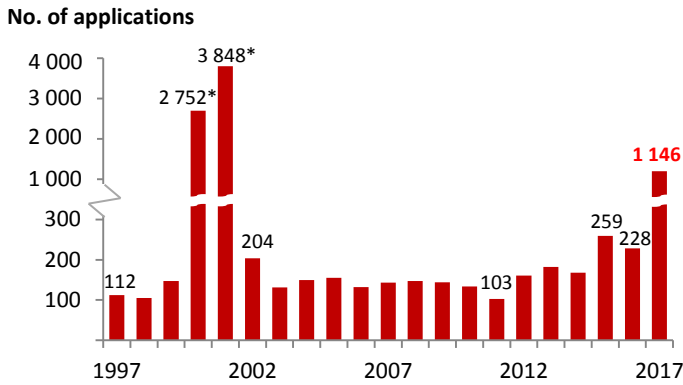




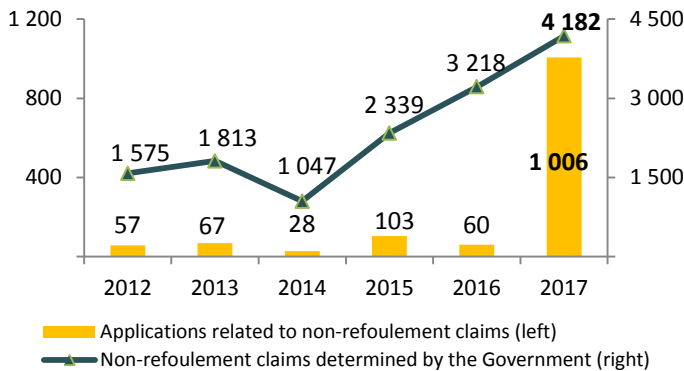
**Judicial review and non-refoulement claims**

**Figure 1 – Applications for leave for judicial review**

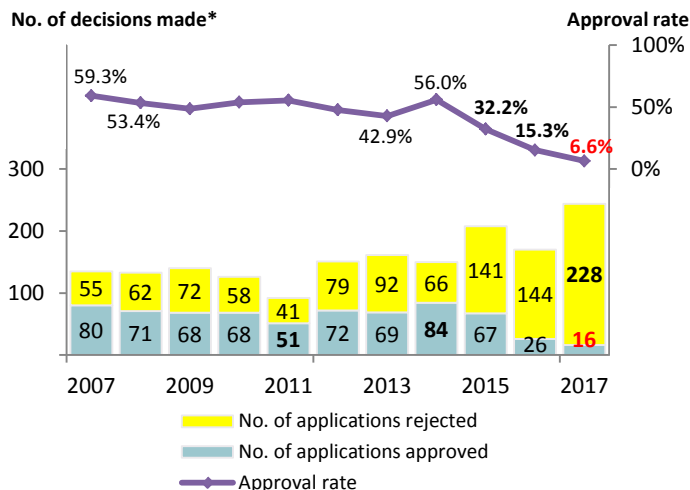


Note: (\*) The upsurge in 2000-2001 was mostly attributable to the judicial review for right of abode cases. Such cases took up about 97% of the caseload in 2001.

**Figure 2 – Number of JR leave applications related to non-refoulement claims**



**Figure 3 – Outcome of JR leave applications**



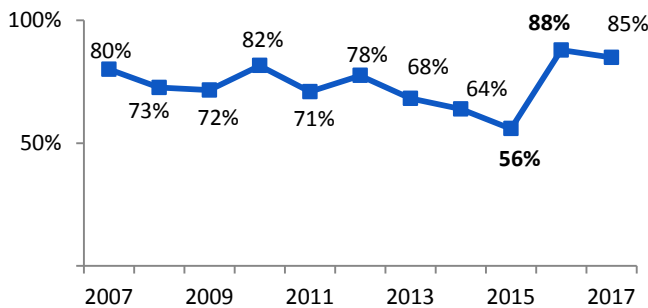
Note: (\*) Figures exclude applications withdrawn or pending decision. 7%, 14% and 76% of applications filed in 2015, 2016 and 2017 were still pending decision as at January 2018.

