

**立法會**  
**Legislative Council**

LC Paper No. CB(2)809/20-21  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/3/20

**Bills Committee on Immigration (Amendment) Bill 2020**

**Minutes of first meeting**  
**held on Wednesday, 20 January 2021, at 9:00 am**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Elizabeth QUAT, BBS, JP (Chairman)  
Hon CHAN Hak-kan, BBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon YIU Si-wing, BBS  
Dr Hon Junius HO Kwan-yiu, JP  
Hon SHIU Ka-fai, JP  
Hon CHAN Chun-ying, JP  
Hon LUK Chung-hung, JP  
Dr Hon CHENG Chung-tai

**Public Officers attending** : Item II  
Mr Sonny AU Chi-kwong, PDSM, PMSM, JP  
Under Secretary for Security  
  
Ms Hanny LAM Shuk-ye, JP  
Deputy Secretary for Security 3  
  
Mr Cyrus CHEUNG Ho-chi  
Principal Assistant Secretary for Security (Review)  
  
Mr Ronald HO Tze-tao  
Assistant Secretary for Security (Review) 1

Mr TAI Chi-yuen  
Assistant Director of Immigration  
(Management and Support)

Ms Sally CHEUNG Sau-yin  
Assistant Director of Immigration  
(Removal Assessment and Litigation)

Ms Monica LAW Man-yuen  
Senior Assistant Law Draftsman  
Department of Justice

Mr Alan CHONG Ka-ning  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Betty MA  
Chief Council Secretary (2) 1

**Staff in attendance** : Miss Joyce CHAN  
Assistant Legal Adviser 1

Ms Gloria TSANG  
Senior Council Secretary (2) 7

Ms Kiwi NG  
Legislative Assistant (2) 1

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## **I. Election of Chairman**

Ms Elizabeth QUAT was elected Chairman of the Bills Committee.

2. Members agreed that there was no need for the Bills Committee to elect a Deputy Chairman.

## **II. Meeting with the Administration**

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).

### **III. Any other business**

4. In view of the COVID-19 epidemic situation, members agreed that written views on the Immigration (Amendment) Bill 2020 would be invited by posting a notice on the website of the Legislative Council. Another meeting would be scheduled to continue discussion with the Administration, and members would be informed of the meeting date and time in due course.

5. There being no other business, the meeting ended at 10:44 am.

Council Business Division 2  
Legislative Council Secretariat  
23 February 2021

**Proceedings of first meeting of the  
Bills Committee on Immigration (Amendment) Bill 2020  
held on Tuesday, 20 January 2021, at 9:00 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
000437 - 000535	Mr CHAN Hak-kan Mr SHIU Ka-fai Ms Elizabeth QUAT Mr CHAN Chun-ying	Election of Chairman	
000536 - 000629	Chairman	Opening remarks	
000630 - 002543	Chairman Admin	Invitation for public views on the Immigration (Amendment) Bill 2020 ("the Bill")  Briefing by the Administration on the Bill (LC Paper No. CB(2)691/20-21(01))	
002544 - 003113	Chairman Mr CHAN Chun-ying Mr Paul TSE Admin	Mr CHAN Chun-ying and Mr Paul TSE declared that they were members of the Advisory Committee on Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants.  Mr CHAN's enquiries regarding:  (a) the comparison between the statutory period for submission of a claim form in Hong Kong (i.e. 28 days) and that in overseas;  (b) details on the extension of submission period through administrative means under the amendment proposals; and  (c) existing interpretation service in screening interviews and the expected change in the usage of interpretation service upon the passage of the Bill.  The Administration responded that:  (a) the 28-day statutory period to return a claim form was similar to that of some other countries. For comparison, some countries offered an even shorter period, e.g. 15-day statutory period in Canada;  (b) the existing 21 additional days through administrative means to return a claim form was usually granted no matter the claim was simple or	

