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*Legislative Council*

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**Paper for the House Committee**

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

**Purpose**

This paper reports on the deliberations of the Subcommittee on Immigration (Unauthorized Entrants) (Amendment) Order 2016 ("the Subcommittee").

**Background**

2. According to the Administration, the number of non-ethnic Chinese illegal immigrants ("NECIIs") intercepted has drastically increased in recent years, from 547 in 2011 to 3 819 in 2015, representing an almost six-fold increase. The majority of these NECIIs originated from Vietnam, Pakistan, Bangladesh, India, and Nepal. During the same period, the number of torture/non-refoulement claimants in Hong Kong has increased from 1 432 in 2011 to 4 634 in 2014 and 5 053 in 2015. At as the end of 2015, amongst the 10 922 claimants in Hong Kong pending screening by the Immigration Department, over half (51%) are NECIIs. According to the Police's record, in 2015 there were 1 113 counts of arrest of non-ethnic Chinese persons on recognizance, who were mostly claimants, for serious crimes such as theft, physical assault, and drug trafficking, representing an increase of 67% over 2014.

**The Immigration (Unauthorized Entrants) (Amendment) Order 2016 ("the Amendment Order")**

3. The Amendment Order is made by the Chief Executive in Council under section 37B of the Immigration Ordinance ("IO") (Cap. 115) to amend

the Immigration (Unauthorized Entrants) Order (Cap. 115D) ("the Order") to extend the scope of unauthorized entrants ("UEs") provided in Part VIIA of IO to include persons resident or formerly resident in Afghanistan, Bangladesh, India, Nepal, Nigeria, Pakistan, Somalia and Sri Lanka. Under the Amendment Order, the smuggling of illegal immigrants from these countries is subject to the offence provisions under Part VIIA including those relating to arranging and assisting in carrying UEs and assisting UEs to remain in Hong Kong.

4. The Amendment Order comes into operation on the date of gazettal, i.e. 20 May 2016.

### **The Subcommittee**

5. At the House Committee meeting on 27 May 2016, Members agreed to form a subcommittee to study the Amendment Order. The membership list of the Subcommittee is in the **Appendix**.

6. Under the chairmanship of Hon IP Kwok-him, the Subcommittee has held one meeting with the Administration.

### **Deliberations of the Subcommittee**

#### Countries to be covered under the Amendment Order

7. While expressing support for the Administration's proposal to extend the scope of UEs provided in Part VIIA of IO to include persons resident or formerly resident in Afghanistan, Bangladesh, India, Nepal, Nigeria, Pakistan, Somalia and Sri Lanka to enhance the penalties against smuggling of illegal immigrants, some members have expressed concern about why the Amendment Order would only apply to these designated countries but not all countries. The Administration has advised that the legislative intent of the Order is directed at syndicates smuggling illegal immigrants from specified countries, irrespective of where UEs start their voyage or passage to Hong Kong. Expanding the list to cover all countries in the Amendment Order may deviate from the legislative intent of Part VIIA of IO.

8. Some members have enquired about the considerations for adding the eight designated countries to the Order, given that Vietnam, which accounts for a large proportion of NECIIs, is already covered under the Order. Some members are particularly concerned about the rationale for proposing to add

Somalia, but not Indonesia, to the Order, as less than 10 NECIIs intercepted are originated from Somalia in a year, whereas Indonesia is the country of origin of a number of non-refoulement claimants.

9. The Administration has advised that besides nearly 60% of NECIIs originated from Vietnam who are 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. It is also noteworthy that as of the first half of 2016, amongst the non-refoulement claimants in Hong Kong, nearly 60% are NECIIs. As regards non-refoulement claimants from Indonesia, it is noted that over 90% are overstayers and very few of them were illegal immigrants in the past few years. The Administration has stressed that it has analyzed 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. Over 99% of NECIIs would have been covered under the Amendment Order after its coming into operation.

#### Effect of the Amendment Order

10. Some members are concerned about 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 may not have accompanied NECIIs in their passage to Hong Kong. The Administration has drawn members' attention to the fact that there are 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. The Administration has pointed out that Part VIIA of IO provides for a number of stringent penalties and strengthened 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 arranges or assists or participates in making arrangements to enable a UE's voyage or passage to Hong Kong (whether by sea or by land) commits an offence and is liable on conviction on indictment to imprisonment for 14 years and a fine of \$5,000,000. Moreover, anyone who assists a UE to remain in Hong Kong is liable on conviction on indictment to imprisonment for 10 years and a fine of \$500,000. In the event that any persons or syndicates arranging the passage of NECIIs into Hong Kong from the Mainland are outside Hong Kong, the relevant authorities in the Mainland would be notified and requested to take enforcement actions against such persons.

11. Some members have expressed concern about whether the legislative proposal would lead to a change in a claimant's status and hence the chance of success in his claim. The Administration has explained that the proposal seeks to impose a heavier penalty on syndicates involved in the smuggling of NECIIs into Hong Kong. NECIIs who are being smuggled, even if they are declared as UEs, are not punishable under Part VIIA. If a non-refoulement claim is made by a UE in Hong Kong, it will be screened in the same manner as those made by other NECIIs who are not UEs. The Administration has stressed that non-refoulement claims will continue to be determined under the unified screening mechanism ("USM") which meets the high standards of fairness required by the law.

12. Some members have sought clarification whether any person who unintentionally assists a UE to remain in Hong Kong would have committed an offence under the Order. The Administration has explained that no person shall be convicted of an offence if he proves 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.

#### Other enforcement actions

13. While members in general support the Amendment Order, some members are of the view that it would be more effective for the Administration and the Mainland authorities to jointly combat the problem at source. Members are advised that since February 2016, the relevant Mainland authorities have launched enforcement operations in parallel with the Hong Kong Police and the Immigration Department to combat human smuggling at the boundary, resulting in four human smuggling syndicates being neutralized and the arrest of about 5 000 NECIIs. Such operations will continue at least until mid 2017.

14. The Administration has further advised that the legislative proposal is one of the proposed measures to address problems relating to non-refoulement claims and illegal immigration. As announced in the 2016 Policy Address, the Government will 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, so as to contain and reverse the growing number of USM claimants stranded in Hong Kong. Amongst these dimensions, pre-arrival control seeks to combat the problem at source. The Administration is 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.

15. In response to members' suggestion of explaining Hong Kong's policy on NECIIs to the major origins of NECIIs, the Administration has acknowledged such a need. Members are advised that representatives of the Administration have 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 relating to USM. Similar visits will be paid to other major countries where NECIIs originated.

16. Noting that a number of non-refoulement claimants have reportedly taken up illegal employment in Hong Kong, some members have expressed concern about the measures in place to curb the problem. The Administration has advised that joint departmental efforts have been stepped up against illegal employment of non-refoulement claimants. Prosecutions have been instituted against claimants found to have taken up illegal employment and the relevant employers, who are both liable to imprisonment upon conviction.

### **Recommendation**

17. The Subcommittee raises no objection to the Amendment Order and will not propose any amendment to the Amendment Order.

### **Advice Sought**

18. Members are invited to note the deliberations of the Subcommittee.

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

**Membership list**

**Chairman** Hon IP Kwok-him, GBS, JP

**Members** Hon James TO Kun-sun  
Hon Emily LAU Wai-hing, JP  
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-yea, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Frankie YICK Chi-ming, JP  
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 Christopher CHUNG Shu-kun, BBS, MH, JP  
Hon Alvin YEUNG Ngok-kiu

(Total : 20 members)

**Clerk** Miss Betty MA

**Legal adviser** Miss Winnie LO

**Date** 6 June 2016