

## **For information**

### **LegCo Panel on Security**

#### **Immigration policy and Discretionary Power of Director of Immigration under the Immigration Ordinance**

#### **Purpose**

In response to Members' request at the Security Panel meeting held on 19 January 2005, this paper provides information on the relationship between our immigration policy and the discretionary power of Director of Immigration to allow a person to stay in Hong Kong under the Immigration Ordinance.

#### **Details**

2. It is a fundamental principle of law that in the exercise of the statutory discretion by the executive authority, each case must be considered on its own merits and decided as the public interest requires at the time.
3. The exercise of the discretionary power by the Director of Immigration under the Immigration Ordinance (Cap. 115) is no exception. It has been firmly established in the decision of the majority of the Court of Final Appeal in the case of *Lau Kong-yung and Others v Director of Immigration* of 3 December 1999 as reported in [1999] 3 HKLRD 778 that the Director's discretion must be exercised in the context of statutory scheme of immigration control, which reflects and provides the legal basis for immigration policy.
4. Indeed, as early as in 1993, the Court of Appeal in *Ho Ming-sai and Others v Director of Immigration* [1994] 1 HKLR 21 and *R. v Director of Immigration, ex parte Chan Heung-mui and Others* (1993) 3 HKPLR 533 made it clear that, in the exercise of his discretion under section 13 of the Immigration Ordinance (Cap. 115), the Director is sanctioning an exception when sufficiently strong and powerful humanitarian grounds are demonstrated to justify a favourable decision.
5. These principles are not disturbed by the judgment of the Court of Final Appeal handed down on 10 January 2002 in the *Ng Siu Tung* and *Sin Hoi-chu* cases (FACV 1 – 3 of 2001). The majority judgment confirms that the exercise of the Director's discretion must not be inconsistent with the statutory

provisions nor must it undermine the general constitutional scheme and the specific statutory purpose.

6. In the exercise of his discretion under the Immigration Ordinance the Director of Immigration must therefore not lose sight of the predominant object of the Immigration Ordinance which is to maintain effective immigration control. Exceptions to the established immigration policies would be allowed in circumstances which justify the departure from those policies.

Security Bureau  
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