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		<p>complicated. Upon passage of the Bill, extension of the submission period through administrative means might not be given by default but would be considered if necessary, so as to expedite the screening procedure under the Unified Screening Mechanism ("USM"); and</p> <p>(c) the Immigration Department ("ImmD") had hired 11 interpreters on non-civil service contract for conducting screening interviews to about 80% of the claimants. For some rare tribal dialects, part-time interpreters would be hired on a need-basis.</p>	
003114 - 003518	Chairman Mr CHAN Hak-kan Admin	<p>As 99% of the non-refoulement claims was unsuccessful and many claimants were believed to have come to Hong Kong for taking up illegal employment, Mr CHAN Hak-kan expressed support for the amendment proposals.</p> <p>In response to Mr CHAN's enquiry about accommodating claimants in detention centres immediately when they arrived at Hong Kong, the Administration drew members' attention to the fact that the existing detention power was subject to the common law <i>Hardial Singh</i> principles, under which ImmD could not continue to detain a person if it could not complete the removal or screening procedures within a reasonable period of time. That said, to enhance the legal backing of the detention policy, it was proposed in the Bill that additional factors, such as ImmD's resources, and whether any procedure was hindered by the person being detained, would also have to be taken into account in considering the reasonableness of the detention period. Besides, while the Castle Peak Bay Immigration Centre ("CIC") could accommodate only about 500 claimants pending removal, the Tai Tam Gap Correctional Institution ("TGCI"), upon renovation, would accommodate additional 160 claimants shortly. The additional detention facility could relieve the detention pressure currently faced by CIC.</p> <p>For the option of detaining all claimants in detention centres, it was highlighted that careful consideration in terms of readily available land supply, manpower, resources, cost-effectiveness, etc, would be needed.</p>	

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003519 - 004244	Chairman Mr LUK Chung-hung Admin	<p>While stressing that substantiated claimants should be assisted, Mr LUK Chung-hung considered that the legislative amendments were necessary to avoid abuse of USM.</p> <p>Mr LUK sought details about claimants' delaying tactics and other abusive practice. The Administration advised that according to past experience, some claimants would use various tactics to delay the screening procedures, such as repeated absence from screening interviews without any reasons, failure to submit medical proofs, request of specified interpreter for rare tribal dialects to conduct interviews, etc.</p> <p>Mr LUK expressed concerns on the untrue report on treatments in CIC by individual media organization.</p>	
004245 - 005052	Chairman Mrs Regina IP Admin	<p>Mrs Regina IP's enquiries regarding:</p> <ul style="list-style-type: none"> <li>(a) the rationale for the proposed increase in penalties for employing persons who were not lawfully employable;</li> <li>(b) the number of cases employing non-refoulement claimants over the years; and</li> <li>(c) the proposed increase in penalties against carrier of potential claimants to a fine at \$100,000 and relevant defence for owner of an aircraft and his agent.</li> </ul> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) the existing punishment of a fine of \$350,000 and imprisonment for three years for employing an employee who was not lawfully employable was last amended in 1996. While the actual imprisonment punishment was in the range from three weeks to five months in previous court cases, the Administration considered it necessary to strengthen the deterrence effect by significantly increasing the punishment to a fine of \$500,000 and imprisonment for 10 years under the current amendment proposals. Such amendment would also provide reference for the court to impose higher penalties in future;</li> </ul>	

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		<p>(b) there were 158 persons prosecuted and 93 persons convicted for employing persons not lawfully employable pursuant to section 17I of the Immigration Ordinance (Cap. 115) ("IO") in 2020;</p> <p>(c) some 200 cases per year relating to passenger arriving in Hong Kong in an aircraft without a valid travel document were convicted in the past few years. During investigation, written explanation would be sought from airlines when necessary. To reflect the gravity of the consequence of the owner of an aircraft and his agent for breaching the duty, it was proposed to increase the maximum fine to \$100,000; and</p> <p>(d) the Secretary for Security ("S for S") was proposed to be empowered to make regulations to implement Advance Passenger Information ("API"), which would strengthen ImmD's capability to prevent potential claimants from coming to Hong Kong, in particular for those unsuccessful claimants entering Hong Kong again after being repatriated.</p> <p>Mrs IP considered it necessary to increase the penalties against carrier of potential claimants to \$100,000.</p>	
005053 - 005644	Chairman Mr SHIU Ka-fai Admin	<p>Given that very few non-refoulement claims were substantiated over the years and claimants had posed a negative impact to public security, Mr SHIU Ka-fai believed that many Hong Kong residents would welcome the legislative amendments. He also supported the amendment proposals, with a view to improving the efficiency of USM procedures by preventing claimants' delaying tactics, such as requesting specific language in screening interviews, improving the operation of the Torture Claims Appeal Board ("TCAB"), etc.</p> <p>The Administration highlighted that under the amendment proposals, for instance, the Chairperson of TCAB could assign any three members to consider an appeal, and nominate the most experienced member, rather than the Chairperson or Deputy Chairperson as currently required, to preside over the appeal hearing. Such arrangement would provide more flexibility to TCAB without affecting claimants' interests.</p>	

