

For discussion on
15 January 2019

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

**Provision of Publicly-funded Legal Assistance and
Humanitarian Assistance to Non-refoulement Claimants**

Purpose

This paper briefs the Subcommittee on the provision of publicly-funded legal assistance (“PFLA”) and humanitarian assistance to non-refoulement claimants by the Government.

Publicly-funded Legal Assistance

Duty Lawyer Service

2. In December 2008, the Court of First Instance (“CFI”) of the High Court ruled in the *FB v Director of Immigration and Secretary for Security* [2009] 2 HKLRD 346 case that the Government must implement a series of measures, including the provision of PFLA to claimants during the screening process, so as to meet the high standards of fairness required by the Court in the *Prabakar* case. The Government has been engaging the Duty Lawyer Service (“DLS”) since 2009 to operate the “Legal Assistance Scheme for Convention Against Torture Claims” (renamed as “Legal Assistance Scheme for Non-Refoulement Claims” subsequent to the commencement of the Unified Screening Mechanism (“USM”) in March 2014). On the premise that the claimant could be provided with PFLA at the same time, the Immigration Department (“ImmD”) will commence the screening procedures and refer the claim to DLS for follow-up.

3. The coverage of the scheme includes:
 - (a) advising the claimant of his/her legal right and the procedures throughout the screening process;
 - (b) assisting the claimant to complete the claim form;
 - (c) accompanying the claimant to attend the screening interview(s), if considered necessary by the lawyer;
 - (d) assessing merits of appeal for claims rejected by the Immigration Department (“ImmD”);
 - (e) preparing notice of appeal for meritorious cases;
 - (f) representing the claimant at the oral hearing on appeal where necessary;
 - (g) assisting the claimant in making a request to re-open a claim or to make a subsequent claim in meritorious cases; and
 - (h) preparing submissions for the claimant in an objection notice on revocation in meritorious cases.

4. Lawyers participating in the “Legal Assistance Scheme for Non-Refoulement Claims” are required to possess a practising certificate in Hong Kong with at least 3 years’ post-qualification experience, and have completed the dedicated training organised or approved by the Law Society of Hong Kong or Hong Kong Bar Association. As at the end of 2018, there were more than 720 lawyers on DLS’ roster eligible for providing assistance to claimants.

5. Under the “Legal Assistance Scheme for Non-Refoulement Claims”, lawyers providing assistance to claimants are remunerated on an hourly basis. If lawyers are required to accompany the claimant to attend the screening interview, they will be remunerated on either half-day or whole-day basis, depending on the duration of the interview. As at the end of 2018, the relevant legal fee is \$880 per hour, \$3,630 per half day and \$7,300 per whole day.

6. Separately, to support the operation of the “Legal Assistance Scheme for Non-Refoulement Claims”, DLS needs to employ supporting staff to refer cases to lawyers. As at September 2018, there were 72 secretariat staff supporting the “Legal Assistance Scheme for Non-Refoulement Claims”.

7. The said legal fee remunerated to lawyers, together with other administrative costs (including the secretariat staff cost, office rent and other expenses) incurred, are fully funded by the Government to DLS.

8. As the Government is required by law to provide every claimant with PFLA, the progress of screening claims by ImmD is not only confined by factors such as its own manpower, interpreters, etc., but also the number of PFLA referrals that could be made by DLS to its lawyers. In order to expedite the handling of claims (especially after the commencement of USM in March 2014), the Government has been requesting DLS to increase the referral quota.

9. At the beginning, the “Legal Assistance Scheme for Non-Refoulement Claims” referred two claimants to lawyers for assistance per day (i.e. about 500 claims per year). In response to the Government’s request, the number of referrals has increased gradually. As agreed by DLS, the number of claims referred to lawyers had increased from 8 cases per day as at the end of 2012 (i.e. about 2 000 claims per year) to 13 cases per day as at August 2015 (i.e. about 3 200 claims per year).

10. There had been a drastic increase in the number of persons making non-refoulement claims after 2014; over 4 600 claims (after the commencement of USM in March) in 2014, over 5 000 claims in 2015, and over 3 800 claims in 2016, having exceeded the maximum capacity of 3 200 referrals per year. Unless the referral capacity was further increased, it would not be feasible to expedite the handling of pending claims as soon as practicable. Therefore, the Government launched the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants (“Pilot Scheme”) in September 2017 to run in parallel with the “Legal Assistance Scheme for Non-refoulement Claims” of DLS.

