

立法會
Legislative Council

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**Subcommittee on
Immigration (Unauthorized Entrants) (Amendment) Order 2016**

**Minutes of meeting
held on Monday, 6 June 2016, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon TAM Yiu-chung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon WONG Kwok-kin, SBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon YIU Si-wing, BBS
Hon CHAN Han-pan, JP
Hon Dennis KWOK
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
Hon Alvin YEUNG Ngok-kiu

Members absent : Hon Emily LAU Wai-hing, JP
Hon Frankie YICK Chi-ming, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers : Item II
attending

Ms Maggie WONG, JP
Deputy Secretary for Security 3

Mr Billy WOO
Principal Assistant Secretary for Security D

Mr Freddy CHIK
Assistant Secretary for Security D1

Mr P H FUNG
Assistant Director of Immigration
(Enforcement and Removal Assessment)

Mr Nelson CHENG
Assistant Commissioner of Police (Operations)

Ms Mandy NG
Senior Government Counsel (Law Drafting Division)
Department of Justice

Clerk in : Miss Betty MA
attendance Chief Council Secretary (2) 1

Staff in : Miss Winnie LO
attendance Assistant Legal Adviser 7

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Mina CHAN
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Election of Chairman

Mr IP Kwok-him was elected Chairman of the Subcommittee.

II. Meeting with the Administration

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. Members requested the Administration to provide the following information to the Panel on Security :

- (a) information on the policy, if any, regarding the repatriation of non-refoulement claimants convicted of crime in Germany; and
- (b) a breakdown by place of origin of illegal immigrants, including the Mainland, the Macao Special Administrative Region, Vietnam and the countries included in the Immigration (Unauthorized Entrants) (Amendment) Order 2016 ("the Amendment Order"), intercepted in the past few years.

III. Any other business

4. The Chairman concluded that the Subcommittee had completed scrutiny of the Amendment Order. Members noted that the Chairman would report on the deliberations of the Subcommittee at the House Committee meeting on 10 June 2016. The deadline for giving notice of amendments, if any, to the Amendment Order was 15 June 2016.

5. There being no other business, the meeting ended at 12:18 pm.

**Proceedings of meeting of the Subcommittee on
Immigration (Unauthorized Entrants) (Amendment) Order 2016
held on Monday, 6 June 2016, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)/Discussion	Action Required
000000 - 000300	Mr James TO Mr YIU Si-wing Mr WONG Ting-kwong Mr IP Kwok-him	Election of Chairman	
000301 - 000841	Chairman Admin	Briefing by the Administration on the Immigration (Unauthorized Entrants) (Amendment) Order 2016 ("the Amendment Order").	
000842 - 001603	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's concern regarding :</p> <ul style="list-style-type: none"> (a) the effectiveness of the Amendment Order in achieving the desired deterrent effect against smuggling syndicates; (b) the considerations for adding the eight designated countries to the Immigration (Unauthorized Entrants) Order (Cap. 115D) ("the Order"); (c) the reason for adding only the eight designated countries to the Order but not all countries; (d) the number of non-ethnic Chinese illegal immigrants ("NECIIs") intercepted in 2015; and (e) the rationale for proposing the addition of Somalia to the Order. <p>Administration's response that :</p> <ul style="list-style-type: none"> (a) the Administration had analysed the profile of NECIIs and their continued trend in the past five years before proposing the list of countries to be covered under the Amendment Order; (b) over 99% of NECIIs would have been covered under the Amendment Order after its coming into operation; 	

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		<p>(c) the legislative intent of the Order was directed at syndicates smuggling illegal immigrants from specified countries. Expanding the list to cover all countries in the Amendment Order might deviate from the legislative intent of Part VIIA of the Immigration Ordinance (Cap. 115) ("IO");</p> <p>(d) 3 819 NECIIs had been intercepted in Hong Kong in 2015;</p> <p>(e) 24 NECIIs from Somali had been intercepted in Hong Kong in the past five years; and</p> <p>(f) besides the number of NECIIs intercepted in a given year, the trend of illegal immigration from a country was also taken into consideration in proposing the inclusion of a country in the Amendment Order.</p>	
001604 - 001814	Chairman Mr CHAN Han-pan Admin	<p>Mr CHAN Han-pan's expression of support for the Amendment Order and question regarding whether the Amendment Order was directed at syndicates involved in the smuggling of NECIIs into Hong Kong.</p> <p>Administration's response that the legislative proposal sought to impose a heavier penalty on syndicates involved in the smuggling of NECIIs into Hong Kong. NECIIs who were being smuggled, even if they were declared as unauthorized entrants ("UEs"), were not punishable under Part VIIA of IO.</p>	
001815 - 002623	Chairman Mr TANG Ka-piu Admin	<p>Mr TANG Ka-piu's concerns regarding :</p> <p>(a) an increasing number of non-ethnic Chinese illegal immigrants ("NECIIs") taking up illegal employment in Hong Kong, thus creating security problems and reducing the job opportunities of local workers;</p> <p>(b) whether persons who arranged illegal employment for UEs in addition to smuggling UEs into Hong Kong would be subject to a heavier sentence on conviction; and</p>	

