smart HKIC under SMARTICS-2. The smart HKIC is a statutory proof of identity, a reliable means for immigration clearance, as well as a platform for inclusion of various public services delivered by different bureaux/departments to the public in accordance with the law. AD(ID) is needed to provide dedicated steer to the project team to ensure that the new smart HKIC is durable, secure and safe to use.

26. During the stage of System Analysis and Design, which is critical to the successful delivery of the project, AD(ID) will steer, plan and monitor all activities relating to the implementation of SMARTICS-2 and ensure its compatibility with other operations of the Department. In addition, AD(ID) will ensure that the latest proven technologies are adopted and major public concerns on

/personal

personal data protection are properly addressed. ImmD undertook to engage independent experts and consultants to ensure necessary safeguards are in place to comply with legal requirements on protection of personal data as well as system security at each and every stage of project development and future application. It also undertook to commission qualified independent consultants to conduct Privacy Impact Assessments (PIAs) during each critical stage of the implementation of SMARTICS-2, to submit all PIAs to the Privacy Commissioner for Personal Data (PCPD) for comments to ensure compliance with relevant data protection principles and other requirements under the Personal Data (Privacy) Ordinance (PD(P)O) (Cap. 486). Furthermore, ImmD will engage an independent auditor to conduct information technology security risk assessment and audit at different stages of implementation to ensure the effectiveness of those security measures in protecting information in SMARTICS-2 and smart HKICs. Close liaison with PCPD will be kept at this critical stage to ensure necessary safeguards are in place to comply with legal requirements on protection of personal data under the PD(P)O. AD(ID) will lead the project team to ensure that all these are done fully and professionally, and that the recommendations of the consultants and the PCPD, if any, are adopted for the subsequent stage of implementation of SMARTICS-2.

27. During the stage of System Development, AD(ID) will ensure that the technical requirements and specifications as finalised at the System Analysis and Design stage are being implemented effectively and efficiently in accordance with the project schedule. AD(ID) will also update the Panel on Security on the progress of the project as and when needed to ensure transparency during system implementation.

28. As regards the one-off territory-wide identity card replacement exercise, it is a mega-scale exercise to replace some 8.8 million smart HKICs by phase within a four-year span from 2018 to 2022. ImmD plans to recruit a dedicated team of about 800 in-house and contract staff to prepare for and to conduct the card replacement exercise. AD(ID) will lead his team in devising an appropriate strategy for the card replacement exercise, formulating measures to facilitate the public in replacing their HKICs, and drawing up comprehensive publicity programmes to publicise the new smart HKIC and the card replacement exercise before the exercise is launched. AD(ID) will also initiate proper legislative exercise declaring the arrangement of the card replacement exercise pursuant to the Registration of Persons Ordinance and Regulations (Cap. 177 & 177A). He will also establish nine card replacement centres across the territory in catering for public needs. In the process, he will lead his team in engaging the relevant District Councils. He will also ensure that all centres are properly equipped and ready for launching the replacement exercise by second quarter 2018 as planned.

29. All the tasks as mentioned in paragraphs 24 to 28 above are complicated, mission-critical and time-critical. It requires high-level strategic judgement and intensive coordination with various stakeholders. The project team has to be steered by a dedicated directorate officer with sufficient vision, experience and skills. The detailed job description of AD(ID) is at Enclosure 5.

Encl. 5

30. The existing and proposed organisation charts of SB and ImmD showing the proposed posts above are at Enclosures 6 and 7 respectively. The proposed PAS(S)Review will head a new Review Division in SB comprising five officers in spearheading the comprehensive review. The proposed AD(RAL) will head a new RAL Branch comprising 303 staff in handling non-refoulement claims, litigation matters and operational support duties. The proposed AD(ID) will head a new ID Branch comprising 49 staff in implementing the SMARTICS-2 project and preparing for the card replacement exercise.

Encls. 6 & 7

ALTERNATIVES CONSIDERED

31. At present, duties relating to policies on handling non-refoulement claims fall under the purview of Principal Assistant Secretary (Security) D (PAS(S)D) in SB, who is also responsible for policies and initiatives relating to combating human smuggling and trafficking crimes, registration of persons, birth, death and marriage, ImmD's IT systems development, operation of control points and supporting the making of decisions relating to deportation orders. As PAS(S)D would be heavily engaged in tasks in other areas under his purview in the next few years, including, for example, ensuring sufficient resources are in place for the smooth operation of existing and new control points, continued facilitating measures at control points for cross-boundary students, overseeing ImmD's development of major IT systems under the Third Information Systems Strategy (ISS-3) Review, etc., it is not feasible for him to take up the many additional duties required of the comprehensive review, particularly under the tight timeframe as set out in paragraphs 12 to 13 above. It is also not feasible for the other PASEs in SB to absorb the duties amidst their already very heavy workload. A summary of the existing duties of all PASEs in SB is at Enclosure 8.

Encl. 8

32. ImmD has also critically examined the possible redeployment of other directorate officers in the Department to take up the work of the proposed AD posts. There are now six AD of Imm posts, each leading a separate branch of ImmD and their duties are at Enclosure 9. All the ADs of Imm are fully committed to duties in different subject areas and it is not feasible for them to absorb the additional work described above. As mentioned in paragraphs 21 and 22 above, AD(EA) (to be re-designated as AD(Enforcement)) will need to dedicate efforts to step up and sustain enforcement and investigation against illegal immigration and

Encl. 9

/unlawful

unlawful employment until implementation of systemic changes to non-refoulement claim screening procedures in 2018-19, which is expected to bring a more long-term solution to the problem of illegal immigration. Meantime, enhanced operations need to be mounted for speedy removal of unsubstantiated claimants.

