

香港特別行政區政府  
保安局



The Government of the  
Hong Kong Special Administrative Region  
Security Bureau

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本函檔號 Our Ref.: SBCR 7/3221/15 Pt.4  
來函檔號 Your Ref.:

*By email*

18 January 2017

Ms Betty Ma  
Clerk to Panel on Security  
Legislative Council  
Legislative Council Complex  
Central  
Hong Kong

Dear Betty,

### **Follow-up to the meeting of 11 November 2016**

I write to provide supplementary information in response to questions raised by Members at the Panel on Security's meeting of 11 November 2016.

#### Shortage of detention facilities

2. The Government is considering, from legal, resource and public security perspectives, how to enhance capacity in detaining illegal immigrants (including non-refoulement claimants) and to provide better support for the operation of detention facilities. We will keep the Legislative Council updated as and when there are concrete proposals.

Conviction figures in respect of employers who employed claimants

3. In 2016, the Immigration Department (ImmD) launched 599 targeted operations against non-ethnic Chinese (NEC) illegal workers (including joint-operations with other LEAs), increasing by 70% comparing to 2015. 487 NEC illegal workers and 299 local employers have been arrested, respectively increasing by 23% and 45% comparing to 2015. ImmD does not maintain figures relating to convictions.

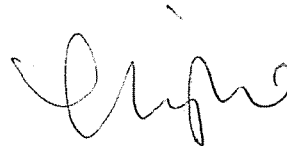
Arrest figures in respect of claimants

4. According to the Police's record, 1 506 NEC persons on recognisance (mostly non-refoulement claimants) were arrested in 2016 for criminal offences (other than taking up unlawful employment), increasing by 35% comparing to 2015.

5. The Government's reply to the questions tabled by Hon Dennis Kwok at the meeting is at Annex.

6. If you have any further enquiries, please contact the undersigned at 2810 2676.

Yours faithfully,



(Billy Woo)  
for Secretary for Security

**Responses to questions raised by Hon Dennis Kwok**

**Background**

To recap, since commencement of the unified screening mechanism (“USM”) in March 2014, there has been a surge of illegal immigrants lodging non-refoulement claims in Hong Kong<sup>1</sup>. There is clear consensus in the community that the processing of claims should be expedited in order to clear the backlog of claims as fast as possible. Following an internal review, the Immigration Department (“ImmD”) assesses that its output can be increased by 75% in 2017-18 to above 5 000 decisions per year. To achieve that target, the number of cases to start screening will need to increase to 23 or more cases per day in tandem. Whilst over 540 lawyers are trained to handle USM cases, the existing scheme operated by the Duty Lawyer Service (“DLS”) to provide publicly-funded legal assistance (“PFLA”) to claimants (“the DLS Scheme”) is only able to handle 13 referrals per day. Each participating lawyer now handles an average of 5 cases per year. The DLS Scheme may not be readily scalable to handle a substantial increase in caseload, mainly due to its mode of operation<sup>2</sup>. As such, there is a genuine need for the Government to implement a Pilot Scheme as soon as practicable to set up a supplementary roster (comprising lawyers from the same pool as the DLS Scheme) for providing claimants with the same level of PFLA of the same quality in the screening process (“the Pilot Scheme”) to provide PFLA to 10 or more claimants per day.

2. To avoid doubt, the DLS Scheme will need to continue to operate. Indeed, we have already written on 28 October 2016 to invite DLS to extend the current Memorandum of Administrative Arrangements for 3 years. On the other hand, we note that different models for providing

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<sup>1</sup> The number of claims increased four times from an average of 100 per month in 2010-13 to 410 from March 2014 to October 2016.

<sup>2</sup> In FY2015-16, over 40% of the expenditure incurred under the DLS Scheme was staff (comprising 41 Court Liaison Officers (CLOs) at entry rank, 13 CLOs at various promotion ranks, and 18 other administrative/supporting staff) and operating costs. DLS requested the addition of 14 posts (9 CLOs and 5 supporting staff) just to maintain the existing quota of 13 cases per day. DLS has also indicated difficulties in recruiting and retaining CLOs.