The Pilot Scheme

11. The Pilot Scheme provides claimants with PFLA of the same coverage (i.e. paragraph 3 above). Under the Pilot Scheme, the qualifications of participating lawyers are also the same as those under the “Legal Assistance Scheme for Non-refoulement Claims” of DLS (i.e. paragraph 4 above).

12. Different from DLS’ “Legal Assistance Scheme for Non-refoulement Claims”, participating lawyers under the Pilot Scheme

will be remunerated a standard legal fee after completion of each case (instead of remuneration at time rates under DLS)². Besides, instead of employing Court Liaison Officers (“CLOs”) and other supporting staff to provide support (such as legal executive and clerical support) to lawyers and claimants, the Pilot Scheme provides an additional legal executive allowance to participating lawyers.

13. By implementing the Pilot Scheme, the screening capacity can be increased immediately and a more flexible mode of operation can be tested, so as to examine on how PFLA can be provided to claimants in the most effective manner. Since the Pilot Scheme does not need to employ a large number of CLOs and other supporting staff for a long period, and the administrative work can be reduced substantially by substituting time-based remuneration with a standard fee, the caseload can be adjusted more promptly and flexibly when necessary. As at the end of 2018, there were 25 staff in the Pilot Scheme Office.

14. As at the end of 2018, there were about 130 qualified lawyers on the roster of the Pilot Scheme to provide claimants with PFLA.

15. The number of referrals under the Pilot Scheme has increased from 2 cases per day (i.e. about 500 claims per year) in September 2017 to 10 cases per day (i.e. about 2 440 claims per year) in March 2018, thereby significantly increasing the number of claims that could be processed by ImmD by about 75% (i.e. from the ceiling of 13 cases per day in the past to 23 cases per day). Since the launch of the Pilot Scheme up to the end of 2018, the Pilot Scheme has provided PFLA to more than 2 400 claimants and has been operating smoothly.

Latest Situation

16. As a result of the various measures implemented under the comprehensive review, and as shown by the latest trend of illegal immigrants and non-refoulement claimants, the number of claims pending screening has significantly dropped. As at the end of 2018, the number of claims pending screening by ImmD was only about 540, a drop of over 90% when compared with the peak.

² For the first stage under the Pilot Scheme (i.e. the stage during which ImmD conducts the screening of claims), the legal fee is standardised at \$20,700 (plus \$9,800 of legal executive allowance). For the second stage (i.e. the appeal stage), the legal fee is \$7,500. Similar to DLS, whether or not a claimant will be provided with PFLA at the appeal stage is subject to merits assessment by the lawyer concerned.

17. The Government has noticed a decreasing trend in the number of new claims received. If the number of new claims received remains at the present level and the various measures for expediting the screening of pending claims continue, ImmD may be able to clear the current backlog in the first quarter of this year.

18. To ensure proper use of public funds and sufficient manpower and resources to cater for the anticipated number of new claims received, the Government discussed the work arrangements with DLS in July 2018. Given that the number of new claims received is currently estimated to be about 100 cases per month, DLS has adjusted the daily number of PFLA cases handled to no more than 4 claims per day, and assistance will be sought under the Pilot Scheme to handle extra cases when more than 4 claims are received on a day.

19. Separately, the Pilot Scheme has been operating for over a year. As proposed by the Government earlier, we will review the Pilot Scheme shortly, which includes examining whether its mode of operation is more flexible while expediting the handling of claims. In the long run, the Government will review the operation of DLS and Pilot Scheme. The fundamental objective is to ensure the continual provision of PFLA to claimants according to the high standards of fairness as required by law on the one hand, and to cater for the changing number of claims flexibly with the proper use of public funds on the other.

Humanitarian Assistance

20. Since 2006, on humanitarian grounds, the Government has been engaging non-governmental organisation to, depending on the circumstances of individual cases, provide humanitarian assistance to non-refoulement claimants² who are deprived of basic needs during their presence in Hong Kong so that they will not become destitute.

