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Panel on Security

**Information note prepared by the Legislative Council Secretariat
for the meeting on 5 June 2018**

**Action plan to tackle trafficking in persons and to enhance protection of
foreign domestic helpers in Hong Kong**

According to the Administration, trafficking in persons ("TIP")¹ is a heinous crime that has never been tolerated in Hong Kong. Hong Kong's long and well-established legal framework, stringent enforcement action, a fiercely independent judicial system, respect for the rule of law in society, as well as a clean and reliable government have placed Hong Kong on a solid footing to combat TIP.

2. The subject of TIP has not been discussed by the Panel on Security ("the Panel"). According to the Administration's reply to a question raised by a Member at a Council meeting, the Administration has always attached great importance to the fight against TIP crimes through multi-faceted measures. Recognizing the contribution of about 370 000 foreign domestic helpers ("FDHs") working in Hong Kong, the Administration is also committed to protecting their rights and interests through a multi-pronged approach. The relevant questions and the Administration's replies are in **Appendices I and II**.

¹ According to Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (i.e. Palermo Protocol), TIP is defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, which shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

3. Members may wish to note that in March 2018, the Administration announced the setting up of a high-level steering committee chaired by the Chief Secretary for Administration to formulate an overall strategy and heighten public awareness of TIP. With the Secretary for Security and the Secretary for Labour and Welfare as the vice-chairmen of the steering committee, the membership also comprises the Commissioner of Police, Director of Immigration, Commissioner of Customs and Excise, Director of Social Welfare, Commissioner for Labour and Director of Public Prosecutions of the Department of Justice. The steering committee has promulgated the Action Plan to Tackle TIP and to Enhance Protection of FDHs in Hong Kong ("the Action Plan"). According to the Administration, the Action Plan includes not only ongoing efforts in combatting TIP and protecting FDHs, but also introduces new initiatives in terms of overall strategy, victim identification, investigation, enforcement, prosecution, victim protection and support, prevention, and partnership with different stakeholders. The relevant press release issued by the Administration is in **Appendix III**.

4. The Administration will brief the Panel on the Action Plan to tackle TIP and to enhance protection of FDHs in Hong Kong at its meeting on 5 June 2018.

Council Business Division 2
Legislative Council Secretariat
30 May 2018

Press Releases

LCQ5: Combating trafficking in persons

Following is a question by Hon Dennis Kwok and a reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (March 21):

Question:

Last year, Hong Kong was placed, for the second consecutive year, on the Tier 2 Watch List in the Trafficking in Persons Report published annually by the Department of State of the United States, indicating "a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons ("TIP") from the previous year" on the part of Hong Kong. Moreover, the High Court pointed out in a judgment handed down in 2016 on a judicial review case that the Government had failed to fulfill its obligation to protect the right, under Article 4 in Part II (Hong Kong Bill of Rights) of the Hong Kong Bill of Rights Ordinance, of the applicant in that case of not being subjected to forced labour or TIP. In particular, the Court stated that the critical flaw in the Government's fulfilment of its obligations under Article 4 of the Hong Kong Bill of Rights was the lack of a criminal offence and penalty that addressed the prohibited concept of forced or compulsory labour. Despite the Government's repeated claim that TIP has been effectively dealt with by the various pieces of legislation, some human rights organisations have expressed concern that the current legislative framework fails to combat all forms of TIP as defined under Article 3(a) of the Palermo Protocol, nor can it effectively pursue syndicates or persons benefiting from the proceeds obtained from such activities. In this connection, will the Government inform this Council whether it will conduct a comprehensive review of the policies and measures in place in relation to TIP and forced labour, and introduce dedicated and comprehensive criminal legislation and penalties to prohibit such acts; if so, of the details (including timetable); if not, the reasons for that?

Reply

President,

Trafficking in persons (TIP) is a heinous crime that is not tolerated in Hong Kong. Our well-established legal framework, stringent enforcement actions, independent judicial system, respect for the rule of law in society as well as our clean government have placed us on a solid footing to combat TIP. The Government has always attached great importance to anti-TIP work, responding to this evolving international issue through targeted and multi-pronged measures (which are now under continuous review and updating) in areas including victim identification, law enforcement, prosecution, victim protection, enhancement in staff training and forming partnership with local and overseas stakeholders.