33. As mentioned in paragraphs 12 and 13 above, our plan is to complete the work of the comprehensive review (including legislative work) within 2018-19. After the review is complete, duties to monitor implementation of the revamped screening mechanism and the ongoing handling of non-refoulement claims would be undertaken by PAS(S)D in the longer run. Likewise, after the revamped screening mechanism is up and running, on-going duties to monitor its implementation would be undertaken by AD(Enforcement). We will review whether the time-limited posts of PAS(S)Review and AD(RAL) will need to be further extended nearer the time, subject to the progress of the comprehensive review.

34. Separately, duties relating to the planning and implementation of information systems strategy and all matters relating to information systems as well as records and data management fall under the purview of Assistant Director (Information Systems) (AD(IS)) leading the Information Systems Branch. In the coming two years, AD(IS) will be fully engaged in developing various strategic information technology projects, which are inter-related and essential to ImmD's mission-critical operations, under the ISS-3 Review in parallel. A list of all projects under ISS-3 and their implementation schedule is at Enclosure 10. AD(IS) has already stretched his limits in leading the IS Branch to implement all other projects under ISS-3, leaving him with no spare capacity to take on the workload generated by SMARTICS-2, which involves implementing a complex and large-scale system to support the critical mission of registering and issuing new smart HKICs in a secured and timely manner, as well as preparing for launching a territory-wide card replacement exercise with 8.8 million HKICs to be replaced.

Encl. 10

35. By the time when the supernumerary AD(ID) post lapses in May 2018, SMARTICS-2 should have been developed and the preparatory work for the territory-wide identity card replacement exercise should have been completed. The duties of overseeing the ongoing operation of SMARTICS-2 and the territory-wide identity card replacement exercise would then be re-distributed to AD(IS) and AD(Personal Documentation) respectively.

/FINANCIAL

FINANCIAL IMPLICATIONS

36. The proposed creation of the three supernumerary directorate posts will bring about a notional annual salary cost at mid-point (NAMS) of \$5,920,200 as follows –

	Rank	NAMS (\$)	No. of posts
(a)	Head 151: GS:SB AOSGC (D2)	1,973,400	1
(b)	Head 70: ImmD AD of Imm (D2)	3,946,800	2
	Total	5,920,200	3

37. The total full annual average staff cost, including salaries and staff on-cost, of the three posts above is 8,450,000. We will reflect the requirements in the Estimates of subsequent years.

PUBLIC CONSULTATION

38. The LegCo Panel on Security was consulted on the staffing proposals for the comprehensive review of the strategy of handling non-refoulement claims as well as SMARTICS-2 at its meeting on 2 February 2016 and 1 March 2016 respectively. Members were supportive of the proposals.

ESTABLISHMENT CHANGES

39. The establishment changes of SB and ImmD for the past two years are as follows –

Establishment (Note)	Number of posts		
	Existing (as at 1 April 2016)	As at 1 April 2015	As at 1 April 2014
SB			
A	14+(1) [#]	14+(1)	14+(1)
B	42	42	42
C	141	136	133
Total	197+(1)	192+(1)	189+(1)
ImmD			
A	12 [#]	12	12
B	1 979	1 894	1 881
C	5 388	5 302	5 198
Total	7 379	7 208	7 091

/Note:

Note:

- A – ranks in the directorate pay scale or equivalent
- B – non-directorate ranks, the maximum pay point of which is above MPS point 33 or equivalent
- C – non-directorate ranks, the maximum pay point of which is at or below MPS point 33 or equivalent
- () – number of supernumerary directorate posts
- # – as at 1 April 2016, there were no unfilled directorate posts in SB and ImmD

CIVIL SERVICE BUREAU COMMENTS

40. The Civil Service Bureau supports the creation of the proposed supernumerary posts of one AOSGC in SB and two ADs of Imm in ImmD. The grading and ranking of the proposed posts are considered appropriate having regard to the level and scope of responsibilities and professional input required.

ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE AND THE STANDING COMMITTEE ON DISCIPLINED SERVICES SALARIES AND CONDITIONS OF SERVICE

41. As the posts are proposed on a supernumerary basis, their creation, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service and the Standing Committee on Disciplined Services Salaries and Conditions of Service in accordance with the agreed procedure.

Security Bureau
April 2016

Background

Comprehensive Review of the Strategy of Handling Non-refoulement Claims

The Unified Screening Mechanism (USM) commenced in March 2014 to screen non-refoulement claims on all applicable grounds in one go. As at end March 2016, 11 201 claims were pending screening, of which over 50% are IIs. In a short span of 25 months, the number of new claims registered a 325% increase (i.e. from 102 per month on average between 2010 and 2013 to 434 per month between March 2014 and March 2016). Over 80% of claimants are from South or Southeast Asian countries including Vietnam (22%), India (19%), Pakistan (18%), Bangladesh (12%) and Indonesia (10%). As at end March 2016, Immigration Department (ImmD) has determined 3 710 claims under USM, 28 of which are substantiated¹ (another 24 torture claims were substantiated before USM).

