

For discussion on  
2 February 2016

**Legislative Council Panel on Security**  
**Comprehensive review**  
**of the strategy of handling non-refoulement claims**

**Purpose**

This paper briefs Members on the comprehensive review of the strategy of handling non-refoulement claims and seeks Members' support for the creation of two supernumerary directorate posts of one Administrative Officer Staff Grade C (AOSGC) (D2) in the Security Bureau (SB) and one Assistant Director of Immigration (AD of Imm) (GDS(C)2 or D2-equivalent) in the Immigration Department (ImmD) to steer the review and to step up relevant enforcement measures and expedite screening of claims meanwhile.

**Background**

2. The Unified Screening Mechanism (USM) commenced in March 2014 to screen non-refoulement claims on all applicable grounds in one go. A summary of key court judgments leading to the implementation of USM is at **Annex A**. As at end 2015, 10 922 claims were pending screening, of which 6 360 (around 60%) were new claims lodged by those who have never lodged a claim before USM<sup>1</sup>. In a short span of 22 months, the number of new claims registered a 331% increase (i.e. from 102 per month on average between 2010 and 2013 to some 440 per month between March 2014 and December 2015). 80% of claimants are from South or Southeast Asian countries including Vietnam (21%), India (19%), Pakistan (18%), Bangladesh (12%) and Indonesia (10%). As at end 2015, ImmD has determined 3 165 claims under USM, 18 of which are substantiated (another 24 torture claims were substantiated before USM).

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<sup>1</sup> 1 703 other claims were lodged by rejected / withdrawn torture claimants after USM commenced, and another 2 859 claims were lodged before USM commenced.

3. The continued and worsened influx of claims lodged by non-ethnic Chinese illegal immigrants (NECIIs), overstayers and refused landing passengers (collectively “illegal immigrants” below) to resist removal by ImmD is characterised by the following –

- (a) Significant rise in NECIIs intercepted: increased from an average of 68 per month between 2010 and 2013 to 318 in 2015 (368% increase). Major source countries of NECIIs are Vietnam, Pakistan, Bangladesh and India (visitors from most of these countries are required to obtain visa to Hong Kong). See **Annex B** for details;
- (b) Significant rise in claimants who are overstayers or refused landing passengers from some visa-free countries: for example, from March 2014 to end 2015, on average 134 Indian nationals lodged claims per month, representing a 13-fold increase over the average of 10 claims per month in 2013; 84% of them are overstayers / refused landing passengers who entered / arrived Hong Kong by way of visa-free arrangement;
- (c) Predominantly single adults: 72% of claimants are male and 95% are over the age of 18. 95% of them came to Hong Kong on their own (without family);
- (d) Delay in lodging claims: about 70% of claimants did not seek to lodge a claim until they were intercepted or arrested by the Police or ImmD outside control points. Overall speaking, claimants had remained in Hong Kong for 11 to 19 months on average before lodging a claim; and
- (e) Worsening crime situation: according to figures from ImmD, in 2015, 232 illegal immigrants (mostly claimants) were arrested for taking up unlawful employment, a 40% increase over 2014. In addition, the Police recorded 1 113 cases of illegal immigrants on recognizance (mostly claimants) arrested for theft, wounding and serious assault, serious drugs offences, as well as other criminal offences in 2015, a 67% increase over 2014.

4. At the same time, the present screening process is lengthy. Enhancements on both efficiency and effectiveness are necessary<sup>2</sup>. The Duty Lawyer Service (DLS) (through which publicly-funded legal assistance is currently provided to claimants) demands that a minimum of 49 days be given for duty lawyers to take instruction from claimants to complete the claim form<sup>3</sup>. In 2015, screening interviews can be successfully scheduled only 13 weeks on average after a claim form is submitted, and 33% of them need to be rescheduled for one reason or another<sup>4</sup>. Seeking extension to submit supporting documents but not submitting any in the end, requesting that an interview be conducted in a rare dialect (whilst the claimant could previously clearly communicate with ImmD in English), refusing to undergo medical examinations arranged on the claimant's own request and challenging the professional qualification of medical practitioners from the Hospital Authority and its data storage security arrangement, etc. are not uncommon.

## Justifications

5. In the past few years, we continued to expand the capacity of ImmD and the Torture Claims Appeal Board (TCAB). The number of ImmD staff (mostly immigration officers / senior immigration officers) deployed to handle non-refoulement claims has increased from 95 in 2009-10 to 204 in 2015-16 (115% increase). Likewise, the number of members appointed to TCAB (adjudicators handling petitions under Article 48(13) of the Basic Law before establishment of the statutory TCAB in December 2012) has increased from 8 in 2009 to 28 in 2015 (250% increase)<sup>5</sup>.

