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**Report of the Subcommittee to Study Issues Relating to
Mainland-HKSAR Families**

Purpose

This paper reports on the deliberations of the Subcommittee to Study Issues Relating to Mainland-HKSAR Families ("the Subcommittee").

Background

2. The Subcommittee was appointed by the House Committee ("HC") in January 2015 to study issues relating to Mainland-HKSAR families, which include immigration arrangements, cross-boundary students, use of subsidized obstetric services, population policy as well as support and social welfare services for new arrivals. The terms of reference and membership of the Subcommittee are set out in **Appendices I and II** respectively.

3. Under the chairmanship of Hon IP Kwok-him, the Subcommittee has held six meetings since October 2015 to meet with the Administration and receive views from deputations. A list of the deputations/individuals which have given views to the Subcommittee is in **Appendix III**.

Deliberations of the Subcommittee

Immigration arrangements

One Way Permit Scheme

4. According to the Administration, Mainland residents who wish to settle in Hong Kong must apply for OWP¹ from the Exit and Entry Administration Offices of the Public Security Bureau of the Mainland at the places of their household registration. The OWP Scheme allows Mainland residents to come to Hong Kong for family reunion in an orderly manner.

5. In response to members' enquiry about the possibility for the HKSAR Government ("the Government") to vet and approve OWP applications, the Administration has advised that the approval system for OWP is drawn up having regard to Article 22(4) of the Basic Law as well as the interpretation by the Standing Committee of the National People's Congress in 1999, and according to which the approval of OWPs is within the remit of the Mainland authorities.

OWP applications by Mainland "overage children"

6. Members note that with effect from 1 April 2011, Mainland "overage

¹ Mainland residents may apply for OWP to settle in Hong Kong if:

- (a) his/her spouse is settled in Hong Kong (may bring along children aged under 18); or
- (b) he/she is aged above 18 and under 60 and needs to come to Hong Kong to take care of his/her parents settled in Hong Kong both of whom are aged above 60 and have no children in Hong Kong; or
- (c) he/she is aged above 60 and has no children in the Mainland, and has to depend on his/her children aged above 18 settled in Hong Kong; or
- (d) he/she is aged under 18 and has to depend on his/her parents settled in Hong Kong; or
- (e) he/she is a child of a Hong Kong permanent resident and holds a Certificate of Entitlement ("CoE").

The existing daily quota of OWP is 150. Of these 150 places, 60 are allocated to persons holding CoE, and the rest for application by other Mainland residents for family reunion in Hong Kong.

children"² of Hong Kong residents can apply for OWP to come to Hong Kong for reunion as long as their natural fathers or mothers still resided in Hong Kong on 1 April 2011. The application, approval and issuance of permits to "overage children" largely follow that of OWP applications. The phased processing of applications from Mainland "overage children" is scheduled chronologically according to the date when the applicants' natural fathers or mothers first obtained their Hong Kong identity cards. Eligible Mainland "overage children" can submit applications according to their own settlement plan and there is no closing date for submitting applications. Phase Six of the scheme commenced in January 2016 for applications from Mainland "overage children" whose natural fathers or mothers first obtained their first Hong Kong identity cards on or before 31 December 1991.

7. Members call on the Administration to expedite the processing of OWP applications from eligible "overage children" so that these adult children can come to Hong Kong for family reunion soonest possible. To this end, members have proposed accepting the OWP applications from all the remaining eligible "overage children" in the next round of application or widening the range of date on which the applicants' natural fathers or mothers obtained their first Hong Kong identity cards, so that more applications can be processed in each round of application.