2. The continued and worsened influx of claims is characterised by (a) significant rise in non-ethnic Chinese illegal immigrants intercepted; (b) significant rise in claimants who are overstayers or refused landing passengers from some visa-free countries; (c) claimants being predominantly single adults; (d) delay in lodging claims; and (e) worsening crime situation.

3. At the same time, the present screening process is lengthy. The Duty Lawyer Service (DLS) (through which publicly-funded legal assistance is currently provided to claimants) demands that a minimum of 49 days be given for duty lawyers to take instruction from claimants to complete the claim form². In 2015, screening interviews can be successfully scheduled only 13 weeks on average after a claim form is submitted, and 33% of them need to be rescheduled for one reason

/or

¹ Including four substantiated on appeal.

² Whilst overseas jurisdictions such as Australia and Canada require that the claim form be already completed when a claim is lodged or within up to 15 days thereafter.

or another³. Further delay tactics are not uncommon⁴. Enhancements on both efficiency and effectiveness are necessary⁵.

4. In the past few years, we continued to expand the capacity of ImmD and Torture Claims Appeal Board (TCAB). The number of ImmD staff (mostly immigration officers/senior immigration officers) deployed to handle non-refoulement claims has increased from 95 in 2009-10 to 205 in 2015-16 (116% increase). Likewise, the number of members appointed to TCAB (adjudicators handling petitions under Article 48(13) of the Basic Law before establishment of the statutory TCAB in December 2012) has increased from eight in 2009 to 28 in 2015 (250% increase)⁶.

5. We also continued to urge DLS to increase the number of cases that it would take up, which is also a key limiting factor on the rate at which claims can be screened. After repeated rounds of negotiations, DLS agreed to increase the number of case referrals from two per day in December 2009 gradually to eight per day since October 2012, and then to 11 per day since April 2015 and to 13 per day since August 2015⁷.

/6.

³ Of all screening interviews rescheduled in 2015, 69% are due to claimants claiming to be sick (often without medical proof) or being absent without reason, 13% to unavailability of duty lawyer (despite that their diary had been reserved for the interview before), 10% to interpreters being unavailable, 6% to change in claimants' circumstances (e.g. abscondance, withdrawal), and 2% to ImmD or other reasons (e.g. case officers having medical leave or summoned by the Court, etc.)

⁴ Such actions include, for example, seeking extension to submit supporting documents but not submitting any in the end, requesting that an interview be conducted in a rare dialect (whilst the claimant could previously clearly communicate with ImmD in English), refusing to undergo medical examinations arranged on the claimant's own request and challenging the professional qualification of medical practitioners from the Hospital Authority and its data storage security arrangement, etc.

⁵ In *HKSAR v. Tarok Das* (2015) HKCFI 1396, the CFI observed that "it seems more needs to be done to weed out promptly the unmeritorious and unworthy claims. This is becoming a serious problem for the courts and the legal system in general, as well as for the community, and there is the added risk that the system in place is being abused not only by unmeritorious claimants but possibly by claimants with a more sinister purpose in mind."

⁶ Meanwhile, the rate of claimants rejected by ImmD lodging an appeal increased from 50% to 90% after commencement of USM, and, after a Court of Appeal judgment in June 2014 (*ST vs Betty Kwan* (2014) HKCA 309), the percentage of appeals requiring an oral hearing (as opposed to consideration of the appeal on paper) increased from 5% to 90%. Both developments imposed a higher demand on the capacity of TCAB.

⁷ Following commencement of USM, between March and December 2014, DLS also agreed to take up three additional "legacy" cases per day (i.e. rejected torture claims which need to be further screened under USM on applicable grounds other than torture.)

6. The total expenditure in relation to the handling of non-refoulement claims increased by over 295% from \$287 million in 2010-11 to \$1,135 million in 2016-17. Expenditure relating to non-refoulement claims are as follows –

Financial Year	Screening of Claims and Handling of Appeals/ Petitions (\$million)	Publicly-funded Legal Assistance (\$million)	Humanitarian Assistance (\$million)	Total* (\$million)
2010-11	126	10	151	287
2011-12	135	37	143	315
2012-13	144	58	191	393
2013-14	151	76	204	430
2014-15	188	97	254	540
2015-16 (revised estimate)	211	112	421	745
2016-17 (estimate)	303	178	655	1 135

* Individual items may not add up to total due to rounding.

Implementation of Next Generation Smart Identity Card System (SMARTICS-2) and Preparation for the Launch of a One-off Territory-wide Card Replacement Exercise for the new Hong Kong Identity Card (HKIC)

7. The FC approved on 15 May 2015 a new commitment for implementing SMARTICS-2 to replace the existing ageing computer system of the current SMARTICS⁸ and to enhance operational efficiency and effectiveness in supporting the issue of smart HKICs⁹. Also, the designed serviceable lifespan of increasingly more smart HKICs issued after 2003 is due to expire after 2013. It is necessary to launch a one-off territory-wide identity card replacement exercise to replace the existing smart HKICs for some 8.8 million HKIC holders by phase from 2018 to 2022 in an orderly manner to minimise the risk of disruption to public services and the impact on frontline law enforcement arising from any sudden upsurge of defective cards. The implementation plan of SMARTICS-2 is as follows –

/Activity

⁸ The current SMARTICS was introduced in 2003 and designed for optimal use for about ten years only. Its hardware and software are already becoming obsolete, and it has become increasingly difficult to secure system maintenance and technical support due to limited and dwindling market supply of the outdated technologies. The expiry date of the system maintenance agreements was recently extended from December 2013 originally to end 2018, and further extension is considered not desirable as it can no longer ensure system reliability due to prolonged use of outdated technologies.