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<sup>2</sup> In *HKSAR v. Tarok Das* (2015) HKCFI 1396, the CFI observed that “it seems more needs to be done to weed out promptly the unmeritorious and unworthy claims. ... [T]his is becoming a serious problem for the courts and the legal system in general, as well as for the community, and there is the added risk that the system in place is being abused not only by unmeritorious claimants but possibly by claimants with a more sinister purpose in mind.”

<sup>3</sup> Whilst overseas jurisdictions such as Australia and Canada require that the claim form be already completed when a claim is lodged or within up to 15 days thereafter.

<sup>4</sup> Of all screening interviews rescheduled in 2015, 69% are due to claimants claiming to be sick (often without medical proof) or being absent without reason, 13% to unavailability of duty lawyer (despite that their diary had been reserved for the interview before), 10% to interpreters being unavailable, 6% to change in claimants' circumstances (e.g. abscondance, withdrawal), and 2% to ImmD or other reasons (e.g. case officers having medical leave or summoned by the Court, etc.)

<sup>5</sup> Meanwhile, the rate of claimants rejected by ImmD lodging an appeal increased from 50% to 90% after commencement of USM, and, after a Court of Appeal judgment in June 2014 (*ST vs Betty Kwan* (2014) HKCA 309), the percentage of appeals requiring an oral hearing (as opposed to consideration of the appeal on paper) increased from 5% to 90%. Both developments imposed a higher demand on the capacity of TCAB.

6. We also continued to urge DLS to increase the number of cases that it would take up, which is also a key limiting factor on the rate at which claims can be screened. After repeated rounds of negotiations, DLS agreed to increase the number of case referrals from 2 per day in December 2009 gradually to 8 per day since October 2012, and then to 11 per day since April 2015 and to 13 per day since August 2015<sup>6</sup>.

7. The total expenditure in relation to the handling of non-refoulement claims increased by over 140% from \$287 million in 2010-11 to \$644 million in 2015-16. A summary is at **Annex C**.

8. As reported to this Panel in July 2015, we also identified, within the existing legal framework, measures to speed up the screening process as far as practicable<sup>7</sup> (with a target to reducing average screening time from 25 weeks to 15 weeks per claim). In view of the different views expressed by the legal professional bodies, we are seeking further legal advice and these measures have yet to be implemented.

9. Whilst we will continue to seek to increase resources for ImmD and TCAB where necessary to enhance screening output and efficiency, this alone is unable to contain and reverse the growing number of USM claimants stranded in Hong Kong. We need to launch a comprehensive review of the strategy of handling non-refoulement claims with a view to addressing fragilities in areas of pre-arrival control, screening procedures, detention and enforcement. Initial ideas of measures identified for detailed consideration are outlined in the ensuing paragraphs.

#### *Pre-arrival control*

10. To tackle the problems at source, we need to prevent economic migrants from embarking on their voyage (or from reaching Hong Kong) and deter those who assist them to this end. Guided by detailed analysis of the background and arriving route of new claimants, we will consider –

- (a) introducing requirement of pre-arrival registration and, if necessary, complementary checking measures for persons with high immigration risks to prevent them from being boarded;

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<sup>6</sup> Following commencement of USM, between March and December 2014, DLS also agreed to take up 3 additional “legacy” cases per day (i.e. rejected torture claims which need to be further screened under USM on applicable grounds other than torture.)

<sup>7</sup> Including advancing the scheduling of screening interviews with claimants, and providing a screening bundle to claimants to save them from having to lodge a data access request.

- (b) liaising with authorities of major source countries of claimants and jurisdictions along their usual route to Hong Kong on strengthening enforcement against smuggling syndicates; and
- (c) reviewing visa requirement or visa-free arrangement as necessary.

11. Apart from the above, we are exploring the possibility of amending the definition of “unauthorized entrants” under Part VIIA of the Immigration Ordinance (Cap. 115) so that stiffer penalties can be applied equally and fairly against all human smuggling syndicates irrespective of the nationality of the illegal immigrants being smuggled<sup>8</sup>.