8. According to the Administration, neither the Government nor the Mainland authorities have information on the number of eligible Mainland "overage children" remaining to be processed under the scheme. In view of uncertainty in the number of eligible "overage children" and in the timing for these eligible applicants to submit their applications, the Mainland authorities are prudent in making their phasing arrangement. However, both the Government and the Mainland authorities have continued to review possible room for expediting the processing of applications. The Administration has advised that subject to the trend in the number of applications received in the current phase (i.e. Phase Six), it

² According to the Administration, before 1 November 2001, eligible Mainland children of Hong Kong residents aged below 14 may apply to the Mainland authorities for OWP to come to Hong Kong for settlement. Approval will not be granted to those who attained the age of 14 while awaiting approval by the Mainland authorities. The term "overage children" refers to those persons who (a) are below the age of 14 when their natural fathers or mothers, on or before 1 November 2001, obtained their first Hong Kong identity cards; and (b) turned 14 while awaiting approval and hence lost their approval status.

does not rule out the possibility of proposing to accept applications from all the remaining eligible Mainland "overage children" in the coming phase.

9. Members are of the view that the 150 daily OWP quota should be fully utilized to facilitate family reunion. As a number of unused OWP quotas have been accumulated throughout the years, some members have enquired about relaxation of the age limit of "overage children" under the existing OWP Scheme. These members have proposed that a channel should be opened for Mainland adult children who are currently not eligible to apply for OWP as "overage children" owing to their non-compliance with the prescribed age limit.³ Under the proposal, OWP should be granted having regard to the circumstances of an applicant (e.g. need to take care of their aging parents in Hong Kong). Report(s) from the Social Welfare Department ("SWD") or other social service organizations on the applicant's family circumstances in Hong Kong can be used to substantiate the application.

10. The Administration has explained that relaxation of the age limit of "overage children" will introduce uncertainty to the OWP Scheme and deviate from the established principle of pragmatic, smooth and orderly arrival of Mainland residents. The proposal of opening a channel for Mainland adult children currently not eligible to apply for OWPs has to be carefully considered in a holistic manner having regard to its implications on a number of concerns. The implications include the potential number of OWP applications by the spouse and children (who are Mainland residents) of the new arrivals (who are granted OWP under the proposal) after they have settled in Hong Kong as well as the provision of public services for these new arrivals. The Administration has further advised that it has been rendering assistance, on a case-by-case basis, to those who have family difficulties and seek help from the Government regarding their applications for OWP.

Mainland single mothers

11. Members note with concern the difficulties that some Mainland single mothers face in taking care of their minor children in Hong Kong. In some members' view, children born to Mainland mothers in Hong Kong are citizens of Hong Kong and should therefore be entitled to the same family care and social support as other local children. Child rearing without proper family care may give rise to a host of social problems at the

³ The prescribed limit is below the age of 14 when their natural fathers or mothers, on or before 1 November 2001, obtained their first Hong Kong identity cards.

expense of the society. The Administration should therefore facilitate these Mainland mothers to settle in Hong Kong for rendering proper care to their children.

12. According to the Administration, the Immigration Department ("ImmD") will handle individual cases which have family difficulties but are not eligible for application for OWP (including Mainland single mothers of minor children in Hong Kong who are widowed, divorced or having other special difficulties) by conveying these cases to and liaise with the Mainland authorities in a case-by-case manner, having regard to the requests of the persons seeking help and circumstances of the cases. ImmD will seek for compassionate consideration of their situation by the Mainland authorities and exercise of discretion in processing their OWP applications. ImmD will actively follow-up with the Mainland authorities on a regular basis through various channels, including meetings and exchange of correspondences, and discuss with them any practicable assistance to the persons seeking help.

13. Some members have observed that the granting of discretionary approval to cases on separated Mainland single mothers is by far less than that to cases on widowed Mainland single mothers. The Administration has explained that difficulty in verifying the matrimonial relationship between a Mainland single mother and her former Hong Kong husband is one of the major obstacles in handling the OWP applications from Mainland single mothers. As at 31 December 2015, ImmD has received a total of 145 requests for assistance from Mainland single mothers, among which the Mainland authorities have issued, on discretionary basis, OWP to over 70 persons seeking help having regard to their unique circumstances, including four persons who claimed to be divorced or pending divorce. About 40 others have been issued one-year multiple exit endorsements for visiting relatives in Hong Kong.