⁹ Please see FCR(2015-16)7.

Activity	Target Completion Date
Procurement of Hardware, Software and Services	Second quarter 2016
System Development and Implementation –	
System Analysis & Design	Third quarter 2016
System Development	Second quarter 2017
User Acceptance Test	Fourth quarter 2017
Site Preparation	Second quarter 2018
Training	Second quarter 2018
Production Rollout	First quarter 2018

Upon the rollout of SMARTICS-2, a card replacement exercise is planned to be launched in the second quarter of 2018 for four years.

**Outline of comprehensive review of the
strategy of handling non-refoulement claims**

Pre-arrival control

To tackle the problems at source, we need to prevent economic migrants from embarking on their voyage (or from reaching Hong Kong) and deter those who assist them to this end. Guided by detailed analysis of the background and arriving route of new claimants, we will consider –

- (a) introducing requirement of pre-arrival registration and, if necessary, complementary checking measures for persons with high immigration risks to prevent them from being boarded;
- (b) liaising with authorities of major source countries of claimants and jurisdictions along their usual route to Hong Kong on strengthening enforcement against smuggling syndicates; and
- (c) reviewing visa requirement or visa-free arrangement as necessary.

2. Apart from the above, we will amend the definition of “unauthorized entrants” under Part VIIA of the Immigration Ordinance (Cap. 115) so that stiffer penalties can be applied equally and fairly against human smuggling syndicates smuggling illegal immigrants from any top source countries¹.

Screening procedures

3. For those who manage to enter Hong Kong and make a non-refoulement claim, we need to expedite the screening process for all cases and deter clear abusers, whilst ensuring that screening procedures will continue to meet with the high standards of fairness required by law. Having accumulated screening experience since 2009 and making reference to the established practices of other common law jurisdictions, we will consider amending Part VIIC of the Immigration Ordinance to –

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¹ “Unauthorized entrants” are declared under the Immigration (Unauthorized Entrants) Order (Cap. 115D) between 1979 and 1980 to include only illegal immigrants from the Mainland, Macao and Vietnam. We intend to amend the declaration so as to include illegal immigrants from any of the top source countries, subject to appropriate exemptions.

- (a) provide statutory underpinning to Unified Screening Mechanism (USM), the operational procedures of which follow Part VIIC of the Immigration Ordinance²;
- (b) tighten procedures to clearly specify the time allowed for each step and to prohibit abusive behaviour;
- (c) screen out manifestly unfounded claims early;
- (d) set out the scope and limits, as appropriate, on the provision of publicly-funded legal assistance; and
- (e) enhance the operation and capacity of Torture Claims Appeal Board.

4. Immigration Department (ImmD) will also enhance its capability to collect countries of origin information useful for screening purposes. Efforts are ongoing to establish contacts with relevant governmental/non-governmental organisations in those countries for establishing an objective and credible database on information of major localities of source countries, as well as topical issues and details of major events of those countries.³

Detention

5. At present, only a very small percentage of claimants are detained pending or during screening. We will carefully consider the feasibility of clarifying and strengthening ImmD's legal power⁴ to detain claimants pending screening, whilst screening or appeal is underway, and/or after their screening is complete but they are remaining in Hong Kong for some other reasons (e.g. they have lodged a judicial review), so as to minimise their security impact, to prevent them from

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² In essence, USM is a mechanism under which non-refoulement claims are simultaneously assessed on all applicable grounds using the existing statutory scheme under Part VIIC of the Ordinance for including torture risk, cruel, inhuman, or degrading treatment or punishment risk under Article 3 of the Hong Kong Bill of Rights and risk of persecution with reference to Article 33 of the 1951 Refugee Convention, etc. though screening of the latter risks is conducted administratively.

³ That said, the information the claimant provided for the purpose of his claim will be treated in confidence. As a general rule, neither the information indicating that the claimant has made a non-refoulement claim nor any information pertaining to his claim will be provided to any government of a risk country without the express consent of the individual concerned.

⁴ Under the Immigration Ordinance, the Director of Immigration is empowered to detain an illegal immigrant under specific circumstances, e.g. when considering whether to make a removal order against the subject (section 32(2A)), when his removal is pending (section 32(3A)), when his non-refoulement claim is pending final determination (section 37ZK), etc., subject to applicable restrictions under the law, e.g., the *Hardial Singh* principles which require that ImmD cannot continue to detain an illegal immigrant if it becomes apparent that it will not be able to effect his removal within a reasonable period.

taking up unlawful employment, and to ensure more efficient screening and subsequent removal. If this proposal is considered legally feasible, we will identify suitable facilities for refurbishment to expand immigration detention capacity as necessary.

Removal and enforcement

6. Finally, unsubstantiated claimants should be removed as soon as possible. We will strengthen liaison with local Consulates General concerned to expedite the removal process. We will also step up enforcement against syndicates and related criminal activities (e.g. unlawful employment), including close collaboration with Mainland authorities, and enhance publicity in Hong Kong and in major source countries on our applicable law and policies to avoid potential claimants from being misguided by syndicates.