The Government does not agree that the existing legislation of Hong Kong cannot effectively combat and prevent TIP. At present, our legislation has provided an adequate and solid legal framework to effectively combat TIP crimes. Although Hong Kong

does not have a single piece of legislation prohibiting TIP and the Palermo Protocol has not been applied here, the legislation of Hong Kong has already covered the conduct of "TIP" as defined in the Palermo Protocol, mainly including the following six aspects:

(1) Crimes Ordinance (Cap. 200) prohibits TIP to or from Hong Kong for the purpose of prostitution; harbouring another person or exercising control or direction over another person for the purpose of that person's prostitution or that that person shall do unlawful sexual acts with others; and any other person from procuring another person to become a prostitute or cause prostitution of that person in Hong Kong or elsewhere. It also prohibits other crimes including rape, procuring another person by threats to do unlawful sexual acts with others and criminal intimidation;

(2) Human Organ Transplant Ordinance (Cap. 465) prohibits commercial dealings in human organs;

(3) Prevention of Child Pornography Ordinance (Cap. 579) prohibits printing, making, producing, reproducing, copying, importing or exporting, publishing and possessing child pornography;

(4) Immigration Ordinance (Cap. 115) prohibits arrangement for an unauthorised entrant to Hong Kong and employing illegal workers;

(5) Employment Ordinance (Cap. 57) imposes criminal liability on employers involved in non-payment, under-payment of wages or delay in payment of wages, failure to grant rest days and statutory holidays to employees; and

(6) other relevant ordinances which prohibit such crimes as assault, forcible taking or detention of persons with intent to sell him or her, child abduction, deception and blackmail, etc.

The most serious penalty for the above offences is life imprisonment.

Although TIP is neither widespread nor prevalent in Hong Kong, the Government has been keeping a close watch on the trend of TIP crimes to make timely responses to the rapidly changing crime situation as well as modus operandi of criminals, and keeping abreast of the enforcement of existing legislation with regard to prevailing circumstances so as to propose legislative amendments if necessary.

To enhance prosecutors' awareness of TIP and forced labour, the Department of Justice incorporated a new paragraph titled "Human Exploitation Cases" in the Prosecution Code published in 2013, with a view to providing guidance to prosecutors as to what may amount to TIP and exploitation, as well as the proper approach to handle the cases concerned.

In addition, the Government attaches great importance to protecting the rights and benefits of foreign domestic helpers (FDHs). At present, there are about 370 000 FDHs in Hong Kong assisting local families in household chores and taking care of the elderly and children in our families, thereby unleashing the local labour force and making significant contribution to Hong Kong's economic development. In order to prevent FDHs from falling victim to TIP, we will further enhance the protection for FDHs and maintain Hong Kong as an attractive place of work for

FDHs. The Employment (Amendment) Ordinance 2018 came into effect on February 9 this year, significantly increasing the maximum penalties for the offences of overcharging of commission from job-seekers and unlicensed operation by employment agencies (EAs) from a fine of HK\$50,000 by seven times to HK\$350,000 and imprisonment for three years. The statutory time limit for prosecuting these two offences has also been extended from six months to 12 months, and the scope of the overcharging offence has been expanded to cover the management and employees of EAs in addition to the licensee. These measures have significantly increased the deterrent effect and provided better protection for all job-seekers, including of course, FDHs.

Combating TIP requires the concerted efforts of various bureaux and departments of different disciplines. To ensure the effective implementation of their work and heighten public awareness of TIP, the Government has decided to establish a high-level Steering Committee, chaired by the Chief Secretary for Administration, with the Secretary for Security and Secretary for Labour and Welfare as the vice-chairmen and relevant department heads as members. The Steering Committee will offer strategic steer in respect of tackling TIP and enhancing the protection of FDHs; formulate and monitor the full implementation of the "Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong" (the Action Plan in short); and ensure the provision of adequate resources to the relevant bureaux and departments for the effective implementation of the Action Plan.

The major new initiatives set out in the Action Plan include:

- (i) expanding the TIP victim screening mechanism by introducing a new victim identification mechanism in the Labour Department for the early identification of FDHs being exploited or abused and provision of appropriate assistance;
- (ii) expanding the victim screening mechanism currently in place in 12 police districts to all 24 police districts in the territory;
- (iii) setting up dedicated teams in relevant departments to ensure high efficiency in investigation and law enforcement, and to facilitate further enhancement of inter-departmental co-operation;
- (iv) setting up a dedicated hotline with interpretation services to enhance assistance to FDHs; and
- (v) stepping up co-operation with major FDH-sending countries, such as enhancing high-level exchanges between governments to understand each other's latest policy developments and discuss issues of mutual concern; and conducting local publicity activities there to promote FDHs' lawful interests in Hong Kong and various protective measures available.

The Government will announce the establishment of the Steering Committee and details on implementing the Action Plan later today.