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		<p>Mr SHIU expressed concern about the handling and investigation towards illegal immigrants smuggling syndicates. The Administration stressed that any person who came to Hong Kong illegally or overstayed here, and any smuggling syndicates who assisted in those activities, constituted a breach of law. Every case would be strictly handled in accordance with the law. According to past experience, there was no indication that non-refoulement claims were in direct connection with smuggling syndicates.</p> <p>The Administration further advised that they would continue to liaise with the source countries and enhance relevant publicity about issues relating to illegal working in Hong Kong.</p>	
005645 - 010901	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-Wing's enquiries regarding:</p> <ul style="list-style-type: none"> <li>(a) the guidelines provided to airlines in respect of the proposed API system;</li> <li>(b) the details on the proposed extension of submission of claim form through administrative means;</li> <li>(c) any penalties against claimants who used various tactics to delay the process of claims handling, such as accommodating those claimants in detention centres;</li> <li>(d) factors to be taken to determine whether a claimant was able to understand and communicate in a language (e.g. English or the official language of the claimant's country of origin); and</li> <li>(e) any grace period regarding the provision of medical examinations and medical reports by claimants.</li> </ul> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) having regard to the implementation of interactive API ("iAPI") system in some 20 countries/regions, they would discuss with airlines and relevant industry stakeholders to set out the guidelines. Normally, airlines were required to provide passenger information to the immigration authorities before flight departure;</li> </ul>	



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		<p>(b) an application for further extension of the submission period for claim form would be granted by the case officer on a case-by-case basis having regard to the justifications provided;</p> <p>(c) undue delay would hopefully be minimized upon passage of the Bill as a claim could be decided based on the available information even if the claimant failed to attend the screening interview. As regards the suggestion for detention, it was reiterated that ImmD would continue to adhere to the <i>Hardial Singh</i> principles in exercising its detention power;</p> <p>(d) whether a claimant would be considered as being able to understand and communicate in a language would depend on the relevant evidences on a case-by-case basis, e.g. whether they were found to be able to reasonably communicate in another language during daily communication on other occasions; and</p> <p>(e) to prevent delaying tactics, ImmD would make arrangements for claimants to undergo medical examinations to assess a disputed physical or mental condition alleged by a claimant. The claimant would be required to attend the examination as scheduled and timely submit the medical report afterwards.</p>	
010902 - 012215	Chairman Dr CHENG Chung-tai Admin	<p>Dr CHENG Chung-tai's view on the invitation for public views on the Bill.</p> <p>Dr CHENG's enquiries regarding:</p> <p>(a) the rationale for including Immigration Services in the list of exemption in the Firearms and Ammunition Ordinance (Cap. 238) ("FAO") and the Weapons Ordinance (Cap. 217) ("WO") to enable CIC officers to possess arms and weapons under the legislative amendments, as well as the public monitoring and complaint handling mechanism relating to the proposed amendments; and</p> <p>(b) the rationale to empower S for S to make regulations to implement API system under the Bill.</p>	

