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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 27 November 2018**

**Proposals to amend the Immigration Ordinance in relation to  
non-refoulement claims**

**Purpose**

This paper provides background information and summarizes Members' past discussions on various issues related to the proposals to amend the Immigration Ordinance (Cap. 115) in relation to 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 any claimant aggrieved by ImmD's decision may lodge an appeal in writing within 14 days after he/she is informed of such decision, which would be handled by the 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. Since then, the number of non-ethnic Chinese illegal immigrants and the number of non-refoulement claimants surged. At the same time, the number of claims pending the commencement of screening procedures by ImmD had been on the rise. Against this background, the Administration launched a review of the strategy of handling non-refoulement claims in early 2016.

5. As part of the review, the Administration has been reviewing the provisions of Cap. 115 in respect of the screening procedures and related issues. According to the Administration, subject to the progress of the review, it targets to submit an amendment bill to the Legislative Council ("LegCo") in early 2019.

## **Members' deliberations**

### Measures to expedite the screening of non-refoulement claims

6. Members noted that under the existing screening procedures, non-refoulement claimants were given 49 days to return their claim forms. With a view to enhancing the screening efficiency, members were advised that the Administration was considering tightening the statutory timeframe for submission of claim forms (e.g. to 14 days). To ensure fairness, claimants could request for an extension of claim forms if they had exercised all due diligence to comply with the original deadline as far as practicable, and under "exceptional" and "uncontrollable" circumstances.

7. Some members expressed support for the proposed tightening of the statutory timeframe for submission of claim forms so as to expedite the screening of claims. They were, however, concerned that allowing a claimant to request for an extension of the timeframe for returning a claim form on the ground of "exceptional" and "uncontrollable" circumstances might be open to abuse. The Administration explained that examples of circumstances which would be considered as "exceptional" and "uncontrollable" included situations in which the claimant was arrested by another law enforcement agency or suffered from serious illness. To avoid abuse, documentary proof of the "exceptional" and "uncontrollable" circumstances would be required.

8. Some other members, however, considered that shortening the timeframe for submission of claim forms to 14 days was unnecessary, given that the number of pending claims had been significantly reduced in recent years. Nonetheless, these members took the view that it was important for the legislative amendments to be introduced to meet the high standards of fairness laid down by the court. According to the Administration, the existing regime

for the screening of non-refoulement claims, which incorporated publicly-funded legal assistance, free interpretation service and free medical examination, as well as an appeal mechanism, met the high standards of fairness required by the court. The proposed measures to expedite the screening of claims, which had been drawn up having regard to relevant overseas practice and the operational experience of USM, also adhered to such standards.

9. As regards the screening interview, members were advised that the Administration was considering adding provisions in Cap. 115 to set out the procedures and rules of arranging interviews between ImmD and claimants, so as to prevent claimants from making repeated requests for deferral of interviews or re-scheduling an interview without any reason. The Administration was also considering stipulating that a claimant could apply for re-scheduling an interview only due to "exceptional" and "uncontrollable" circumstances, and such application must be submitted before the original interview date.

10. Noting that the Administration was considering tightening the statutory timeframe for lodging an appeal from 14 days to seven days if aggrieved by ImmD's decision, some members considered that the proposed arrangement was unfair to the claimants. This would also cause practical difficulties for the legal representatives of claimants to prepare and file a notice of appeal. These members expressed concern whether the Administration had conducted any consultation on the proposed arrangement during its review. The Administration stressed that the comprehensive review exercise was still ongoing and the proposed legislative amendments, including the tightening of the timeframe for submission of claim forms and lodging of appeals, were preliminary suggestions. It had maintained communication with the Hong Kong Bar Association and the Law Society of Hong Kong, as well as other relevant stakeholders on the review.

#### Crime committed by non-refoulement claimants and detention

11. Some members expressed concern about the crime committed by non-refoulement claimants. They took the view that the Administration should take the opportunity of the review of USM and consider introducing legislative amendments to provide for the establishment of detention centres for accommodation of claimants to address the security threat to residents and prevent claimants from taking up illegal employment. Some other members, however, did not see the need for setting up detention centres. These members also queried as to whether the crime rate of non-refoulement claimants was exceptionally high in comparison with the overall crime rate of Hong Kong.

12. The Administration pointed out that according to a relevant court ruling, ImmD could continue to detain an illegal immigrant only if it was believed that the illegal immigrant could be removed within a reasonable period. Stressing

that the setting up of detention centres was a complicated issue with diverse views from the society, the Administration would continue studying the issue, including exploring into any lawful, practicable and effective option, and would keep LegCo updated when ready. Pointing out that about 1 500 claimants had been arrested for committing crime in Hong Kong in the previous two years respectively, the Administration stressed that it was very concerned about the crime committed by claimants, adding that the Police had established a dedicated team under the Organized Crime and Triad Bureau to combat such crime.

### Repatriation of rejected claimants

13. Some members were of the view that claimants convicted of crime in Hong Kong should be repatriated immediately. The Administration advised that the court had ruled that the right of a claimant not to be subjected to cruel, inhuman, or degrading treatment or punishment was absolute. Even if a claimant was convicted of crime, it was still necessary to screen the claim concerned under procedures which met the high standards of fairness required by the court. As such, removal procedures of rejected claimants would only be commenced after all the screening and appeal procedures were completed. The Administration assured members that although claimants would not be repatriated immediately upon their conviction of crime, their claims were given priority to be handled, such that they could be removed as soon as possible if their claims were rejected.

14. To enhance ImmD's removal efficiency, members were advised that the Administration was considering adding provisions in Cap. 115 to prescribe that even though the appeal was pending, once the claim had been rejected by an immigration officer, the Government may liaise with the relevant authorities for repatriation arrangements in parallel. Some members expressed concern about the proposed arrangement. The Administration advised that liaison with relevant overseas authorities on the repatriation arrangements for a rejected claimant while the appeal concerned was pending would only be conducted on the prerequisite of not disclosing whether the person concerned had filed a claim. As the action was only taken after ImmD had determined the claim, fairness of handling the claim was safeguarded.

15. Some members asked whether there were difficulties in the repatriation of a rejected claimant. The Administration advised that before repatriation of a rejected claimant, ImmD had to contact the claimant's home country for verification of the claimant's identity and issue of travel document. While the work required cooperation of the home country of the claimant, it had been observed that many authorities had accorded a rather low priority to such work. Complications might also arise in the repatriation arrangements if there was no direct flight from Hong Kong to the claimant's home country.

**Relevant papers**

16. A list of relevant papers available on the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
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## Appendix

### Relevant papers on proposals to amend the Immigration Ordinance in relation to non-refoulement claims

Committee	Date of meeting	Paper
Panel on Security	2.2.2016 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Security	7.6.2016 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee on Immigration (Unauthorized Entrants) (Amendment) Order 2016	--	<a href="#">Report of the Subcommittee to the House Committee</a>
Panel on Security	11.6.2016 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</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	<a href="#">Agenda</a> <a href="#">Minutes</a>
	21.5.2018	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Security	10.7.2018 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>