### *Screening procedures*

12. For those who manage to enter Hong Kong and make a non-refoulement claim, we need to expedite the screening process for all cases and deter clear abusers, whilst ensuring that screening procedures will continue to meet with the high standards of fairness required by law. Having accumulated screening experience since 2009 and making reference to the established practices of other common law jurisdictions, we will consider amending Part VIIC of the Immigration Ordinance to –

- (a) provide statutory underpinning to USM, the operational procedures of which follow Part VIIC of the Immigration Ordinance<sup>9</sup>;
- (b) tighten procedures to clearly specify the time allowed for each step and to prohibit abusive behaviour;
- (c) screen out manifestly unfounded claims early;

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<sup>8</sup> “Unauthorized entrants” are declared under the Immigration (Unauthorized Entrants) Order, Cap.115D between 1979 and 1980 to include only illegal immigrants from the Mainland, Macau and Vietnam. We intend to amend the declaration so as to include illegal immigrants of all nationalities, subject to appropriate exemptions.

<sup>9</sup> In essence, USM is a mechanism under which non-refoulement claims are simultaneously assessed on all applicable grounds using the existing statutory scheme under Part VIIC of the Ordinance for including torture risk, CIDTP risk under BOR 3 and risk of persecution with reference to article 33 of the 1951 Refugee Convention, etc. though screening of the latter risks is conducted administratively.

- (d) set out the scope and limits, as appropriate, on the provision of publicly-funded legal assistance; and
- (e) enhance the operation and capacity of TCAB.

13. ImmD will also enhance its capability to collect countries of origin information useful for screening purposes. Efforts are ongoing to establish contacts with relevant governmental / non-governmental organisations in those countries for establishing an objective and credible database on information of major localities of source countries, as well as topical issues and details of major events of those countries.<sup>10</sup>

#### *Detention*

14. At present, only a very small percentage of claimants are detained pending or during screening. We will carefully consider the feasibility of clarifying and strengthening ImmD's legal power<sup>11</sup> to detain claimants pending screening, whilst screening or appeal is underway, and / or after their screening is complete but they are remaining in Hong Kong for some other reasons (e.g. they have lodged a judicial review), so as to minimize their security impact, to prevent them from taking up unlawful employment, and to ensure more efficient screening and subsequent removal. If this proposal is considered legally feasible, we will identify suitable facilities for refurbishment to expand immigration detention capacity as necessary.

#### *Removal and enforcement*

15. Finally, unsubstantiated claimants should be removed as soon as possible. We will strengthen liaison with local Consulates General (CGs) concerned to expedite the removal process. We will also step up

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<sup>10</sup> That said, the information the claimant provided for the purpose of his claim will be treated in confidence. As a general rule, neither the information indicating that the claimant has made a non-refoulement claim nor any information pertaining to his claim will be provided to any government of a risk country without the express consent of the individual concerned.

<sup>11</sup> Under the Immigration Ordinance, the Director of Immigration is empowered to detain an illegal immigrant under specific circumstances, e.g. when considering whether to make a removal order against the subject (section 32(2A)), when his removal is pending (section 32(3A)), when his non-refoulement claim is pending final determination (section 37ZK), etc., subject to applicable restrictions under the law, e.g., the *Hardial Singh* principles which require that ImmD cannot continue to detain an illegal immigrant if it becomes apparent that it will not be able to effect his removal within a reasonable period.

enforcement against syndicates and related criminal activities (e.g. unlawful employment), and enhance publicity in Hong Kong and in major source countries on our applicable law and policies to avoid potential claimants from being misguided by syndicates.

### **Timeline of the Review / Legislative Exercise**

16. Research and preparatory work is already underway on the four major dimensions identified in paragraphs 10 to 15 above. Within 2016-17, we aim to complete our review on (i) introducing pre-arrival registration and necessary complementary checking measures; and (ii) amendment to the Immigration (Unauthorized Entrants) Order on the definition of “unauthorized entrants”. Appropriate measures in these areas will be introduced immediately when ready. We also aim to complete our review on the screening procedures and ImmD’s legal power on detention within 2016-17, with a view to introducing an amendment bill on these areas in 2017-18. Subject to the progress of scrutiny of the bill by the Legislative Council (LegCo), we hope to implement the revamped statutory screening procedures in 2018-19 or earlier, and proceed with works project(s), if necessary, for providing additional detention facility for ImmD.

17. Meanwhile, ImmD will continue its efforts to identify administrative measures to expedite screening as far as possible, and will join hands with the Police to step up enforcement against illegal immigration, smuggling and unlawful employment, etc. and strengthen co-operation with CGs and law enforcement agencies of source countries.

18. Throughout the review process, we will, as always, listen to the views of stakeholders on effective measures to ensure that genuine claimants are identified without delay, abuses of the screening procedures are minimized, and economic migrants are deterred from coming to Hong Kong for illegal work.