Finally, President and members, I must reiterate that TIP and exploitation of FDHs are absolutely not tolerated in Hong Kong. The Government will implement various measures under the Action Plan to continue its dedicated efforts in combating TIP

and enhancing the protection of FDHs, including close monitoring of the latest modus operandi of criminals and introducing further initiatives as and when necessary. We will also continue our close co-operation with community organisations and the international community.

As regards the judicial review case mentioned in the Hon Dennis Kwok's question (i.e. ZN v. Secretary for Justice and others, HCAL 15/2015), the Government does not agree with the conclusion and judgment of the Court of First Instance and has lodged an appeal. As the Court of Appeal will hear the case in May this year, it is inappropriate for the Government to make further comment on the case at this stage.

Thank you, President.

Ends/Wednesday, March 21, 2018
Issued at HKT 13:51

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Press Releases

LCQ17: Immigration Department remains vigilant in monitoring "bogus marriages" concerned parties if they are involved in other crimes

Following is a question by the Hon Kenneth Leung and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 23):

Question:

It has been reported that some human trafficking offenders arranged bogus marriages for to-be-trafficked persons to enable them to meet the eligibility requirements for entry into certain countries, and then force the trafficked persons to take up illegal employment or engage in prostitution activities in such countries. Regarding bogus marriage-related offences involving human trafficking, will the Government inform this Council:

(1) of the respective numbers of persons who were alleged to have entered into bogus marriages and, on this account, were (i) arrested and (ii) convicted in Hong Kong for the related offences in each year since 2008, with a breakdown by their nationality and gender;

(2) of the respective numbers of persons who were alleged to have arranged bogus marriages for other persons and, on this account, were (i) arrested and (ii) convicted in Hong Kong for the related offences in each year since 2008, with a breakdown by their nationality and gender; the nationalities of the persons for whom they mainly arranged bogus marriages;

(3) as the authorities have pointed out in a paper submitted recently to the Panel on Security of this Council that in respect of persons who had gained entry into Hong Kong by means of bogus marriages, the main purpose of their coming to Hong Kong was to take up illegal employment, among the persons who were arrested or convicted for bogus marriage-related offences mentioned in (1), of the respective numbers of those who were alleged to have also (i) committed the offence of taking up illegal employment, and (ii) engaged in prostitution activities, with a breakdown by their nationality and gender; whether the authorities have, during investigation of these cases, discovered if (a) these persons were forced to work in Hong Kong and were subjected to manipulation, and (b) organised crimes or human trafficking were/was involved in such cases;

(4) given that paragraph 18 of the Prosecution Code of the Department of Justice (DoJ) provides guidelines and pointers to prosecutors in respect of offences relating to the exploitation of persons and the trafficking of them for that purpose, of the number of times for which DoJ handled cases pursuant to this code when instituting prosecutions in the past five years; among such cases, of the number of those which involved bogus marriage-related offences; and

(5) of the authorities' measures to combat bogus marriage-related offences involving human trafficking, and to prevent such crimes from happening in Hong Kong?

Reply:

President,

The Government has always been concerned about "bogus marriages". The Immigration Department (ImmD) set up a special task force in 2006 to step up enforcement actions to combat such offences to prevent persons seeking entry into Hong Kong by means of "bogus marriages" and intermediaries aiding others to seek entry into Hong Kong through such means. When suspected "bogus marriage" cases are identified, ImmD will conduct in-depth investigations on parties alleged to arrange and participate in "bogus marriages", collect evidence and initiate prosecution.

The reply to the questions raised by the Hon Leung is as follows:

(1) and (2) From 2008 to 2017, ImmD investigated a total of 6 971 suspected cases of "bogus marriage". A total of 10 649 persons were arrested, out of which 1 733 persons were successfully prosecuted and convicted. Relevant statistics breakdown by year is as follows:

Year	Number of cases	Number of arrestees	Number of persons successfully prosecuted
2008	874	908	259
2009	1 033	728	180
2010	1 283	1 504	185
2011	605	1 242	263
2012	432	1 059	240
2013	515	1 102	188
2014	687	1 096	122
2015	461	1 016	113
2016	507	979	98
2017	574	1 015	85
Total	6 971	10 649	1 733

Among the 10 649 persons arrested, 277 were arrested for allegedly arranging "bogus marriages" for others or participating in "bogus marriages" at the same time, the remaining 10 372 were alleged to have participated in "bogus marriages". Among the above 1 733 persons successfully convicted, 985 were male and 748 were female; 1 280 were Hong Kong residents and 453 were non-Hong Kong residents. Persons successfully convicted mentioned above include intermediaries and parties to "bogus marriages". ImmD does not maintain other statistical breakdown mentioned in the question. As seen from past cases, "bogus marriages" involved both local and non-local residents, and the non-local residents

involved mostly Mainland residents.