**Proposed Job Description
for the New Supernumerary Principal Assistant Secretary
under Security Bureau**

Post Title : Principal Assistant Secretary (Security) Review

Rank : Administrative Officer Staff Grade C

Responsible to : Deputy Secretary (Security) 3

Duties and Responsibilities –

1. To draft an Immigration (Amendment) Bill to revamp handling of non-refoulement claims, including reviewing existing procedures, formulating consultation plan with stakeholders, and ensuring that the future statutory mechanism would be consistent with latest jurisprudence and effective in minimising abuses.
2. To develop pre-arrival registration, and if necessary, complementary checking measures based on claimant profile, and strategy in negotiation with stakeholders (e.g. Consulates General, Chinese Diplomatic and Consular Missions, airlines, etc.) in implementing the proposed measures, and overseeing Immigration Department's (ImmD) development of necessary information technology system.
3. To research into ImmD's power on detention and identify and plan for the use of suitable facilities to detain illegal immigrants (subject to outcome of review) and securing support in the required funding and legislative proposals.
4. To review the operation of the Torture Claims Appeal Board to enhance its screening capacity.
5. To review the provision of publicly-funded legal assistance by the Government, including consideration of imposing a cap on the legal fees per claimant.
6. To oversee the existing screening procedures and work with ImmD on short-term solutions to expedite the process.

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7. To ensure other peripheral support to facilitate smooth and efficient screening and effective removal (e.g. ensuring sufficient supply of interpreters/translators), as well as overall financial management (e.g. implementation of the humanitarian assistance scheme by the Social Welfare Department through Non-Governmental Organisations, etc.).
8. To monitor law enforcement agencies' further efforts to combat human smuggling syndicates and illegal immigration.

**Proposed Job Description
for the New Supernumerary Assistant Director of Immigration
under Immigration Department**

Post Title : Assistant Director (Removal Assessment and Litigation)

Rank : Assistant Director of Immigration

Responsible to : Deputy Director of Immigration

Major Duties and Responsibilities –

1. To manage and oversee the Removal Assessment and Litigation Division.
2. To support the Security Bureau in steering, planning and development of new measures during the comprehensive review of the strategy of handling non-refoulement claims.
3. To propose and evaluate new measures identified during the comprehensive review from operational and enforcement perspectives, and to formulate plans for their early implementation as required.
4. To identify further administrative measures useful to streamline screening procedures and consider means of allocating existing available resources effectively, with a view to increasing the number of claims determined as far as possible.
5. To oversee the implementation of the screening mechanism of non-refoulement claims with a view to ensuring effective and efficient screening of claims to meet high standards of fairness as required by law; to lead and steer the day-to-day operation of the screening unit, and to make strategic recommendations in handling civil litigation matters related to non-refoulement claims and enforcement.

**Proposed Job Description
for the New Supernumerary Assistant Director of Immigration
under Immigration Department (ImmD)**

Post Title : Assistant Director (Identity Card)

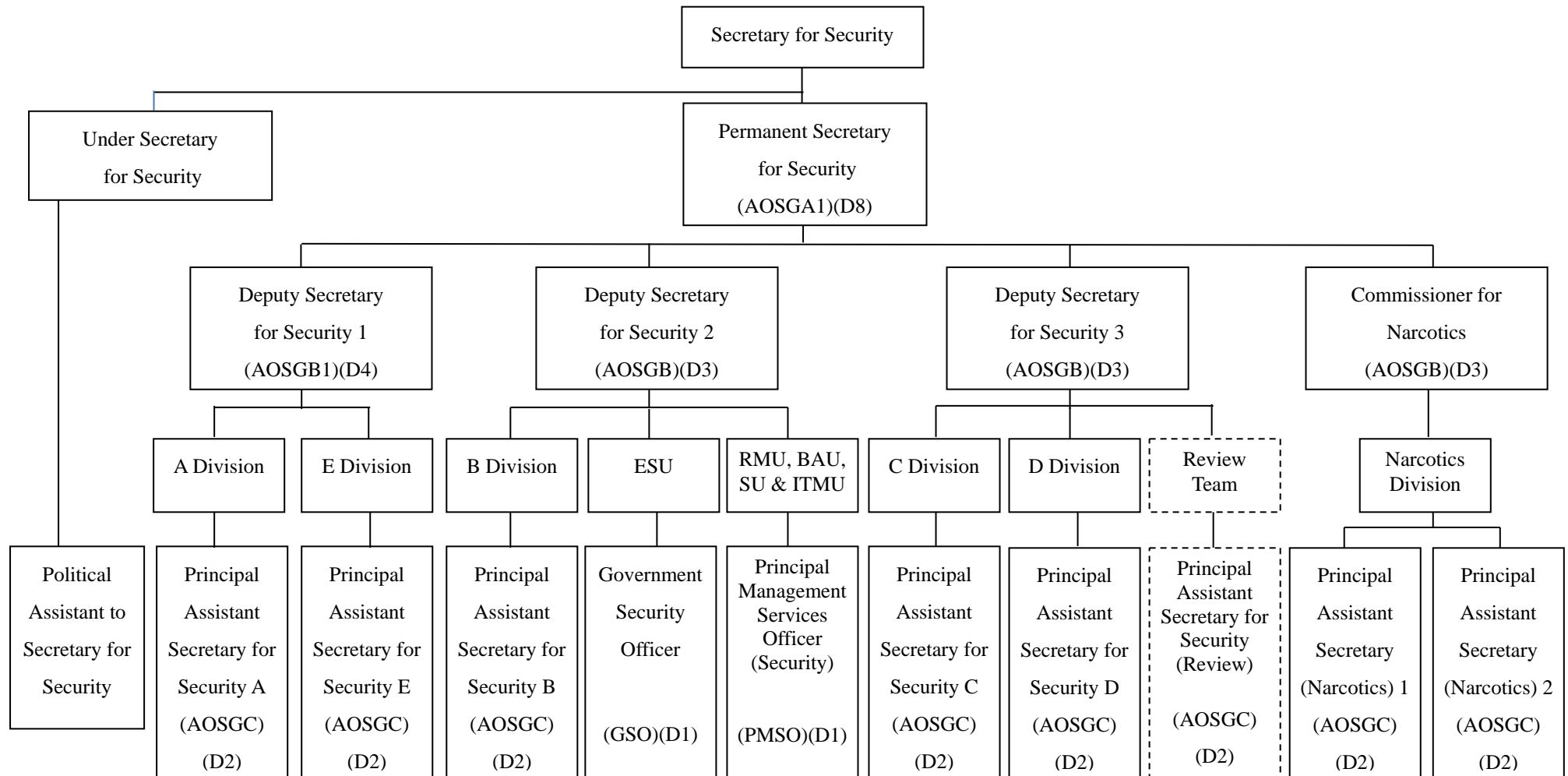
Rank : Assistant Director of Immigration