### **Creation of Posts**

19. Given the breadth and complexity of the review, the number of stakeholders involved and the need to come up with practical and effective measures (including legislative amendment proposals) as soon as possible to address the problems we are facing, we propose creating a new supernumerary AOSGC post (designated as Principal Assistant

Secretary for Security (Review) (PAS(S)(Review))) in SB for three years to spearhead the review with dedicated efforts. PAS(S)(Review) will be responsible for proposing legislative amendments necessary to underpin new measures, conducting extensive consultation with relevant stakeholders (e.g. LegCo members, legal professional bodies, non-government organisations, etc.) and maintaining liaison with counterparts and experts in overseas jurisdictions, seeing through the legislative exercise, as well as reviewing and proposing necessary changes to relevant institutions such as TCAB and the publicly-funded legal assistance scheme. Subject to the outcome of the review, PAS(S)(Review) will also steer ImmD and other relevant departments through necessary works project (e.g. to refurbish existing facility for detention) and systems project (e.g. to develop computer systems to support various pre-arrival control measures), etc. The proposed job duties of the post are at **Annex D**.

20. Separately, as more manpower and financial resources of ImmD have been deployed to handle non-refoulement claims, ImmD proposes to create a new supernumerary post of AD of Imm (designated as Assistant Director (Removal Assessment and Litigation) (AD(RAL))) to provide dedicated directorate steer to this area of work. Apart from providing support to the comprehensive review (including proposing and evaluating suggested measures from operational and enforcement perspectives, preparing for their early implementation, etc.), AD(RAL) will also strive to expedite the screening process within existing legal framework and available resources (e.g. through identifying further administrative measures useful to streamline screening procedures, considering the most effective means of deploying available resources, etc.) in order to increase the number of claims determined by ImmD as far as possible. In addition, AD(RAL) will be responsible for civil litigation matters relating to non-refoulement claims and enforcement. The proposed job duties of the post are at **Annex E**.

### **Alternatives Considered**

21. At present, duties relating to policies on handling non-refoulement claims fall under the purview of Principal Assistant Secretary (Secretary) D (PAS(S)D) in SB, who is also responsible for policies and initiatives relating to combatting human smuggling and trafficking crimes, registration of persons, birth, death and marriage, ImmD's IT systems development, operation of control points and supporting the making of decisions relating to deportation orders. As

PAS(S)D would be heavily engaged in tasks in other areas under his purview in the next few years, it is not feasible for him to take up the many additional duties required of the comprehensive review, particularly under the tight timeframe as set out in paragraph 16 above. It is also not feasible for the other PASes in SB to absorb the duties amidst their already very heavy workload. A summary of the existing duties of all PASes in SB is at **Annex F**.

22. As regards ImmD, duties relating to the handling of non-refoulement claims fall under the purview of Assistant Director (Enforcement and Removal Assessment) (AD(EA)) at present, who is also responsible for all immigration-related investigation and enforcement, prosecution, as well as detention, deportation and removal of illegal immigrants. The proposed creation of AD(RAL) will provide dedicated efforts to supervise and enhance the daily operation of USM as outlined in paragraph 20 above. The already overloaded AD(EA) (to be re-designated as Assistant Director (Enforcement)) can then dedicate more focused efforts on strengthening enforcement and prosecution against illegal immigration, unlawful employment and other immigration-related offences, and expediting the removal of rejected claimants and other illegal immigrants. It is not feasible for the other five ADs of Imm to absorb the duties amidst their already very heavy workload<sup>12</sup>. A summary of the existing duties of all ADs of Imm is at **Annex G**.

### **Financial implications**

23. The proposed creation of the supernumerary AOSGC post under SB and the supernumerary AD of Imm post under ImmD will require additional notional annual salary cost at mid-point of \$1,973,400 each. The full annual average staff cost, including salaries and staff on-cost, of the two posts are \$2,780,000 and \$2,835,000 respectively. We will reflect the requirements in the Estimates of subsequent years. Other supporting non-directorate staff will be provided through re-deployment or to be sought following established procedures where necessary.

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<sup>12</sup> ImmD will also be proposing the creation of another new supernumerary post at the rank of AD of Imm to oversee the development and implementation of the Next Generation Smart Identity Card System as recommended in the third Information Systems Strategy Review. The Government will seek the Panel on Security's view on this proposal soon.