14. Mr LEE Cheuk-yan has proposed that Mainland single mothers should be allowed to apply under the OWP Scheme for reunion with their minor Hong Kong resident children. Noting that there are cases in which the custody of a Hong Kong resident child is awarded to his Mainland single mother by order of a Hong Kong court, some members including the Chairman have suggested that such a court order should be treated as a qualifying condition for approving the OWP applications from Mainland single mothers, as it is not reasonable for a mother without the right to abode in Hong Kong to assume the responsibility of taking care of her Hong Kong resident children. Some other members including Mr LEE

Cheuk-yan, however, have reservations about the suggested qualifying condition.

15. In the Administration's view, to allow Mainland single mothers to apply under the OWP Scheme may induce more pregnant Mainland women to enter Hong Kong through various channels for delivery and give rise to the problem of bogus marriage. It must therefore be carefully considered from a policy perspective. While the number of cases on Mainland single mothers is limited, consideration on a case-by-case basis can address some of these problems. Mainland single mothers who have a genuine need to take care of their children in Hong Kong will usually be granted, on compassionate grounds, OWPs or one-year multiple exit endorsements for visiting relatives in Hong Kong exceptionally.

16. As regards the criteria for granting OWPs to Mainland single mother on compassionate grounds, the Administration has advised that as such granting of OWPs is not within the established policy framework, the Mainland authorities will consider each case having regard to the merits of individual circumstances. Some members are of the view that a mechanism for vetting and approving OWP applications by Mainland single mothers should be established to make the process more transparent and systematic.

17. Expressing concern that some Mainland women may have tolerated abuse by their husbands in fear of losing their eligibility for OWPs, some members have asked whether the Administration will consider granting OWPs to Mainland single mothers to prevent family violence. The Administration has advised that victims of domestic violence should report to the Government regardless of their residence status in Hong Kong. ImmD will reflect all pertinent information to the Mainland authorities and it is believed that the Mainland authorities will give due regard to the circumstances in considering their applications for OWP.

Mechanism for OWP holders to return to the Mainland

18. In response to members' enquiry about the implementation of a mechanism for allowing OWP holders who have settled in Hong Kong to return to the Mainland, the Administration has advised that a request from OWP holders who have settled in Hong Kong to return to the Mainland is currently handled by the Mainland authorities on a case-by-case basis. While it is considered pragmatic for new arrivals who have not yet acquired the permanent resident status and find themselves difficult to

adapt to living in Hong Kong to return to the Mainland, the Administration will continue to discuss the proposed mechanism with the Mainland authorities.

Cross-boundary students

19. The Administration has advised that there are about 28 100 cross-boundary students studying in kindergartens, primary and secondary schools in Hong Kong in the 2015-2016 school year. About 90% of them study in schools located in the North, Yuen Long and Tuen Mun districts. Members have expressed concern about the long travelling time required for students to commute daily between their homes in Shenzhen and the schools in Hong Kong. The Education Bureau ("EDB") is urged to strengthen its effort to facilitate these Hong Kong students to study in Shenzhen. Members are of the view that the Administration should also ensure that sufficient school places are available to cater for the need of cross-boundary students. Some members including Ms Cyd HO take the view that EDB should make available sufficient school places in school nets near Shenzhen so as to minimize the travelling time of cross-boundary students. Some other members including the Chairman consider that this may not be feasible as each school has a finite capacity.

20. According to the Administration, EDB and Shenzhen Municipal Education Bureau have jointly implemented the "Scheme of Classes for Hong Kong Children"⁴ since 2008 to encourage more Hong Kong children residing in the Mainland to complete primary education in Shenzhen. In the 2015-2016 school year, 11 minban (民辦) schools⁵ are providing Hong Kong curriculum for some 3 100 Hong Kong students residing in Shenzhen. Eligible primary six students in those schools can participate in the Secondary School Places Allocation System in Hong Kong. Some members have expressed concern about the high tuition fee charged by these minban schools which is in the range of RMB 70,000 to RMB 80,000 per year as told by parents in the Mainland. The Administration has clarified that the tuition fee charged by minban schools in Shenzhen in the 2015-2016 school year range from RMB 7,000 to RMB 30,000 per year (exclusive of fees for other services like hostel accommodation). The Administration is not aware of any minban school charging a school fee at the level as quoted by members.