Responsible to : Deputy Director of Immigration

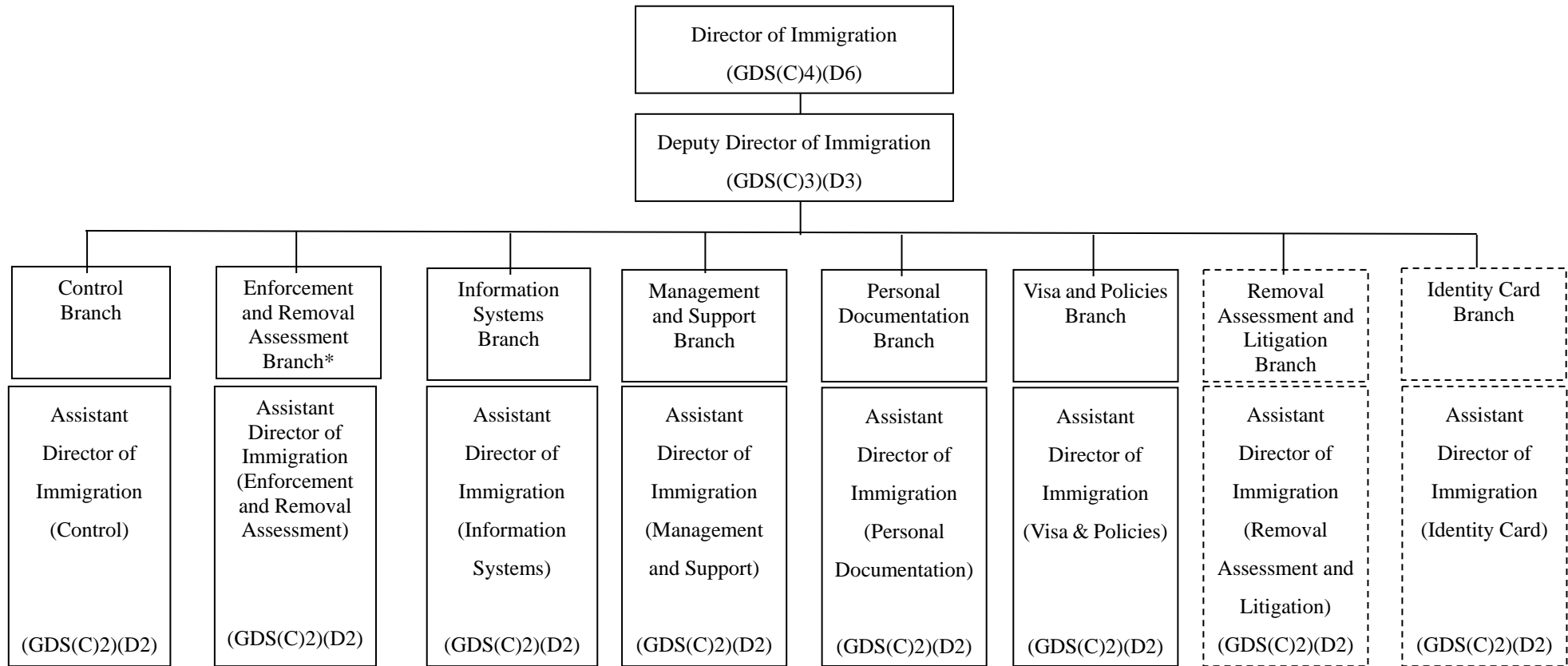
Major Duties and Responsibilities –

1. To steer, plan, direct and monitor all activities relating to the implementation of Next Generation Smart Identity Card System (SMARTICS-2) and liaise closely with other directorate officers of ImmD with a view to ensuring compatibility with other operations of the Department.
2. To oversee the introduction of the new smart Hong Kong Identity Cards (HKICs) with proven technologies.
3. To steer, plan and prepare for the launching of the territory-wide identity card replacement exercise, including securing venues, recruitment of staff, initiating legislative exercise on the schedule of replacement.
4. To draw up and roll out comprehensive publicity programmes to publicise the new smart HKIC and the card replacement exercise.
5. To be answerable to the project steering committee on matters relating to the implementation of the project and the replacement exercise.
6. To discuss and resolve matters requiring co-ordination between bureaux and departments in the process of planning and implementing SMARTICS-2 and in launching the replacement exercise.
7. To liaise with relevant stakeholders such as the Office of the Privacy Commissioner for Personal Data on protection of personal data which are of concern to the general public.
8. To report the progress of the project to the Legislative Council Panel on Security and members of the public as appropriate.

Organisation chart of Security Bureau



Organisation chart of Immigration Department



* To be re-designated as the Enforcement Branch if the creation of new post is approved.

**Duties and Existing work Priorities of
Principal Assistant Secretaries in the Security Bureau**

Principal Assistant Secretary for Security (A) is responsible for policy matters relating to boundary administration, closed area, counter-terrorism, surrender of fugitive offenders and mutual legal assistance in criminal matters. He oversees the liaison between the Hong Kong Special Administrative Region (HKSAR) Government and the Garrison and handles matters with a Garrison dimension. He also deals with policy and resource matters relating to the Government Flying Service and certain security-related functions of the Customs and Excise Department, as well as matters concerning the Security and Guarding Services Industry Authority.

2. Principal Assistant Secretary for Security (B) is responsible for policies in respect of the emergency rescue services provided by the Fire Services Department, including matters relating to fire safety, fire prevention, fire-fighting, the emergency ambulance service, and the control of dangerous goods. He also oversees policies relating to the penal system maintained by the Correctional Services Department, covering such matters as rehabilitation of prisoners and the prison development programme. He deals with issues relating to the transfer of sentenced persons and supports the statutory boards on prison sentence review and prisoner supervision. In addition, he is responsible for the aviation security policies, including the maintenance and implementation of the Hong Kong Aviation Security Programme. He is currently heavily engaged in pursuing initiatives to improve fire safety and enhance the provision of emergency ambulance service, overseeing the prison development and improvement programmes to address the problems of outdated facilities and overcrowding, and reviewing issues of concerns related to penal management and offenders' rehabilitation.