## **Way forward**

24. Members are invited to note the comprehensive review of the strategy to handle non-refoulement claims and support the proposed creation of the new supernumerary AOSGC and AD of Imm posts. We plan to submit the proposal to the Establishment Subcommittee of the Finance Committee for consideration in the first/second quarter of 2016.

**Security Bureau  
Immigration Department  
January 2016**

**Key Court rulings relating to  
handling claims for non-refoulement made by foreigners**

<b>Date</b>	<b>Case</b>	<b>Ruling</b>	<b>Implication on Screening</b>
June 2004	<i>Sakthevel Prabakar vs Secretary for Security</i> [2004] 7 HKCFAR 187	The CFA ruled that, to a potential deportee who has made a torture claim, his life and limb are in jeopardy and his fundamental human right not to be subjected to torture is involved. Accordingly, the Government must determine his claim independently and properly in a way that meets the <b>high standards of fairness</b> .	The Immigration Department (ImmD) introduced administrative screening procedures to screen torture claims.
December 2008	<i>FB vs Director of Immigration and Secretary for Security</i> [2009] 2 HKLRD 346	The Court of First Instance ruled that the Government must implement a series of measures, including the provision of <b>publicly-funded legal assistance</b> to claimants during the torture claim screening process, to meet the high standards of fairness required in <i>Prabakar</i> .	Screening procedures suspended until December 2009 when enhanced administrative screening mechanism was introduced. Under enhanced mechanism, publicly-funded legal assistance was provided to claimants through the Duty Lawyer Service. Adjudicators were appointed to handle petitions independently.

Date	Case	Ruling	Implication on Screening
December 2012	<i>Ubamaka Edward Wilson vs the Secretary for Security</i> [2012] 15 HKCFAR 743	The CFA ruled that the right not to be subjected to torture or <b>cruel, inhuman, or degrading treatment or punishment</b> (CIDTP) enshrined under Article 3 of the Hong Kong Bill of Rights (BOR) <sup>13</sup> is absolute and non-derogable. Accordingly, the Government <b>must not remove</b> a foreigner to a country where he has a genuine and substantial risk of being subjected to CIDTP, no matter how undesirable or dangerous he is.	Apart from torture, the Government is also required to assess claimed risk of being subjected to CIDTP under Article 3 of BOR. Accordingly, the Government introduced a unified screening mechanism (USM) in March 2014 to assess all claimed risks in one go.
March 2013	<i>C &amp; Ors vs Director of Immigration</i> [2013] 16 HKCFAR 280	The CFA ruled that as long as the Director of Immigration maintains a prevailing practice of considering a person's <b>claimed fear of persecution</b> before exercising the power to remove him to another country, the Director is required to <b>independently determine</b> whether the claimed fear of persecution is well-founded before executing such removal.	Apart from torture and CITDP, the Government is also required to assess claimed risk of being persecuted. Accordingly, the Government introduced USM in March 2014 to assess all claimed risks in one go.

<sup>13</sup> Article 3 of the Hong Kong Bill of Rights implements Article 7 of the International Covenant on Civil and Political Rights, which was applied to Hong Kong in 1976 and remains in force pursuant to Article 39 of the Basic Law.

Date	Case	Ruling	Implication on Screening
February 2014	<i>GA &amp; Ors vs Director of Immigration</i> [2014] 17 HKCFAR 60	The CFA ruled that where it can be shown that, as a consequence of the prohibition against working, the individual concerned can be shown to be facing inhuman or degrading treatment, the Director must exercise his discretion to give him permission to work, despite that <b>non-refoulement claimants have no right</b> under the Basic Law or any other legal right <b>to work in Hong Kong</b> , even if their claim is substantiated.	ImmD would consider application by substantiated claimants for permission to work on a case by case basis.
March 2014	<i>Ghulam Rbani v Director of Immigration</i> [2014] 17 HKCFAR 138	The CFA ruled that the Hardial Singh principles must be observed when ImmD detains illegal immigrants, i.e., such persons <b>may only be detained for a period that is reasonable</b> in all the circumstances; and ImmD cannot continue to detain that person if it becomes apparent that it will not be able to effect removal within that reasonable period.	Over 99% of pending claimants are required to be released on recognizance in lieu of being detained.

Date	Case	Ruling	Implication on Screening
June 2014	<i>ST vs Betty Kwan</i> [2014] HKCA 309	The CA ruled that, while there is no absolute right to an oral hearing during the appeal process, certain guidelines should be followed in deciding whether an oral hearing should be held, having regards to facts of the case. The CA also observes that conducting <b>an oral hearing should be the norm rather than the exception.</b>	Percentage of oral hearings required at appeal stage (as opposed to consideration of appeal on paper) jumped from 5% to over 90%.

