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Panel on Security

**Information note prepared by the Legislative Council Secretariat
for the meeting on 12 April 2016**

**Proposed amendment to
the Immigration (Unauthorized Entrants) Order**

According to the Administration, since the implementation of the Unified Screening Mechanism ("USM") in March 2014 to screen non-refoulement claims on all applicable grounds, 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 the claimants are from South or Southeast Asian countries including Vietnam, India, Pakistan, Bangladesh and Indonesia. As at end 2015, the Immigration Department ("ImmD") determined 3 165 claims under USM, 18 of which were substantiated (another 24 torture claims were substantiated before USM).

2. When the Panel on Security ("the Panel") was briefed at its meeting on 2 February 2016 on the Administration's comprehensive review of the strategy of handling non-refoulement claims and the Security Bureau's initiatives in the 2016 Policy Address, members were advised that to contain and reverse the growing number of USM claimants and tackle the problems at source, the Administration would launch a comprehensive review of the strategy in handling USM claims. The major areas to review include:

- (a) *Pre-arrival control*: to consider introducing pre-boarding checks at airports of major source "unauthorized entrants" under the Immigration Ordinance (Cap. 115) ("IO") for more effective penalty against human smuggling by sea or land; to liaise with relevant authorities on strengthening enforcement against smuggling syndicates; to review visa-free policy as required; etc.
- (b) *Screening procedures*: to tighten the overall timeframe for screening claims, prohibit delaying tactics, and consider means to screen out manifestly unfounded claims early; to review the provision of publicly-funded legal assistance, including the need for a cap on legal fees; to enhance the operation and capacity of the Torture Claims Appeal Board; to enhance ImmD's capability to

collect, at major source countries, country of origin information useful in scrutinizing claims, etc.;

- (c) *Detention*: to consider the feasibility to strengthen ImmD's power to detain more claimants pending screening or whilst screening/appeal; to identify and refurbish suitable facilities for expanding immigration detention capacity if necessary; and
- (d) *Removal and enforcement*: to strengthen liaison with local Consulate Generals of major source countries to expedite the removal process; to step up enforcement against syndicates and related criminal activities (e.g. unlawful employment); to enhance public education in Hong Kong and in major source countries.

3. Some members expressed concern that triad societies, intermediary companies and solicitor firms might be involved in the smuggling of illegal immigrants into Hong Kong. According to the Administration, it was aware that human smuggling syndicates might involve triad societies involved in other crime, such as money laundering. Members were advised that the Administration was exploring the possibility of amending the definition of "unauthorized entrants" under Part VIIA of IO¹ so that stiffer penalties could be applied equally and fairly against all human smuggling syndicates irrespective of the nationality of the illegal immigrants being smuggled and the boats used for human smuggling could be confiscated.

4. According to information provided in the Administration's reply to a question raised by a Member on the comprehensive review of strategy of handling non-refoulement claims at the Council meeting of 27 January 2016, the Administration advised that it would step up enforcement against human smuggling syndicates and update the law to strengthen penalties against human smuggling.

5. The Administration will brief the Panel on the proposed amendment to the Immigration (Unauthorized Entrants) Order (Cap. 115D) at the meeting on 12 April 2016.

Council Business Division 2
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¹ Part VIIA of IO sets out, among other things, provisions relating to the offences of arranging passage to Hong Kong of unauthorized entrants, assisting unauthorized entrants to remain in Hong Kong, as well as provisions relating to the forfeiture of ships and property used for human smuggling. Under the Immigration (Unauthorized Entrants) Order (Cap. 115D), unauthorized entrants only include illegal immigrants from the Mainland, Macau and Vietnam.