

**立法會**  
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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 21 May 2018**

**Screening and appeal procedures**

**Purpose**

This paper provides background information and summarizes Members' past discussions on the screening and appeal procedures under the unified screening mechanism ("USM").

**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 ("TCAB").

4. In March 2014, the Administration commenced operating USM to screen non-refoulement claims on all applicable grounds.<sup>1</sup> 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.

## **Members' deliberations**

### Expediting the screening of claims

5. Members noted that as at the end of February 2018, there were 4 958 non-refoulement claims pending screening by ImmD. Members were generally of the view that measures should be introduced to expedite the screening of such claims. Some members suggested that instead of giving 49 days for a claimant to complete a claim form, the time allowed for filing a claim form should be shortened and the application of a claimant who failed to attend an interview without a valid reason should be revoked. In addition, more manpower resources should be provided to ImmD to speed up the screening of claims.

6. Members were advised that the existing deadline for submitting a completed claim form had been determined after deliberations in the enactment of the existing laws and was further lengthened as a compromise to the strong request of the Duty Lawyer Service ("DLS"). Claims submitted beyond the deadline were dealt with in accordance with existing laws. According to the Administration, ImmD had created 83 new posts in 2016 to handle such claims.

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<sup>1</sup> 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.

The screening of pending claims was expected to be completed by the first half of 2019. Moreover, additional interpreters and translators were also recruited to provide interpretation for claimants at briefing sessions and screening interviews and translation of documents submitted by claimants. Members were further advised that the Administration was carrying out a review of the existing regime and would come up with legislative proposals to expedite the screening of claims.

7. Some members expressed concern about an average time lag of 11 months between the arrival of a claimant in Hong Kong and the lodging of a claim. Some members suggested that a claimant should be required to submit a claim within a specified time period from his time of arrival in Hong Kong. According to the Administration, the average time lag arose from the fact that many illegal immigrants and overstayers did not lodge a claim until they were intercepted by law enforcement officers in Hong Kong. Besides, the capacity of DLS in supporting the provision of publicly-funded legal assistance to claimants was also a limit to the processing of claims.

8. To further expedite screening, members were advised that the Administration had launched the "Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants" ("Pilot Scheme") since September 2017, under which a supplementary roster of lawyers was set up to run in parallel with the "Legal Assistance Scheme for Non-refoulement Claimants" provided by DLS. Eligible lawyers currently participating in the DLS Scheme were welcome to join the supplementary roster of the Pilot Scheme. The daily number of claims for which the screening procedures could be commenced was thereby increased to 23 cases per day from the original DLS ceiling of 13.

9. Members were also advised that ImmD had enhanced the efficiency of screening procedures by flexible staff deployment and optimized workflow, including advanced scheduling of screening interviews and handling of claims involving claimants from the same country by dedicated officers. The handling time per claim (i.e. from the commencement of screening procedures to determination by ImmD) had been expedited from about 25 weeks on average at the early implementation of USM to the current average of about 10 weeks.

#### Expanding the membership of TCAB

10. Currently, a claimant may lodge an appeal within 14 days upon receiving the notice of decision to reject the claim if aggrieved by the decision. According to the Administration, it required about 14 to 16 weeks to handle an appeal case. It was expected that the pending appeal cases would be completed in 2021. Some members, however, expressed concern that speedier screening of claims by ImmD would be followed by a large number of appeal

cases. These members were concerned how the Administration would handle the increasing number of appeal cases.

11. The Administration advised that new members had been appointed to TCAB since July 2016, making its membership expanded from the original size of 28 to the current strength of 102. In addition, manpower of TCAB secretariat and ancillary facilities (such as office accommodation and hearing facilities) had been increased. As such, the number of claims determined by TCAB in 2017 had increased by 3.8 times over 2016 (from a monthly average of 49 to 235), and would be expected to further go up in 2018.

### **Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
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## Appendix

### Relevant papers on screening and appeal procedures

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Security	2.2.2016 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	24.2.2016	<a href="#">Official Record of Proceedings (Question 18)</a>
Panel on Security	7.6.2016 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Security	11.6.2016 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	15.6.2016	<a href="#">Official Record of Proceedings (Question 12)</a>
Panel on Security	11.11.2016 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Security	6.6.2017 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims	27.3.2018 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>