3. Principal Assistant Secretary for Security (C) is responsible for the following immigration policies and matters: nationality and right of abode; visa regime for foreign nationals and policy on entry from Mainland, Taiwan and Macao; travel convenience of Hong Kong residents; the Outbound Travel Alert system and assistance to Hong Kong residents in distress outside Hong Kong. He oversees policy issues concerning admission of talent, professionals and investors. He is also responsible for the policy, resource and housekeeping matters of the Immigration Department.

4. Apart from issues relating to non-refoulement claims, Principal Assistant Secretary for Security (D) is responsible for handling policy issues concerning combatting human smuggling and trafficking crimes; registration of persons, births, deaths and marriages; the processing of detention and deportation cases under the Immigration Ordinance; the processing of immigration-related statutory and non-statutory petition cases; and housekeeping matters relating to the Immigration Tribunal, Registration of Persons Tribunal, HKSAR Passports Appeal Board, and Civil Celebrant of Marriages Appointment Appeal Board. He is also responsible for policy, legislation and resource matters relating to the operation of control points and related co-operation with the Mainland, including complementary immigration/enforcement measures on cross-boundary students. Furthermore, he is engaged in the planning for the new Liantang/Heung Yuen Wai Boundary Control Point; and implementing various new information technology initiatives (including new information technology infrastructure, new immigration control system and the next generation smart Hong Kong Identity Card system) of the Immigration Department.

5. Principal Assistant Secretary for Security (E) is responsible for policy matters concerning internal security and law and order, as well as resources matters relating to the Hong Kong Police Force and the Hong Kong Auxiliary Police Force. He also oversees the implementation of the Interception of Communications and Surveillance Ordinance. He is the Secretary to the Fight Crime Committee and oversees the operation of the Committee and its Subcommittees.

6. Principal Assistant Secretary for Security (Narcotics) 1 is primarily responsible for anti-drug preventive education and publicity strategy and initiatives; the policy and management of the Beat Drugs Fund (BDF), including overseeing the process of considering applications for support from the fund under the annual funding exercise and ongoing monitoring and evaluation of the implementation and effectiveness of BDF funded projects; monitoring and formulating the necessary response, including through legislative control, to the threats posed by emerging drugs; monitoring drug trends through the Central Registry of Drug Abuse and regular large scale student surveys; coordinating anti-drug external cooperation on a policy level; overseeing the provision of secretarial support to the Action Committee Against Narcotics, etc.

7. Principal Assistant Secretary for Security (Narcotics) 2 is primarily responsible for the policy and programmes concerning treatment and rehabilitation matters, including the coordination of measures concerning the enhancement and re-engineering of Treatment and Rehabilitation services having regard to the changing circumstances of the drug scene; helping drug treatment and rehabilitation centres in Hong Kong to meet the statutory licensing requirements; and formulating policy and programmes relating to drug testing.