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		<p>(c) whether some European countries such as Germany repatriated non-refoulement claimants convicted of crime in the country.</p> <p>Administration's response that :</p> <p>(a) the legislative proposal was one of the proposed measures to address problems relating to non-refoulement claims and illegal immigration. The Administration would launch a comprehensive review of the strategy of handling non-refoulement claims in four dimensions including pre-arrival control, screening procedures, detention, and removal and enforcement;</p> <p>(b) relevant Mainland authorities had launched enforcement operations in parallel with the Hong Kong Police and the Immigration Department ("ImmD") to combat human smuggling across the boundary;</p> <p>(c) joint departmental efforts had been stepped up against illegal employment of non-refoulement claimants. Assisting a UE to remain by arranging illegal employment for him would violate Part VIIA of IO, apart from other provisions prohibiting illegal employment. Prosecutions had been instituted against claimants found to have taken up illegal employment and the relevant employers, who were both liable to imprisonment upon conviction;</p> <p>(d) it was conducting a review on the unified screening mechanism ("USM"), including the deadline for submitting a non-refoulement claim form and the arrangements for handling situations in which a claimant failed to attend an interview without explanation; and</p> <p>(e) the court had required that even if a claimant had been convicted of crime, his non-refoulement claim was still required to be screened under procedures which met a high standard of fairness.</p>	

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		The Administration was requested to provide information on the policy, if any, regarding the repatriation of non-refoulement claimants convicted of crime in Germany.	Admin
002624 - 003354	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's expression of support for stepping up penalties against syndicates involved in smuggling of illegal immigrants.</p> <p>Dr CHEUNG's concerns regarding :</p> <ul style="list-style-type: none"> (a) the number of illegal immigrants from the Mainland, the Macao Special Administrative Region, Vietnam and the countries proposed in the Amendment Order; (b) the percentage of NECIIs among non-refoulement claimants; (c) why the countries included in the Amendment Order did not cover Indonesia, which was a major country of origin of non-refoulement claimants; and (d) the reasons for a sharp increase in the number of NECIIs from Vietnam in recent years. <p>Administration's response that :</p> <ul style="list-style-type: none"> (a) besides nearly 60% of NECIIs originated from Vietnam who were covered by existing legislation and mainly entered Hong Kong by land, over 40% of NECIIs intercepted in the past two years originated from other countries such as Pakistan, Bangladesh, India and Nepal; (b) in the first five months of 2016, nearly 60% of non-refoulement claimants in Hong Kong were NECIIs; (c) in the past few years, over 90% of non-refoulement claimants from Indonesia were overstayers and very few of them were illegal immigrants; and (d) it could be noted that some NECIIs from Vietnam had been arranged by smuggling 	

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		<p>syndicates to take up illegal employment in Hong Kong with forged identity cards.</p> <p>The Administration was requested to provide a breakdown by place of origin of illegal immigrants, including the Mainland, the Macao Special Administrative Region, Vietnam and the countries included in the Amendment Order, intercepted in the past few years.</p>	<p>Admin</p>
<i>Break</i>			
003723 - 004512	<p>Chairman Mr Alvin YEUNG Admin</p>	<p>Mr Alvin YEUNG's expression of support in principle for the Amendment Order.</p> <p>Mr YEUNG's concern regarding :</p> <p>(a) the effectiveness of the Amendment Order in achieving the desired deterrent effect against smuggling syndicates, especially against the "snake heads" of the smuggling syndicates who might not have accompanied NECIIs in their passage to Hong Kong;</p> <p>(b) whether the Administration would explain Hong Kong's policy on NECIIs to the major origins of NECIIs; and</p> <p>(c) whether there were Mainland laws against the smuggling of illegal immigrants.</p> <p>Administration's response that :</p> <p>(a) Part VIIA of IO provided for a number of stringent penalties and strengthened enforcement powers against the smuggling of UEs. It would be an offence for the crew (including the captain), the owner and his agent of any ship carrying a UE on board into Hong Kong, or anyone who arranged or assisted or participated in making arrangements to enable a UE's voyage or passage to Hong Kong (whether by sea or by land);</p> <p>(b) representatives of the Administration had visited the relevant government departments of India and Vietnam to discuss the problems and launch publicity in these two countries on Hong Kong's law and policy</p>	

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		<p>relating to USM. Similar visits would be paid to other major countries where NECIIs originated; and</p> <p>(c) under Article 318 of the Criminal Law of the People's Republic of China, a person convicted of assisting smuggling across borders would be liable to a fixed-term imprisonment of not less than two years and not more than seven years.</p>	
004513 - 005522	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's concerns regarding :</p> <p>(a) whether the Administration and Mainland authorities would jointly combat the problem of smuggling of illegal immigrants at source, given that some "snake heads" of smuggling syndicates might not have accompanied NECIIs in their passage to Hong Kong;</p> <p>(b) whether the Administration would step up operations against illegal employment; and</p> <p>(c) whether the Subcommittee would hold a meeting to receive views relating to the rights of non-refoulement claimants.</p> <p>Administration's response that :</p> <p>(a) relevant Mainland authorities had launched enforcement operations in parallel with the Hong Kong Police and ImmD to combat human smuggling at the boundary;</p> <p>(b) in the event that any person or syndicates arranging the passage of NECIIs into Hong Kong from the Mainland were outside Hong Kong, the relevant authorities in the Mainland would be notified and requested to take enforcement actions against such persons; and</p> <p>(c) the legislative proposal sought to impose a heavier penalty on syndicates involved in the smuggling of NECIIs into Hong Kong. NECIIs who were being smuggled, even if they were declared as UEs, were not punishable under Part VIIA of IO.</p>	