PFLA to claimants (where available) are adopted by other common law jurisdictions. We consider it an opportune time to operate the Pilot Scheme to (a) speed up claims determination as necessitated by current situation and (b) to test out a different model of delivery of PFLA. The experience gathered in operating the DLS Scheme and the Pilot Scheme, together with further research into other legal assistance regimes in Hong Kong and other relevant overseas practice, will inform the Government's deliberation, as part of our on-going comprehensive review, on the most suitable arrangement for provision of PFLA to claimants in the longer run.

### **Fee level and other support**

3. To ensure that legal assistance provided to claimants under the DLS Scheme and the Pilot Scheme are on par, we will draw reference to the average legal fees per case under the existing DLS scheme in setting the standard fee level under the Pilot Scheme, covering the three stages of first-tier screening, i.e. completion of a claim form, attending screening interview(s) and explanation of the decision to the claimant. Separately, an allowance will be supplemented to cover legal executive support, including for taking initial instructions from the claimant and conducting necessary research, etc.; the assigned lawyer is hence given the flexibility to discharge such legal executive work in a way that best fits his/her circumstances. As in the DLS scheme, additional PFLA would be offered under the Pilot Scheme at the appeal / petition stage subject to lawyers' assessment on the merits of appeal / petition. If PFLA is offered, an additional standard fee for assisting the claimant at the appeal/petition stage under the Pilot Scheme will be paid to the assigned lawyer.

4. Although we are still gathering more data on fees and have yet to come to a final decision on the flat fee and the additional allowance for legal executive support, for illustration purpose, if the above standards were adopted, lawyers under the Pilot Scheme would be paid a total flat fee of \$27,200<sup>3</sup> for providing assistance to each claim discharged (from

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<sup>3</sup> Amongst all 1 257 cases discharged during the first half of 2016, the average fees for the three stages of first-tier screening sum to \$20,700, including (a) \$9,900 for stage one (completion of claim form); (b) \$7,400 for stage two (attending screening interview); and (c) \$3,400 for stage three (explanation of decision to claimant). As for legal executive support (which is mainly required to take initial instructions from the claimant), available records indicate that such duties normally take one full-day to discharge (translating to a daily rate of \$6,520).

serving of claim form to decision by ImmD); an additional flat fee of \$7,500 will be paid for advising cases on appeal, subject to merits test.

5. In addition to the fees above, the Pilot Scheme Office (“PSO”) will provide assistance to lawyers on liaison and secretarial work if so requested (including liaison between claimants, their assigned lawyer, interpreters and decision-makers at ImmD and the Torture Claims Appeal Board, as the case may be). PSO will also arrange interpretation service on public funds on the instruction of assigned lawyers and make available interview rooms for lawyers to book to use.

6. In case the lawyer under the Pilot Scheme is not satisfied that a reasonable level of legal assistance could be provided to the claimant within the standard fee, the case can be referred to the DLS scheme under its existing quota. In other words, such arrangement will always be initiated by the assigned case lawyer under the Pilot Scheme. PSO, on receiving the suggestion of the assigned case lawyer, will consider the suggestion in consultation with its in-house legal adviser (who is separate and distinct from the legal advisers in the Department of Justice (“DOJ”) who advise ImmD on non-refoulement matters) and decide on whether to accept the suggestion. If it does, the case will be transferred to DLS direct. To avoid doubt, ImmD will not play any role under this process. We note that similar arrangements are put in place by the Legal Aid Agency (LAA) of the United Kingdom: where the lawyer (who is normally paid a flat fee as mentioned at paragraph 5 above) is of the view that a particular case may require him or her to spend three times or more of the “technical hours” to be rendered under the flat fee, he or she may apply to LAA for calculation of legal fees by an hourly rate instead.

7. In the event that PSO passes a case to DLS for handling on the suggestion of an assigned lawyer, the assigned lawyer will be paid for his first meeting with the claimant, which we estimate shall last for around two hours.

8. The above aims to ensure that all claimants will receive adequate legal support that is consistent with the high standards of fairness, whether through the DLS Scheme or the Pilot Scheme. We trust that, upon accepting an assignment, all lawyers will act in the best interest of their clients (i.e. claimants) and provide them with all assistance necessary to establish their claims.

## Way Forward

9. The Government has an ongoing discussion with the legal professional bodies and DLS on the operational details of the Pilot Scheme. It is our target to implement the Pilot Scheme as soon as practicable. Briefing sessions will be arranged to participating lawyers and their staff to familiarize them with the operation of the Pilot Scheme. The operation of the Pilot Scheme will be reviewed 12 months after its commencement.

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