21. Through an open and fair tendering process, the Social Welfare Department (“SWD”) has commissioned the International Social Service Hong Kong Branch (“ISS-HK”) to provide such humanitarian assistance. ISS-HK will assess claimants’ eligibility for the types and level of

² Regardless whether the claimant’s claim has been substantiated, is pending screening or pending removal after being rejected, eligible claimants are entitled for humanitarian assistance after assessment.

assistance based on their individual needs, health condition and availability of resources, etc. The assistance covers accommodation-related assistance (monthly rent allowance per adult and child is \$1,500 and \$750 respectively, plus rent deposit of up to \$3,000 or an amount equivalent to two months of rent [whichever is the less], plus property agent fee of up to \$750 or an amount equivalent to the rent for half a month [whichever is the less]), basic utilities allowance (\$300 per month), food (\$1,200 per month), transportation allowance (ranging from \$200 to \$420 per month), other basic necessities (offered in-kind), and counselling services, etc.

22. To ensure proper use of public funds, ISS-HK is required to submit monthly service statistical reports and financial statements to SWD, and maintain all financial records for inspection by the Government. According to the service contract, ISS-HK is also required to, upon expiry of the contract period, engage a certified public accountant to conduct an independent audit on the financial status of its service plans and submit an audited financial statement to SWD. SWD has maintained contact with ISS-HK and closely monitors the provision of humanitarian assistance via regular / surprise inspections and through the relevant information furnished.

23. In addition, the Government will, from time to time, review the overall assistance level and make adjustment as necessary. Service users with extra needs may provide justification and documentary proof to ISS-HK for its consideration on a case-by-case basis. The Government has to emphasize that the provision of humanitarian assistance aims to ensure that claimants will not become destitute during their presence in Hong Kong, but not to provide them with assistance more than necessary to meet their basic needs, so as to avoid any magnet effect which may have serious implications on the long-term sustainability of such assistance and the immigration control of Hong Kong.

24. Separately, in 2014, the Court of Final Appeal upheld in its ruling that non-refoulement claimants, even if their claims are substantiated, have no constitutional right or any other legal right to work in Hong Kong. That said, substantiated claimants may submit their applications to ImmD for taking up employment. Having regard to the merits of individual cases, ImmD will approve such application on an exceptional basis.

Medical Assistance

25. As regards medical assistance, the Hospital Authority (“HA”) will, on the premise that medical services for local residents are not affected,

provide non-residents (i.e. non-eligible persons), including non-refoulement claimants, with medical services. Persons in need may submit their applications for medical fee waivers to HA or service units of SWD for assessment in accordance with the current mechanism on waiving medical expenses for non-eligible persons (including consideration of the financial status of individual applicants). Discretionary approval for the one-off waiver of medical expenses at public clinics or hospitals will be given on a case-by-case basis. All claimants staying in Hong Kong, regardless of the progress of their claim, are eligible for the said medical assistance.

School Placement

26. Regarding the support to non-refoulement claimants who are school-age children, if the arrangement of school placement is needed, applications may be made to the Education Bureau (“EDB”) for processing taking into account the circumstances of individual cases. Upon receipt of such application, EDB will consult ImmD. If the minor claimant concerned will not be removed from Hong Kong shortly, and ImmD does not have any comment, EDB will vet the application and make decision on school placement. Successful applicants will be arranged placement at suitable schools, having regard to the districts they live in and their learning level.

Conclusion

27. In the past five years (including 2018-19), the expenditures on PFLA and humanitarian assistance is at **Appendix**. The Government will continue to closely monitor the provision of PFLA and humanitarian assistance to non-refoulement claimants and timely review the relevant arrangements, with a view to continuously providing claimants with adequate support while ensuring proper use of public funds.

**Security Bureau
Immigration Department
Social Welfare Department
January 2019**

Appendix

**Expenditures on PFLA and Humanitarian Assistance
to Non-refoulement Claimants**

| Year | PFLA (\$ Million) | Humanitarian Assistance (\$ Million) | Total (\$ Million) |
|-----------------------|------------------------------|---|-------------------------------|
| 2014-15 | 97 | 254 | 351 |
| 2015-16 | 106 | 489 | 595 |
| 2016-17 | 122 | 729 | 851 |
| 2017-18 | 152 [23] | 587 | 739 |
| 2018-19 (Estimate) | 271 [124] | 755 | 1 026 |

Note: [] denotes the expenditure on the Pilot Scheme (inclusive in the total expenditure on PFLA)