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		<p>The Chairman's remark that regarding issues relating to the rights of non-refoulement claimants, which were not within the scope of the Amendment Order, the Panel on Security had scheduled to receive the views of the public on the relevant subject at its meeting on the following day and a special meeting on 11 June 2016.</p>	
005523 - 010217	<p>Chairman Mr YIU Si-wing Admin</p>	<p>Mr YIU Si-wing's expression of support for the Amendment Order.</p> <p>Mr YIU's questions regarding :</p> <p>(a) measures adopted by the Administration to address the problem of a large number of persons from countries such as India entering Hong Kong under visa-free arrangements and lodging a non-refoulement claim after they were in Hong Kong; and</p> <p>(b) the percentage of illegal immigrants and overstayers among non-refoulement claimants from Vietnam and India.</p> <p>Administration's response that :</p> <p>(a) it was actively developing the details for introducing pre-arrival registration to prevent those visitors who enter Hong Kong under visa-free arrangements and with a high risk of lodging non-refoulement claims from boarding in the first place; and</p> <p>(b) over 90% of non-refoulement claimants from Vietnam were illegal immigrants and about 70 % to 80% of claimants from India were overstayers.</p> <p>Mr YIU's expression of support for the early introduction of pre-arrival registration for visitors from high risk countries.</p>	

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010218 - 012529	<p>Chairman Mr Paul TSE Mr Alvin YEUNG Dr Fernando CHEUNG Mr YIU Si-wing Admin</p>	<p>Mr Paul TSE's expression of support for the Amendment Order.</p> <p>Mr Paul TSE's concern regarding :</p> <ul style="list-style-type: none"> (a) the difference in penalty level for breach of the provisions in Part VIIA and breach of other parts of IO; and (b) whether there were safeguards against a person who unintentionally assisted a UE to remain in Hong Kong. <p>Mr YIU Si-wing's concern regarding whether any person who unintentionally assisted a UE to remain in Hong Kong would have committed an offence under the Order.</p> <p>Mr Alvin YEUNG's question regarding whether persons from countries on which pre-arrival registration was imposed would be refused entry into Hong Kong unless with pre-arrival registration.</p> <p>Dr Fernando CHEUNG's view that :</p> <ul style="list-style-type: none"> (a) consideration should be given to extending the 1951 Refugee Convention and its 1967 Protocols ("the Refugee Convention") to Hong Kong; and (b) there was insufficient ground for the inclusion of Somalia and Nigeria in the Amendment Order. <p>Administration's response that :</p> <ul style="list-style-type: none"> (a) there were no penalty provisions in IO comparable to those in Part VIIA against persons or syndicates arranging the passage of NECIIs into Hong Kong or assisting them to remain. A person who committed an offence under the provisions in IO other than those under Part VIIA was liable on conviction on indictment to imprisonment for seven years and a fine of \$600,000, if he was the captain, and three years otherwise. Part VIIA of IO provided for a number of more stringent penalties and strengthened 	

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		<p>enforcement powers against the smuggling of UEs. Notably, the crew (including the captain), the owner and his agent of any ship carrying a UE on board into Hong Kong, or anyone who arranged or assisted or participated in making arrangements to enable a UE's voyage or passage to Hong Kong (whether by sea or by land) committed an offence and was liable on conviction on indictment to imprisonment for 14 years and a fine of \$5,000,000;</p> <p>(b) it was provided in section 37DA(2) of IO that no person would be convicted of an offence under section 37DA(1) of IO if he proved that he did not know, had no reason to suspect and could not with reasonable diligence have discovered that the person he assisted was a UE;</p> <p>(c) the pre-arrival registration arrangement sought to prevent those visitors who entered Hong Kong under visa-free arrangements and with a high risk of lodging non-refoulement claims from boarding in the first place;</p> <p>(d) it had analysed the profile of NECIIs and their continual trend in the past five years before proposing the list of countries to be covered under the Amendment Order; and</p> <p>(e) the Refugee Convention had never been applied to Hong Kong.</p>	
012530 - 012642	Chairman Admin	Examination of the provisions of the Amendment Order.	
012643 - 012844	Chairman	<p>Completion of scrutiny of the Amendment Order.</p> <p>Date of reporting the work of the Subcommittee to the House Committee and deadline for giving notice of amendment to the Amendment Order.</p> <p>The Administration was requested to provide the information requested by members at the meeting to the Panel on Security.</p>	Admin

Council Business Division 2
Legislative Council Secretariat
11 July 2016