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**Subcommittee to Follow Up Issues Relating to
the Unified Screening Mechanism for Non-refoulement Claims**

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 24 April 2018**

Pre-arrival control

Purpose

This paper provides background information and summarizes the past discussions of the Panel on Security ("the Panel") on pre-arrival control measures in respect of the strategy of handling non-refoulement claims.

Background

2. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") has been applied to Hong Kong since 1992. Article 3 of CAT provides that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
3. Pursuant to several court rulings since 2004, the Administration has reviewed and revised the administrative screening mechanism for torture claims. The Immigration (Amendment) Ordinance 2012, which came into operation in December 2012, provides for a statutory process for making and determining claims, including how a torture claim is made, the time limit for a claimant to return the torture claim form, the requirements for the Immigration Department ("ImmD") to arrange screening interviews and issue written notices of decision, etc. It also provides that a claimant who was aggrieved by the decision might lodge an appeal, which would be handled by a statutory Torture Claims Appeal Board.
4. In March 2014, the Administration commenced operating the unified screening mechanism ("USM") to screen non-refoulement claims on all

applicable grounds.¹ Since then, there were increasing numbers of non-ethnic Chinese illegal immigrants ("NECIIs") and non-refoulement claimants. At the same time, the number of claims pending the commencement of screening procedures by ImmD was on the rise. As a result, the Administration launched a comprehensive review of the strategy of handling non-refoulement claims in 2016, focusing on the following four areas:

- (a) implementing pre-arrival control;
- (b) expediting the commencement of screening procedures for pending claims, shortening the screening time per claim, and expediting the handling of appeals;
- (c) expediting repatriation of the claimants whose claims have been rejected; and
- (d) studying detention policies and stepping up law enforcement.

5. According to the Administration, the top source countries of non-refoulement claimants include Pakistan, India, Vietnam and Bangladesh (accounting for 71% of all claimants).² Most of the claimants from Pakistan, Vietnam and Bangladesh³ smuggled into Hong Kong by sea or by land via the Mainland. As regards claimants from India, 80% of them first arrived in Hong Kong as visitors visa-free and made a non-refoulement claim after overstaying or having been refused permission to land.

Deliberations of the Panel

6. The Panel had discussed issues relating to the strategy of handling non-refoulement claims at a number of meetings and the major views and concerns expressed by members on implementing pre-arrival control are summarized in the following paragraphs.

Collaboration with the Mainland to combat illegal immigration

7. Noting that many claimants had entered Hong Kong illegally via the Mainland and there were also many claimants who had entered Hong Kong

¹ A claim by someone subject to be removed from Hong Kong to another country that if removed to that country, he will be subjected to torture, or his absolute and non-derogable rights under the Hong Kong Bill of Rights ("HKBOR") will be violated (including being arbitrarily deprived of his life as referred to in Article 2 and cruel, inhuman or degrading treatment or punishment as referred to in Article 3 of the HKBOR), or be persecuted, etc.

² From the commencement of USM in March 2014 to the end of 2015.

³ Visitors from these countries usually require a visa to visit Hong Kong.

legally but overstayed, members were generally concerned about the measures adopted by the Administration to tackle the problem.

8. The Administration advised that a dedicated joint operation with the Mainland had been launched to combat illegal immigration since February 2016 and seven joint operations against smuggling syndicates have been conducted. Mainland authorities had also stepped up patrol with additional patrol vessels in prime waters such as Shekou, Deep Bay and O Tau areas. Upon detecting suspicious vessels, Mainland authorities would notify the Hong Kong Police Force ("Police") for joint action at sea and in the air to intercept illegal immigrants before they enter Hong Kong waters. Given that smuggling syndicates would adjust their tactics from time to time (including varying their routes and operation modes), both sides had agreed to continue the dedicated joint anti-smuggling operations until mid-2019.

Stepping up patrol and examination at boundary control points

9. Members were advised that the Police, ImmD and the Customs and Excise Department ("C&ED") had been taking enforcement actions on the land and sea boundaries all along to combat all illegal immigration activities. On land, to tackle illegal immigrants who smuggled in by hiding under large goods vehicles, container lorries and container trailers, the Police, ImmD and C&ED had been conducting joint operations to step up examination of cross-boundary vehicles at vehicular boundary control points ("BCPs"). The Enhanced Under Vehicle Surveillance System had also been installed at all existing vehicular BCPs to examine all south-bound lorries.

10. Members were further advised that at sea, apart from the joint operation with Mainland authorities, a funding of about \$190 million was approved in December 2017 by the Finance Committee for the implementation of the Marine Situational Awareness System. The new system would allow the sharing of real-time images, footage and other important information among police on vessels and at command centres on land, thereby helping to detect the smuggling of illegal immigrants by sea and other maritime crimes effectively.

Heavier penalties on syndicates

11. Members noted that since the Immigration (Unauthorized Entrants) (Amendment) Order 2016 came into effect in May 2016 by which heavier penalties are imposed on syndicates smuggling illegal immigrants (from Pakistan, India, Bangladesh, Nepal, Sri Lanka, etc.), the Court had heard several such cases. Moreover, law enforcement agencies had successfully applied for heavier penalties under the Organised and Serious Crimes Ordinance in some of the cases.

Online pre-arrival registration

12. According to the Administration, India is a major source country of non-refoulement claimants and that 80% of claimants from India arrived in Hong Kong as visa-free visitors. ImmD has since January 2017 implemented the pre-arrival registration ("PAR") requirement for Indian nationals, under which Indian nationals must first apply for PAR online before visiting Hong Kong visa-free.

13. Some members were concerned about whether the introduction of PAR would discourage Indian passport holders from visiting Hong Kong and some members asked whether the number of non-refoulment claimants from India had decreased. The Administration advised that PAR had been operating smoothly and about 310 000 visitors had successfully registered as at the end of February 2018, representing a success rate of over 90%. Meanwhile, the number of Indian visitors overstaying in Hong Kong had decreased by 80% since the implementation of PAR. The Administration stressed that PAR had struck a balance between immigration control and travel convenience for visitors. The Administration further advised that in the longer term, it might extend such requirement to other countries, on a need basis.

Relevant papers

14. A list of relevant papers available on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on pre-arrival control

Committee	Date of meeting	Paper
Panel on Security	2.2.2016 (Item VI)	Agenda Minutes
Legislative Council	24.2.2016	Official Record of Proceedings (Question 18)
Panel on Security	7.6.2016 (Item IV)	Agenda Minutes
Subcommittee on Immigration (Unauthorized Entrants) (Amendment) Order 2016	--	Report of the Subcommittee to the House Committee
Panel on Security	11.6.2016 (Item I)	Agenda Minutes
Legislative Council	15.6.2016	Official Record of Proceedings (Question 12)
Panel on Security	11.11.2016 (Item V)	Agenda Minutes
Panel on Security	6.6.2017 (Item IV)	Agenda Minutes
Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims	27.3.2018 (Item I)	Agenda