⁴ The title of the Scheme was changed to "Scheme of Classes for Hong Kong Students" in 2013.

⁵ Non-government schools.

21. In response to some members' proposal of providing subvention for Hong Kong students studying in the Mainland, the Administration has advised that the provision of subvention for Hong Kong students studying outside Hong Kong involves wide policy implications. In its view, the issue of cross-boundary students is a transient problem which will be alleviated after the 2018-2019 school year. The existing arrangements, including the facilitation measures available for cross-boundary students and the arrangement of minban schools, are considered effective in dealing with the problem.

22. Some members have proposed the setting-up of Government-funded schools in Shenzhen for Hong Kong students. The Administration has advised that it involves complicated issues like the setting-up of a regulatory regime and the fixing of the level of subvention. In addition, there would be a problem of sustainability of such schools after the transient problem of cross-boundary students is solved.

23. Noting the lack of a mechanism (mentioned in paragraph 18 above) for allowing OWP holders who have settled in Hong Kong to return to the Mainland, members share the Chairman's concern that the absence of a mechanism for renouncing the Hong Kong permanent resident status will discourage children of Mainland-HKSAR families with such status from returning to the Mainland for receiving education, because the prohibition of "dual residency" will render them unable to obtain household registration in the Mainland and therefore unable to receive subsidized education there. The Administration is requested to address the problem of absence of such renouncing mechanism.

24. Members note that a provisional regulation on residential permit ("the Regulation") is enforced from 1 January 2016. According to this regulation, holders of residential permit can enjoy basic public services, including compulsory education provided by the Mainland authorities at the respective residential places. Members have requested the Administration to discuss with the Mainland authorities the possibility to extend the scope of application of the Regulation to Hong Kong people. Members hope that problems concerning cross-boundary students and complications concerning the return of OWP holders to Mainland China can be resolved to a certain extent if the Regulation can be applied to Hong Kong people.

Use of subsidized obstetric services

25. According to the Administration, Hong Kong's healthcare system is provided primarily for Hong Kong residents. Non-Hong Kong residents (i.e. non-eligible persons ("NEPs")), including Hong Kong residents' Mainland spouses, may seek non-emergency public healthcare services when there is spare service capacity and upon the payment of a fee chargeable to NEPs. In the absence of such spare capacity, the Hospital Authority ("HA") has adopted the "zero quota policy" since 2013 and reserved all beds for obstetric services in public hospitals for local women. No booking from non-local women has been accepted since then. The Administration understands that some Mainland pregnant women whose spouses are Hong Kong residents hope to give birth in Hong Kong. It has therefore established a special arrangement with private hospitals to allow Mainland pregnant women, whose spouses are Hong Kong residents and who wish to give birth in Hong Kong, to make delivery bookings at local private hospitals on the production of specified supporting documents.⁶

Population policy on raising fertility

26. According to the population policy report promulgated by the Steering Committee on Population Policy ("SCPP") in 2015, to tackle the problem of low fertility, the Administration has taken various measures to raise fertility. Some members take the view that the current restrictions (mentioned in paragraph 25 above) imposed on the use of subsidized obstetric services by Mainland women with Hong Kong resident spouses are not conducive to raising fertility. In this connection, the Secretariat has, as instructed by the Subcommittee, requested the Chief Secretary of Administration who is the Chairman of SCPP to clarify whether the population policy and the related measures to raise fertility cover Mainland-HKSAR families.

⁶ Supporting documents include:

- (a) a Hong Kong certificate of marriage, or a certificate of marriage notarized by a notary public office on the Mainland;
- (b) the husband's Hong Kong permanent identity card, or the husband's Hong Kong identity card and OWP;
- (c) oaths taken by the husband and the wife separately on their marital and parent-child relationships; and
- (d) a consent form signed by the couple authorizing the authority to conduct checks with the relevant Hong Kong and Mainland departments and organizations on their marriage certificate, proof of their identity and other documents.