Duties of Assistant Directors in the Immigration Department (ImmD)

At present, ImmD has six permanent Assistant Director (AD) posts responsible for heading the six branches of ImmD, namely, the Control Branch, Enforcement and Removal Assessment Branch, Information Systems Branch, Management and Support Branch, Personal Documentation Branch and Visa and Policies Branch with responsibilities as set out below –

(I) Control (C) Branch - headed by AD(C)

AD(C) is responsible for formulating and implementing policies on maintaining immigration control by denying entry of undesirables and preventing wanted criminals from departure and facilitating the mobility of tourists and business visitors. The Control Branch comprises the Airport Division, the Border (Rail) Division, the Border (Vehicles) Division and the Harbour Division. The Airport Division enforces immigration control over passengers and aircrew entering and leaving Hong Kong by air. The Border (Rail) Division comprises three control points, serving railway passengers at Lo Wu, Hung Hom and Lok Ma Chau Spur Line. The Border (Vehicles) Division comprises four land boundary control points at Lok Ma Chau, Man Kam To, Sha Tau Kok and Shenzhen Bay, serving cross-boundary passengers and vehicles. The Harbour Division comprises the Harbour Control Section, the Macau Terminal Section, the China Ferry Terminal Section, the Tuen Mun Ferry Terminal Section and the Kai Tak Cruise Terminal Section which carry out immigration control over people movements by passenger liners, ferries and cruise liners.

(II) Enforcement and Removal Assessment (EA) Branch – headed by AD(EA)

AD(EA) is responsible for spearheading the EA Branch which comprises the Enforcement Division and the Removal Assessment and Litigation Division. The Enforcement Division is responsible for formulating and implementing policies in respect of investigation, deportation and removal. The Removal Assessment and Litigation Division is responsible for determining non-refoulement claims lodged by persons not having the right to enter and remain in Hong Kong on all applicable grounds, handling matters relating to prosecution of immigration offenders and litigation cases relating to removal, deportation and non-refoulement claims, and also managing the Castle Peak Bay Immigration Centre for the detention of persons of 18 years old or above.

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(III) Information Systems (IS) Branch - headed by AD(IS)

AD(IS) is responsible for formulating and implementing strategies on information systems and related matters as well as record management and data privacy management of the Department. The IS Branch comprises four functional divisions. The Information Systems (Development) Division is responsible for formulating and implementing the Department's information systems strategy, developing new systems to meet the future business needs; the Information Systems (Production) Division is responsible for management and security of information systems in operation as well as on-going enhancement of the information systems and related processes; the Technology Services Division provides technical support for the maintenance and development of computer systems in the Department, and the Records and Data Management Division is responsible for handling all issues relating to data privacy, access to information and management of departmental records.

(IV) Management and Support (MS) Branch - headed by AD(MS)

AD(MS) is responsible for formulating and implementing policies on human resources management and development of the Immigration Service. It comprises two divisions, namely the Service Management Division and the Immigration Service Institute of Training and Development. The Service Management Division deals with matters relating to welfare, conduct and discipline of service staff and is responsible for managing public relations, conducting management audit and reviewing complaints from the public. The Immigration Service Institute of Training and Development is responsible for recruitment, training, development and deployment of service staff.

(V) Personal Documentation (PD) Branch - headed by AD(PD)

AD(PD) is responsible for formulating and implementing policies on personal documentation. The PD Branch comprises the Documents Division and Registration of Persons Division. The Documents Division deals with applications for HKSAR passports and other HKSAR travel documents, handles matters relating to the implementation of the Chinese Nationality Law in Hong Kong, negotiates visa-free travel arrangements for HKSAR residents, provides assistance to Hong Kong residents in distress outside Hong Kong and processes registration of births, deaths and marriages. The Registration of Persons Division processes applications relating to claims to right of abode under the Basic Law, issues identity cards to Hong Kong residents and maintains records on registration of persons.

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(VI) Visa and Policies (VP) Branch – headed by AD(VP)

AD(VP) is responsible for formulating and implementing policies on managing pre-entry immigration control through the visa and entry permit systems. The VP Branch comprises the Visa Control (Policies) Division and the Visa Control (Operations) Division. Their major areas of work include formulating and reviewing policy and assessment procedures on visa matters with a view to meeting the changing needs of Hong Kong, facilitating visitors and enhancing operational efficiency and effectiveness of the visa and entry permit system; processing various types of immigration applications in accordance with approved policies, such as applications for entry into Hong Kong for visit, employment, investment, training, residence or study, applications for extension of stay from visitors and temporary residents, applications for Certificate of Entitlement (COE) to the Right of Abode in HKSAR and handling appeals/petitions/judicial reviews relating to COE and visa control matters, etc.

Enclosure 10 to EC(2016-17)2

Third Information Systems Strategy Projects and Implementation Schedule

Projects	Target System Rollout Date
Being Implemented/Funding being Sought	
New Information Technology Infrastructure	By phase from first quarter 2015
Immigration Control System	By phase from first quarter 2016
SMARTICS-2	First quarter 2018
Next Generation Electronic Passport System	By phase from first quarter 2019
Under Active Planning and Funding will be Sought	
Visa Automation System	By phase from first quarter 2021
Assistance to Hong Kong Residents, Births, Deaths & Marriage, Right of Abode Decision Support System	
Enforcement Case Processing System	
Human Resources Management System	Implementation timeline subject to Government Human Resources Management System Review
