

For discussion on
27 November 2018

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

Proposals to Amend the Immigration Ordinance

Purpose

This paper briefs Members on the latest situation of handling non-refoulement claims and the progress of reviewing the Immigration Ordinance (Cap. 115).

Latest situation

2. After implementation of the Unified Screening Mechanism (“USM”) in March 2014, as at end October 2018, the Immigration Department (“ImmD”) received a total of 16 386 non-refoulement claims. Together with the 2 501 torture claims pending screening previously, and the 4 198 claims on other grounds such as cruel, inhuman or degrading treatment or punishment lodged before USM, there were a total of 23 085 claims requiring ImmD’s screening under USM.

3. Among them, 15 111 claims had been determined by ImmD, 6 654 claims were withdrawn or those for which no further action could be taken, and the remaining 1 320 claims were pending screening by ImmD. Of those determined by ImmD, 77 claims were substantiated and 15 034 rejected.

4. Of those rejected by ImmD, 13 923 appeals were lodged. The Torture Claims Appeal Board (“TCAB”) had completed the handling of 5 817 appeals, of which 44 were substantiated and 5 773 rejected. Another 1 622 appeals were withdrawn or those for which no further action could be taken. There were 6 484 appeals pending handling by TCAB.

5. The cases mentioned above involved a total of about 22 000 claimants¹, out of whom 8 000 were already removed from Hong Kong. Of those remaining, apart from the about 8 000 claimants whose claims or appeals were pending handling as mentioned above, another about 6 000 persons should be removed to their countries of origin as soon as practicable. Among these persons, about 2 800 were pending judicial review (“**JR**”) or other litigation procedure, and some other 1 600 were imprisoned, remanded, involved in ongoing prosecution or investigation process, or otherwise still in Hong Kong. At present, ImmD is arranging for the removal of the remaining about 1 600 persons (including seeking re-entry documents and arranging air passage for their return).

6. As regards JRs relating to non-refoulement claims, according to the information provided by the Judiciary, in the past three years (2015, 2016 and 2017), the numbers of applications for leave to JR in relation to non-refoulement claims received by the Court of First Instance of the High Court were 103, 60 and 1 006 respectively. The Judiciary does not have the breakdown of the operation expenses by types of cases or levels of courts.

Amending the Immigration Ordinance

7. The Government consulted the Legislative Council (“**LegCo**”) Panel on Security on some of the proposals to amend the Immigration Ordinance² in July 2018. At the Subcommittee meeting on 18 October 2018, some Members and members of the public expressed different views on the proposals. Further information on some of the major proposals is provided below for Members’ reference.

Claim form and submission of evidence

8. We propose to tighten the statutory timeframe for a claimant’s submission of a claim form from the current 28 days to 14 days. Meanwhile, we propose to continue allowing a claimant, before the submission deadline, to submit a written application to an immigration officer for extending the time to return the claim form. Nevertheless, we

¹ As the same claimant may lodge more than one claim, e.g. re-opening a claim after withdrawal, filing a subsequent claim after being rejected, the number of claimants is therefore smaller than the number of claims.

² LC Paper No. CB(2)1751/17-18(01)

also propose to specify more clearly that applications should be considered only after a claimant has exercised all due diligence to comply with the original deadline as far as practicable, and the need for any additional time is because of “exceptional” and “uncontrollable” circumstances.

9. The above amendment will avoid the present situation that claimants would in general have at least 49 days to complete the form regardless of the complexity of the cases and claimants’ needs. At the same time, claimants who have a genuine need for more time may still apply for extension under the mechanism. This ensures not only fairness but also effective screening.

10. As regards the period of 21 additional days currently given to all claimants by administrative measures, we also propose to cancel it. Since this change does not relate to legislative amendments, we are considering whether it can be implemented sooner before enactment of the amendment ordinance.

11. In regard to the view that the publicly-funded legal assistance currently in place may not be able to operate well with the tightened timeframe, we will in parallel review the administrative arrangements for providing such assistance, such that lawyers will be in contact with claimants at the earliest possible time and available time can be fully used.

12. In addition, to ensure that claimants will continue to have every reasonable opportunity to submit available and relevant documents in support of their claims, we propose to have the following safeguards in place:

- (a) if a claimant is unable to submit all relevant supporting documents with the claim form, he/she may provide a list in advance, stating the outstanding documents that will be submitted later, in which case he/she may submit the listed documents before the first screening interview; and
- (b) if a claimant has exercised all due diligence to comply with the specified deadline, but still could not timely submit the documents due to “exceptional” and “uncontrollable” circumstances, an immigration officer may accept any document not submitted before the specified deadline or listed as an outstanding document as described above.

Languages used in screening interviews

13. The overwhelming majority of claimants are from countries in South or Southeast Asia, such as Vietnam, India, Pakistan, Indonesia and Bangladesh. At present, unless claimants can communicate in Chinese or English, ImmD will arrange simultaneous interpreters to communicate with them, including during screening interviews. The 22 in-house translator and interpreter posts created in ImmD on non-civil service terms to provide language support in Hindi, Urdu, Bengali, Punjabi, Indonesian and Vietnamese are already sufficient to serve over 80% of all the claimants. As for claimants from other countries, ImmD will hire, on a case-by-case basis, non-government part-time interpreters from the pool of over 280 interpreters registered with the Judiciary to provide interpretation service.

14. ImmD will continue the above arrangement. However, there have been cases where claimants could reasonably communicate in other languages (e.g. English or the official languages of their countries of origin), but they still repeatedly requested ImmD to arrange an interpreter who could communicate in their tribal dialects for interviews, causing obstruction or delays to the screening process. Hence, drawing reference to overseas practice, we propose to stipulate that if a claimant is reasonably supposed to be able to communicate in another language, interviews need not be conducted in the claimant's most proficient language.

Management of detention facilities

15. Anti-riot equipment is regulated by the Firearms and Ammunition Ordinance (“FAO”) (Cap. 238); Section 3(b) of which empowers officers or members of certain government departments to possess or deal with arms or ammunition on behalf of the Government. Currently, ImmD is not listed in that section. To ensure that ImmD staff working at the Castle Peak Bay Immigration Centre (“CIC”) can perform their duties effectively and to ensure the safety of them and of detainees, CIC staff must be sufficiently equipped. At present, the Commissioner of Police grants exemptions under FAO to applications by ImmD staff deployed to work at CIC on a personal and case-by-case basis for possessing firearms and ammunition. This practice constrains ImmD's flexibility in the deployment of staff, which in turn affects its ability in handling emergencies. Besides, ImmD has not been able to conduct its

own training for CIC staff but has been seeking the assistance of the Correctional Services Department (“CSD”) to provide tailor-made training on using anti-riot equipment and relevant refresher courses. This arrangement is undesirable for both ImmD and CSD.

16. We therefore propose to amend FAO (and the Weapons Ordinance (Cap. 217) for similar reasons) to authorise ImmD officers to possess firearms and ammunition (e.g. pepper spray), with a view to strengthening internal training and deployment flexibility, and further enhancing ImmD’s capability in emergency response.

Way Forward

17. The review of the Immigration Ordinance is ongoing. Major issues being studied include further strengthening arrival prevention, strengthening detention, expediting removal, combating unlawful employment, and some other proposals of other stakeholders (e.g. imposing a deadline on lodging a claim, publication of appeal decisions, providing full legal underpinning to the screening mechanism, etc.).

18. We aim to consult the Panel on Security on the remaining amendment proposals early next year before introducing the bill into LegCo thereafter.

Security Bureau
Immigration Department
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