(3) ImmD does not maintain the figures of persons who were arrested or convicted for offences relating to "bogus marriage" and were alleged to have committed the offence of taking up illegal employment or engaging in prostitution activities at the same time. ImmD so far has not identified any "bogus marriage" case involving trafficking in persons (TIP). If there is any information (including the statements of parties concerned) which indicates that human trafficking offence may be involved in such a case, ImmD will investigate on the case in accordance with the established mechanism.

(4) According to information provided by the Department of Justice (DoJ), where there is a claim that a defendant or intended defendant is a victim of human trafficking, or that a case may involve human exploitation/ TIP elements, the law enforcement agencies will draw the prosecutor's attention to such claims or elements. In appropriate cases, the prosecutor may also draw the law enforcement agencies' attention to such claims or elements in the files submitted for legal advice.

In making a prosecutorial decision, a prosecutor would assess the merits of each claim with a high level of sensitivity, understanding and awareness of the human exploitation/TIP considerations in accordance with paragraph 18 of the Prosecution Code. As all prosecutors are expected to give due consideration to such claims or elements in each case as appropriate, the DoJ has not specifically maintained statistics on the number of cases in which paragraph 18 of the Prosecution Code has been considered.

(5) As mentioned in part 3 of this reply, ImmD so far has not identified any "bogus marriage" case involving TIP. Having said that, ImmD will remain vigilant in monitoring the parties concerned to see if they are involved in other crimes while combatting "bogus marriages". When suspected TIP cases are identified, ImmD will take a series of measures with related law enforcement agencies to enhance victim identification, protection and support, investigation as well as enforcement on the crimes involving TIP.

In fact, the Government has always attached great importance to anti-TIP work, responding to this evolving international issue through targeted and multi-pronged measures (which are now under continuous review and updating) in areas including victim identification, law enforcement, prosecution, victim protection, enhancement in staff training and forming partnership with international and local and overseas stakeholders.

At present, our legislation has provided an adequate and solid legal framework to effectively combat TIP crimes. Although Hong Kong does not have a single legislation prohibiting TIP and the Palermo Protocol has not been applied here, the legislation of Hong Kong has already covered the conduct of TIP as defined in the Palermo Protocol, mainly including the following six aspects:

(i) Crimes Ordinance (Cap 200) prohibits TIP to or from Hong Kong for the purpose of prostitution; harbouring another person or exercising control or direction over another person for the purpose of that person's prostitution or that that person shall do unlawful sexual acts with others; and any other person from procuring another person to become a prostitute or cause

prostitution of that person in Hong Kong or elsewhere. It also prohibits other crimes including rape, procuring another person by threats to do unlawful sexual acts with others and criminal intimidation. Moreover, there are provisions under the Crimes Ordinance that provide extra-territorial effect against certain sexual offences committed against children outside Hong Kong, including related arrangements and advertisements, making them punishable in Hong Kong;

(ii) Human Organ Transplant Ordinance (Cap 465) prohibits commercial dealings in human organs;

(iii) Prevention of Child Pornography Ordinance (Cap 579) prohibits printing, making, producing, reproducing, copying, importing or exporting, publishing and possessing child pornography;

(iv) Immigration Ordinance (Cap 115) prohibits arrangement for an unauthorised entrant to Hong Kong and employing illegal workers;

(v) Employment Ordinance (Cap 57) imposes criminal liability on employers involved in non-payment, under-payment of wages or delay in payment of wages, failure to grant rest days and statutory holidays to employees; and

(vi) other relevant ordinances which prohibit such crimes as assault, forcible taking or detention of persons with intent to sell him or her, child abduction, deception and blackmail, etc.

The most serious penalty for certain offences above is life imprisonment.

The Government established a high-level Steering Committee to Tackle TIP and to Enhance Protection of Foreign Domestic Helpers in Hong Kong (Steering Committee), chaired by the Chief Secretary for Administration, in March 2018 to tackle TIP and enhance protection of foreign domestic helpers (FDHs) working in Hong Kong through a multi-pronged approach. The Steering Committee has endorsed a comprehensive "Action Plan to Tackle TIP and to Enhance Protection of FDHs in Hong Kong" (Action Plan), which outlines a package of multi-faceted measures that are comprehensive, strategic and targeted, and which cover victim identification, protection and support, investigation, enforcement, prosecution and prevention as well as partnership with different stakeholders.