**Number of NECII intercepted**

	<b>Vietnamese</b>	<b>Pakistani</b>	<b>Bangladeshi</b>	<b>Indian</b>	<b>Other nationalities</b>	<b>Total</b>
2010	375 (31)	194 (16)	20 (2)	36 (3)	127 (11)	752 (63)
2011	281 (23)	196 (16)	27 (2)	9 (1)	34 (3)	547 (45)
2012	342 (29)	241 (20)	116 (10)	26 (2)	31 (3)	756 (63)
2013	424 (35)	457 (38)	274 (23)	29 (2)	34 (3)	1 218 (101)
2014	1 180 (98)	358 (30)	342 (29)	60 (5)	44 (4)	1 984 (165)
2015	2 278 (190)	686 (57)	414 (35)	380 (32)	61 (5)	3 819 (318)

Figures in ( ) denotes monthly average

**Annex C**

**Expenditure relating to non-refoulement claims**

<b>Financial Year</b>	<b>Screening of Claims and Handling of Appeals / Petitions (\$million)</b>	<b>Publicly-funded Legal Assistance (\$million)</b>	<b>Humanitarian Assistance (\$million)</b>	<b>Total (\$million)</b>
2010-11	126	10	151	<b>287</b>
2011-12	135	37	143	<b>315</b>
2012-13	144	58	191	<b>393</b>
2013-14	151	76	204	<b>431</b>
2014-15	188	97	246	<b>531</b>
2015-16 (estimate)	207	108	329	<b>644</b>

**Proposed Job Description  
for the New Supernumerary Principal Assistant Secretary under SB**

Post Title : Principal Assistant Secretary (Security) Review  
(PAS(S)(Review))

Rank : Administrative Officer Staff Grade 'C' (AOSGC)

Responsible to : Deputy Secretary (Security) 3 (DS(S)3)

**Duties and Responsibilities**

1. To draft an Immigration (Amendment) Bill to revamp handling of non-refoulement claims, including reviewing existing procedures, consultation plan with stakeholders, and ensuring that the future statutory mechanism would be consistent with latest jurisprudence and effective in minimizing abuses.
2. To develop pre-arrival registration, and if necessary, complementary checking measures based on claimant profile, and strategy in negotiation with stakeholders (e.g. Consulates General, Chinese Diplomatic and Consular Missions, airlines, etc.) in implementing the proposed measures, and overseeing Immigration Department's (ImmD) development of necessary information technology system.
3. To identify and plan ImmD's use of suitable facilities to detain illegal immigrants (including claimants) and securing support in the required funding and legislative proposals.
4. To review the operation of the Torture Claims Appeal Board to enhance its screening capacity.
5. To review the provision of publicly-funded legal assistance by the Government, including consideration of imposing a cap on the legal fees per claimant.
6. To oversee the existing screening procedures and work with ImmD on short-term solutions to expedite the process.
7. To ensure other peripheral support to facilitate smooth and efficient

screening and effective removal (e.g. ensuring sufficient supply of interpreters / translators), as well as overall financial management (e.g. implementation of the humanitarian assistance scheme by the Social Welfare Department through Non-Governmental Organisations, etc.).

8. To monitor liaison between law enforcement agencies to strengthen efforts in combatting human smuggling syndicates and illegal immigration.

**Proposed Job Description  
for the New Supernumerary Assistant Director of Immigration  
under ImmD**

Post Title : Assistant Director (Removal Assessment and  
Litigation) (AD(RAL))

Rank : Assistant Director of Immigration

Responsible to : Deputy Director of Immigration

1. To manage and oversee the Removal Assessment and Litigation Division.
2. To support the Security Bureau in steering, planning and development of new measures during the comprehensive review of the strategy of handling non-refoulement claims.
3. To propose and evaluate new measures identified during the comprehensive review from operational and enforcement perspectives, and to formulate plans for their early implementation as required.
4. To identify further administrative measures useful to streamline screening procedures and consider means of allocating existing available resources effectively, with a view to increasing the number of claims determined as far as possible.
5. To oversee the implementation of the screening mechanism of non-refoulement claims with a view to ensuring effective and efficient screening of claims to meet high standards of fairness as required by law; to lead and steer the day-to-day operation of the screening unit, and to make strategic recommendations in handling civil litigation matters related to non-refoulement claims and enforcement.