27. Some members have commented that the prevailing policy governing the use of subsidized obstetric services by Mainland women whose spouses are Hong Kong residents are unfair to Mainland-HKSAR families. In their view, Mainland women with Hong Kong resident husbands should be entitled to use subsidized obstetric services as they are members of Hong Kong families and the lack of spare service capacity is not a justifiable reason for depriving them of this right. Without provision of subsidized obstetric services, families with limited financial means and thus unable to meet the medical expenses for delivery in Hong Kong may have to defer their child bearing plan.

28. According to the Administration, eligibility for public healthcare services are based on the status of the patients directly receiving the services (i.e. depending on whether the patients themselves are eligible persons or not) and not on the status of the patients' family members.

29. Some members have commented that the obstetric service package charge of \$39,000 applicable to NEP is obviously in excess of the cost for providing the service. They have queried why the fee for obstetric services is not calculated at the daily rate applicable to NEPs for other medical services. The Administration has explained that the fees of HA's private services, which are based on the costs of providing services to private patients, are adopted as the basis for setting the obstetric package charge for NEPs. In addition, reference has also been made to charges of private hospitals so that NEPs will not be attracted to public hospitals because of lower fees. In these members' view, the fee scale for the use of obstetric services by NEPs should be reviewed.

30. Given that HA hospitals have handled some 45 000 deliveries in 2011 and the projected number of deliveries in 2016 is about 39 000 only, some members have queried why HA cannot accommodate a certain number, say a few thousand, of deliveries by Mainland women with Hong Kong resident spouses. The Administration has advised that there is a high turnover rate of obstetricians in HA hospitals resulting in a manpower shortage problem. To meet the service demand, some doctors in the gynaecology services have been redeployed to provide obstetric services. As a result, the waiting time of gynaecology patients is prolonged. In 2015-16, the 90th percentile waiting time of routine cases in the specialist outpatient clinics of gynaecology, for instance, has reached one to two years. The Administration has also advised that the bed occupancy rate of neonatal intensive care units in HA in 2015 has reached 106% and that in 2016 is expected to reach 105%, both of which are well above the

appropriate level of 80% as advocated by HA's Coordinating Committee in Paediatrics. There remains no spare capacity to provide obstetric services for non-local women at public hospitals.

31. Some members consider that as the Hong Kong resident husbands will be able to accompany and render better care to their pregnant Mainland spouses if the latter can deliver in Hong Kong, the Administration should consider allowing these Mainland pregnant women to give birth in public hospitals in Hong Kong. Mr YIU Si-wing has suggested that if the capacity constraint cannot be resolved in the short term, the Administration should consider providing some form of subsidy/allowance for Mainland pregnant women with Hong Kong resident spouses to deliver in private hospitals in Hong Kong.

Supporting services for new arrivals

32. Members note that SWD provides funding for the International Social Service Hong Kong Branch ("ISSHK") to operate the Cross-boundary and Inter-country Casework Service to help individuals and families to handle and solve problems arising from geographical separation. Service counters of ISSHK at the Lo Wu Control Point and the Registration of Persons Office of the Immigration Department provide new arrivals with information on Hong Kong's social services and will refer them to appropriate service units as necessary in order to help identify and prevent family problems at an early stage. In addition, SWD has linked up its hotline with the New Arrivals Connect Hotline ("NAC Hotline") operated by ISSHK. Calls from new arrivals and their family members can be transferred to the NAC Hotline.

33. In response to some members' enquiry about the utilization rate of NAC Hotline, the Administration has advised that ISSHK has recorded 1 134 and 2 184 direct calls to the NAC Hotline in the first two quarters and last two quarters of 2015 respectively. Separately, SWD has referred some 500 calls to the NAC Hotline in 2015. These members have commented that the number of calls may not accurately reflect the service utilization as there can be repeated calls from the same person and on the same issue(s). The Administration is requested to explore the feasibility of refining the statistics and adopt a more representative indicator, e.g. the number of persons who have called the NAC Hotline. The Administration has advised that there are practical difficulties in recording the number of callers served.