In addition to the ongoing measures, the Action Plan will include several major new initiatives, including appointing dedicated teams or officers in the relevant law enforcement agencies, such as Hong Kong Police Force, ImmD and the Hong Kong Customs and Excise Department, to handle cases relating to TIP and exploitation of FDHs. The Steering Committee will monitor the full implementation of the Action Plan and ensure the provision of adequate resources to the relevant bureaux and departments for the effective implementation of the Action Plan.

When implementing the Action Plan, the Government will work closely with the civil society, other sectors of the community and other governments; run targeted awareness campaigns via a wide range of suitable channels, including websites, social media, posters, leaflets, etc. to raise public awareness of TIP and exploitation of FDHs, and to promote available victim protection services. The Government will also review the

implementation of the Action Plan from time to time and identify further initiatives as and when necessary.

Ends/Wednesday, May 23, 2018
Issued at HKT 16:50

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Press Releases

Action plan to tackle trafficking in persons and enhance protection of foreign domestic helpers endorsed

A high-level inter-bureau/departmental steering committee, chaired by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, has endorsed a comprehensive action plan to tackle trafficking in persons (TIP) and enhance the protection of foreign domestic helpers (FDHs) working in Hong Kong through a multi-pronged approach.

The Action Plan to Tackle TIP and to Enhance Protection of FDHs in Hong Kong outlines a package of multi-faceted measures that are comprehensive, strategic and targeted, and which cover victim identification, protection and support, investigation, enforcement, prosecution and prevention as well as partnership with different stakeholders.

In addition to more than 20 ongoing measures, the Action Plan includes several major new initiatives:

- (a) extend the victim screening mechanism to the Labour Department (LD);
- (b) extend the Police's victim screening mechanism to all 24 police districts;
- (c) appoint dedicated teams or officers in the relevant law enforcement agencies to handle cases relating to TIP and exploitation of FDHs;
- (d) appoint dedicated teams or officers in the relevant LD divisions, and setting up a new dedicated FDH Division in the LD to ensure the effective implementation of measures to enhance protection of FDHs;
- (e) strengthen support for the designated co-ordinator of human exploitation cases in the Department of Justice;
- (f) set up a dedicated hotline with interpretation services to provide support services to FDHs; and
- (g) engage with the governments of major FDH source countries and launch public education campaigns through the relevant Economic and Trade Offices.

To combat TIP and protect FDHs, the Government has set up the high-level Steering Committee to Tackle TIP and to Enhance Protection of FDHs in Hong Kong with the key aims of formulating an overall strategy and overseeing the implementation of the Action Plan. With the Secretary for Security, Mr John Lee, and the Secretary for Labour and Welfare, Dr Law Chi-kwong, as the vice chairmen, the membership also comprises the Commissioner of Police, the Director of Immigration, the Commissioner of Customs and Excise, the Director of Social Welfare, the Commissioner for Labour and the Director of Public Prosecutions of the Department of Justice.

Speaking about the Action Plan, Mr Cheung said, "It demonstrates the determination of the Hong Kong Special

Administrative Region Government and the concerted efforts of various bureaux and departments in combatting TIP and protecting FDHs," adding that the Government "looks forward to joining hands with all stakeholders to achieve positive results.

"TIP is a heinous crime which must not be tolerated. Crimes relating to TIP need to be tackled on all fronts. As the threat of trafficking posed by transnational organised crime syndicates continues to evolve, we have continued to identify necessary new measures in response over the years.

"Meanwhile, as at the end of 2017, about 370 000 FDHs were working in Hong Kong and their population is expected to continue to grow in future years. Whilst FDHs are fully protected under Hong Kong's labour laws and the government-prescribed Standard Employment Contract to prevent them from falling victim to exploitation, we also take the opportunity to develop new measures for enhancing the protection of FDHs. Noting that our community fully appreciates the contribution of FDHs, the Action Plan includes measures for enhancing their protection to prevent them from falling victim to exploitation.

"The setting up of the high-level and inter-bureau/departmental Steering Committee plus the promulgation of the Action Plan underline the Government's resolve in combatting TIP and enhancing protection for FDHs. It represents the concerted efforts of various government bureaux and departments in coming up with multi-faceted measures in tackling crime."

The Action Plan is available on the websites of the Security Bureau (www.sb.gov.hk/eng/special) and the Labour and Welfare Bureau (www.lwb.gov.hk/eng/home/index.htm).

Ends/Wednesday, March 21, 2018
Issued at HKT 15:02

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