**Duties and Existing work Priorities of  
Principal Assistant Secretaries in the Security Bureau**

Principal Assistant Secretary for Security (A) is responsible for policy matters relating to boundary administration, closed area, counter-terrorism, surrender of fugitive offenders and mutual legal assistance in criminal matters. He oversees the liaison between the Hong Kong Special Administrative Region (HKSAR) Government and the Garrison and handles matters with a Garrison dimension. He also deals with policy and resource matters relating to the Government Flying Service and certain security-related functions of the Customs and Excise Department, as well as matters concerning the Security and Guarding Services Industry Authority.

2. Principal Assistant Secretary for Security (B) is responsible for policies in respect of the emergency rescue services provided by the Fire Services Department, including matters relating to fire safety, fire prevention, fire-fighting, the emergency ambulance service, and the control of dangerous goods. He also oversees policies relating to the penal system maintained by the Correctional Services Department, covering such matters as rehabilitation of prisoners and the prison development programme. He deals with issues relating to the transfer of sentenced persons and supports the statutory boards on prison sentence review and prisoner supervision. In addition, he is responsible for the aviation security policies, including the maintenance and implementation of the Hong Kong Aviation Security Programme. He is currently heavily engaged in pursuing initiatives to improve fire safety and enhance the provision of emergency ambulance service, overseeing the prison development and improvement programmes to address the problems of outdated facilities and overcrowding, and reviewing issues of concerns related to penal management and offenders' rehabilitation.

3. Principal Assistant Secretary for Security (C) is responsible for immigration policies and strategies in respect of a wide range of matters. These include nationality and residency; travel documents and convenience of Hong Kong residents; visa regime for foreign nationals and travel convenience for Taiwan residents; the Outbound Travel Alert system and assistance to Hong Kong residents in distress outside Hong Kong. He oversees policy issues concerning entry into Hong Kong for study, employment, investment and settlement, as well as those relating to entry from the Mainland, including the operations of the One-way

Permit and Two-way Permit Scheme. He is also responsible for the policy, resource and housekeeping matters of the Immigration Department.

4. Apart from issues relating to non-refoulement claims, Principal Assistant Secretary for Security (D) is responsible for handling policy issues concerning combatting human smuggling and trafficking crimes; registration of persons, births, deaths and marriages; the processing of detention and deportation cases under the Immigration Ordinance; the processing of immigration-related statutory and non-statutory petition cases; and housekeeping matters relating to the Immigration Tribunal, Registration of Persons Tribunal, HKSAR Passports Appeal Board, and Civil Celebrant of Marriages Appointment Appeal Board. He is also responsible for policy, legislation and resource matters relating to the operation of control points and related co-operation with the Mainland, including complementary immigration/enforcement measures on cross-boundary students. Furthermore, he is engaged in the planning for the new Liantang/Heung Yuen Wai Boundary Control Point; and implementing various new information technology initiatives (including new information technology infrastructure, new immigration control system and the next generation smart Hong Kong Identity Card system) of the Immigration Department.

5. Principal Assistant Secretary for Security (E) is responsible for policy matters concerning internal security and law and order, as well as resources matters relating to the Hong Kong Police Force and the Hong Kong Auxiliary Police Force. He also oversees the implementation of the Interception of Communications and Surveillance Ordinance. He is the Secretary to the Fight Crime Committee and oversees the operation of the Committee and its Subcommittees.

6. Principal Assistant Secretary for Security (Narcotics) 1 is primarily responsible for anti-drug preventive education and publicity strategy and initiatives; the policy and management of the Beat Drugs Fund (BDF), including overseeing the process of considering applications for support from the fund under the annual funding exercise and ongoing monitoring and evaluation of the implementation and effectiveness of BDF funded projects; monitoring and formulating the necessary response, including through legislative control, to the threats posed by emerging drugs; monitoring drug trends through the Central Registry of Drug Abuse and regular large scale student surveys, etc.

7. Principal Assistant Secretary for Security (Narcotics) 2 is primarily responsible for the policy and programmes concerning treatment and rehabilitation matters, including the coordination of measures concerning the enhancement and re-engineering of Treatment and Rehabilitation services having regard to the changing circumstances of the drug scene; helping drug treatment and rehabilitation centres in Hong Kong to meet the statutory licensing requirements; and formulating policy and programmes relating to drug testing.