34. Members have also expressed concern about the availability of induction programmes and appropriate training opportunities for adult new arrivals to enable their early integration into the community. They are of the view that new arrivals from the Mainland are a source of labour supply and more emphasis should be placed in unleashing their potential. According to the Administration, EDB will offer placement services to newly-arrived children aged six to 15 for admission to public sector schools in Hong Kong. For new arrivals over the age of 15, EDB will provide information on public sector schools or vocational training institutes based on the preference and ability of the persons concerned.

35. On the employment front, the Administration has advised that the Labour Department ("LD") provides employment services for job seekers (including new arrivals) through a network of 13 job centres, three industry-based recruitment centres and the Interactive Employment Service ("iES") website. Tailor-made employment briefings, thematic employment fairs and two dedicated webpages (one targeted for new arrivals and another one on part-time vacancies) are set up under iES to provide new arrivals with job search information and enhance their job search skills. In addition, a number of employment support programmes are administered by LD to enhance the employability of job seekers who have difficulty in finding jobs, such as the Employment Programme for the Middle-aged and the Work Trial Scheme.

Recommendations

36. The Subcommittee urges the Administration to consider the views and concerns expressed by members on all relevant issues raised by the Subcommittee. The Subcommittee also recommends that the Administration should:

- (a) propose to the Mainland authorities that applications from all the remaining eligible Mainland "overage children" should be accepted in the next phase;
- (b) propose to the Mainland authorities that the following persons should be allowed to apply under the OWP Scheme:
 - (i) Mainland adult children who are currently not eligible to apply for OWP as "overage children" owing to their non-compliance with the prescribed age limit; and

- (ii) Mainland single mothers who wish to reunite with their minor Hong Kong resident children in Hong Kong;
- (c) provide sufficient school places in Hong Kong for cross-boundary students;
- (d) address the issue relating to the Mainland household registration of persons with Hong Kong permanent resident status (including the absence of a mechanism for renouncing Hong Kong permanent resident status), which has discouraged children of Mainland-HKSAR families with such status from returning to the Mainland for receiving subsidized education;
- (e) discuss with the Mainland authorities the possibility to extend the scope of application of the Regulation to Hong Kong people with a view to solving the problems concerning cross-boundary students and the complication regarding the return of OWP holders to Mainland China;
- (f) clarify whether the population policy and the related measures to raise fertility cover members of Mainland-HKSAR families; and
- (g) consider allowing Mainland pregnant women whose spouses are Hong Kong residents to give birth in public hospitals in Hong Kong.

Advice sought

37. Members are invited to note the work of the Subcommittee.

Appendix I

Subcommittee to Study Issues relating to Mainland-HKSAR Families

Terms of reference

To study issues relating to Mainland-HKSAR families and make recommendations where necessary.

Subcommittee to Study Issues relating to Mainland-HKSAR Families

Membership list

Chairman Hon IP Kwok-him, GBS, JP

Members Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHEUNG Kwok-che
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Dr Hon Kenneth CHAN Ka-lok
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP (since 23 November 2015)
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

(Total : 19 members)

Clerk Mr Colin CHUI

Legal Adviser Miss Rachel DAI

Date 23 November 2015

Subcommittee to Study Issues relating to Mainland-HKSAR Families

List of deputations/individuals which/who have given oral representation to the Subcommittee

1. Christian Action
2. Concern Group on the Split Single Parent Families
3. Justice & Peace Commission of The Hong Kong Catholic Diocese
4. Labour Party
5. Mainland-Hong Kong Families Rights Association - Single Mother Concern Group
6. Mission To New Arrivals
7. New Arrival Women League
8. New People's Party
9. Society for Community Organization
10. The Coalition for Mainland-Hong Kong Families Rights
11. The Lion Rock Institute
12. Tsuen Wan - Our New Net
13. Young DAB
14. 居留權大學
15. 居留權委員會
16. 爭取子女居港權家長協會
17. 陳少枝女士
18. 黃碧瑜女士
19. 新移民互助會
20. 準移民關注組
21. 蔡錐女士

List of deputations which have provided written views to the Subcommittee only

1. Mainland-Hong Kong Families Rights Association
2. 香港大媽舞推廣協會