**Highlights**

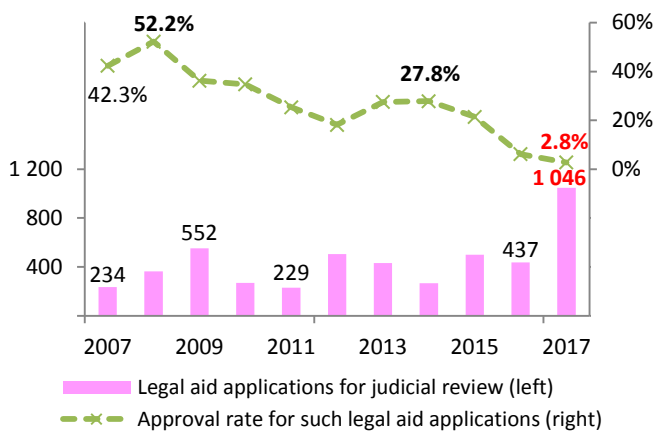
- Article 35 of the Basic Law provides for the right of citizens to challenge decisions made by public authorities through judicial review ("JR") at courts, but citizens must obtain permission (i.e. leave) from the court beforehand. While the number of such applications has registered an upsurge during 2000-2001, this was entirely attributable to the right of abode claims. It then stabilized and eased back to a narrow range of 100-260 in the ensuing years till 2016, before rebounding strongly by 403% to 1 146 in 2017 (Figure 1).
- To a considerable extent, the rebound in 2017 was due to a spike in non-refoulement claims (i.e. claims for the right to stay in Hong Kong due to inhuman treatment in home countries) filed by foreigners. Amongst the JR leave applications filed in 2017, 1 006 or 88% were related to such claims. As the Government has devoted more manpower resources to expedite the screening process in the more recent years, some claimants whose cases were identified as unsubstantiated would seek justice in court. For instance, the Government determined a total of 4 182 such claims in 2017, but only 38 or 1% of them were substantiated, triggering an upsurge in such JR leave applications (Figure 2).
- In the decision over JR leave applications, the Court of Final Appeal raised the approval threshold in November 2007, from "potential arguability" to "reasonable arguability", implying that leave would only be granted to cases with realistic prospects of success. Yet the approval rate dropped only slightly during 2008-2014, with an overall approval rate of 51% in determined cases. However, the approval rate fell steadily more recently, to 32% in 2015 and further to 7% in 2017 (Figure 3).

## Judicial review and non-refoulement claims (cont'd)

**Figure 4 – Court rulings of JR in favour of the Government**

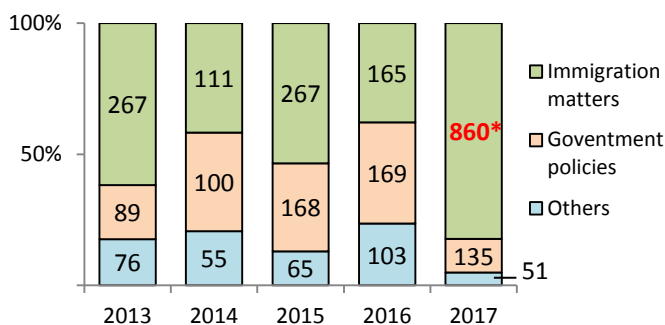


**Figure 5 – Legal aid applications for JR\***



Note: (\*) Approval for legal aid for judicial review may not be granted within the same year as the application was received.

**Figure 6 – Legal aid applications for JR by category**



Note: (\*) 841 cases were related to non-refoulement claims.

### Highlights

- After obtaining the leave from the court, JR applications can proceed to full hearing in court on the grounds of illegality, irrationality or procedural impropriety of the decision or action of the Government or other public bodies. For cases involving the Government and heard in the Court of Final Appeal or the High Court, the proportion of rulings in favour of the Government ranged from 56% to 88% annually during 2007-2017, with an overall rate of 74% (Figure 4).
- There are public concerns about how far JR applicants rely on legal aid due to a lack of financial means. Over the past decade, the number of legal aid applications for JR more than quadrupled to 1 046 cases in 2017. Nonetheless, the approval rate for such applications witnessed a downtrend, from a peak of 52% in 2008 to 28% in 2014, and further to just 3% in 2017 (Figure 5).
- Analysed by case category within the legal aid applications for JR, "immigration matters" witnessed a visible upshot most recently due to the aforementioned non-refoulement claims, accounting for 82% of the overall caseload in 2017. This was followed by "government policies and related matters", with a share of 13% (Figure 6). As a whole, the Government spending on legal aid for JR increased by a total of 66% over the past five years to HK\$36.3 million in 2016-2017.

Data sources: Latest figures from Department of Justice, Immigration Department, and Legal Aid Department.