**Duties of Assistant Directors in the Immigration Department**

At present, Immigration Department (ImmD) has six permanent Assistant Director (AD) posts responsible for heading the six branches of ImmD, namely, the Control Branch, Enforcement and Removal Assessment Branch, Information System Branch, Management and Support Branch, Personal Documentation Branch and Visa and Policies Branch with responsibilities as set out below:

(I) Control (C) Branch - headed by AD(C)

AD(C) is responsible for formulating and implementing policies on maintaining immigration control by denying entry of undesirables and preventing wanted criminals from departure and facilitating the mobility of tourists and business visitors. The Control Branch comprises the Airport Division, the Border (Rail) Division, the Border (Vehicles) Division and the Harbour Division. The Airport Division enforces immigration control over passengers and aircrew entering and leaving Hong Kong by air. The Border (Rail) Division comprises three control points, serving railway passengers at Lo Wu, Hung Hom and Lok Ma Chau Spur Line. The Border (Vehicles) Division comprises four land boundary control points at Lok Ma Chau, Man Kam To, Sha Tau Kok and Shenzhen Bay, serving cross-boundary passengers and vehicles. The Harbour Division comprises the Harbour Control Section, the Macau Terminal Section, the China Ferry Terminal Section, the Tuen Mun Ferry Terminal Section and the Kai Tak Cruise Terminal Section which carry out immigration control over people movements by passenger liners, ferries and cruise liners.

(II) Enforcement and Removal Assessment (EA) Branch – headed by AD(EA)

AD(EA) is responsible for spearheading the EA Branch which comprises the Enforcement Division and the Removal Assessment and Litigation Division. The Enforcement Division is responsible for formulating and implementing policies in respect of investigation, deportation and removal. The Removal Assessment and Litigation Division is responsible for determining non-refoulement claims lodged by persons not having the right to

enter and remain in Hong Kong on all applicable grounds, handling matters relating to prosecution of immigration offenders and litigation cases relating to removal, deportation and non-refoulement claims, and also managing the Castle Peak Bay Immigration Centre for the detention of persons of 18 years old or above.

(III) Information Systems (IS) Branch - headed by AD(IS)

AD(IS) is responsible for formulating and implementing strategies on information system and related matters as well as record management and data privacy management of the Department. The IS Branch comprises four functional divisions. The Information Systems (Development) Division is responsible for formulating and implementing the Department's information systems strategy, developing new systems to meet the future business needs; the Information Systems (Production) Division is responsible for management and security of information systems in operation as well as on-going enhancement of the systems and related processes; the Technology Services Division provides technical support for the maintenance and development of computer systems in the Department, and the Records and Data Management Division is responsible for handling all issues relating to data privacy, access to information and management of departmental records.

(IV) Management and Support (MS) Branch - headed by AD(MS)

AD(MS) is responsible for formulating and implementing policies on human resources management and development of the Immigration Service. It comprises two divisions, namely the Service Management Division and the Immigration Service Institute of Training and Development. The Service Management Division deals with matters relating to welfare, conduct and discipline of service staff and is responsible for managing public relations, conducting management audit and reviewing complaints from the public. The Immigration Service Institute of Training and Development is responsible for recruitment, training, development and deployment of service staff.

(V) Personal Documentation (PD) Branch - headed by AD(PD)

AD(PD) is responsible for formulating and implementing policies on personal documentation. The PD Branch comprises the Documents Division and Registration of Persons Division. The Documents Division deals with applications for HKSAR passports and other HKSAR travel documents, handles matters relating to the implementation of the Chinese Nationality Law in Hong Kong, negotiates visa-free travel arrangements for HKSAR residents, provides assistance to Hong Kong residents in distress outside Hong Kong and processes registration of births, deaths and marriages. The Registration of Persons Division processes applications relating to claims to right of abode under the Basic Law, issues identity cards to Hong Kong residents and maintains records on registration of persons.

(VI) Visa and Policies (VP) Branch – headed by AD(VP)

AD(VP) is responsible for formulating and implementing policies on managing pre-entry immigration control through the visa and entry permit systems. The VP Branch comprises the Visa Control (Policies) Division and the Visa Control (Operations) Division. Their major areas of work include formulating and reviewing policy and assessment procedures on visa matters with a view to meeting the changing needs of Hong Kong, facilitating visitors and enhancing operational efficiency and effectiveness of the visa and entry permit system; processing various types of immigration applications in accordance with approved policies, such as applications for entry into Hong Kong for visit, employment, investment, training, residence or study, applications for extension of stay from visitors and temporary residents, applications for Certificate of Entitlement (COE) to the Right of Abode in HKSAR and handling appeals / petitions / judicial reviews relating to COE and visa control matters, etc.

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