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		<p>Dr CHENG considered that the amendment in (b) above was not proportionate to the need and there was no relationship between such amendment and the Administration's primary objective of enhancing the efficiency of screening claims</p> <p>The Administration responded that:</p> <p>(a) currently, officers deployed at CIC were equipped with suitable anti-riot equipment (such as pepper spray, pepper ball and single shot launcher) for the protection of themselves and detainees at CIC in case of emergency. In 2020, there were 25 physical confrontations occurred at CIC, in which six ImmD officers were injured;</p> <p>(b) under the existing arrangement, relevant ImmD officers needed to apply to the Commissioner of Police for exemption to possess the required firearms and ammunition every year. Besides, ImmD had been relying on the Correctional Services Department ("CSD") to provide the necessary training to its staff. The legislative amendments sought to lessen the administrative burden of Police, ImmD and CSD; and</p> <p>(c) the API system was a requirement put in place by the International Civil Aviation Organization. There were over 20 countries implementing the iAPI now, including Australia, Canada, the United Kingdom and the United States of America. Implementing API in Hong Kong would ensure smooth passenger clearance while enhancing aviation safety. It would also help prevent potential claimants, such as those who had been previously issued with a removal order or a deportation order, from entering Hong Kong again.</p>	
012216 - 012929	Chairman Mr Michael TIEN Admin	<p>Mr Michael TIEN sought clarification regarding the proposed amendments to FAO and WO.</p> <p>The Administration reiterated that CIC officers were currently equipped with suitable anti-riot equipment for security control and safety of both the staff and detainees. However, under the existing arrangement, relevant CIC officers had to apply to the Police every year for exemption to possess the required firearms and ammunition. To satisfy the criteria for exemption and renewal of exemption, relevant officers</p>	

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		<p>also had to undergo a three-week fundamental training and regular refresher training provided by CSD. With a view to improving the utilization of resources and lessening the administrative burden of all the concerned departments, it was proposed that Immigration Services be included in the list of exemption under FAO and WO, so that they could possess such articles on behalf of the Government without the need to seek individual exemption again. ImmD would also have more flexibility in staff deployment and capacity to conduct staff training on its own.</p>	
012930 - 012939	Chairman	Extension of the meeting for 15 minutes	
012940 - 013754	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE expressed support for the invitation of public views on the Bill.</p> <p>Mr TSE's enquiries regarding:</p> <p>(a) the reasons why ImmD had not been included in the list of exemption to possess firearms and ammunitions before and why ImmD needed to be exempted now; and</p> <p>(b) the rationale for the proposed amendment to section 38AA of IO to extend the liability to overstaying visitors who took up any employment before being issued with a removal order or a deportation order.</p> <p>The Administration responded that:</p> <p>(a) CIC had been operating since 2005 and was managed by CSD then. In 2010, the overall management of CIC was handed over to ImmD. It was considered at that time that legislative amendments would be made to relevant provisions when the frontline officers of ImmD deployed at CIC had gained more experience in the effective management of the detention centre and the use of relevant anti-riot equipment. Hence, to enhance ImmD's flexibility in staff training and deployment, it was proposed that FAO and WO be amended in the current exercise; and</p> <p>(b) under the existing arrangement, overstaying visitors who were arrested for unlawful</p>	

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		<p>employment before being issued with a removal order or a deportation order could only be prosecuted for breaching their conditions of stay, in which the imprisonment penalty was up to two years only. Such penalty was not on par with illegal immigrants taking any unlawful employment, who were liable to conviction to imprisonment up to three years. It was thus proposed that section 38AA of IO be amended such that overstaying visitors taking up any unlawful employment would be subject to the same penalty levels as those of illegal immigrants.</p> <p>Mr TSE's enquiry and the Administration's response regarding the existing penalties for employing persons who were not lawfully employable and the rationale for the proposed increase in penalties. Mr TSE considered that the proposed increase was a bit too high.</p>	
013755 - 014442	Chairman Admin	<p>While considering that genuine claimants should be assisted, the Chairman expressed support for the amendment proposals and said that she had been requesting the Administration to amend IO to expedite the screening procedures for non-refoulement claims and to prevent abuse. Although she was glad to see ImmD's effort in improving the screening procedures, she was also worried about the recent increase in the number of new claims received.</p> <p>The Chairman's enquiries regarding:</p> <ul style="list-style-type: none"> <li>(a) the estimated expenditure relating to the handling of non-refoulement claims in the coming financial year upon the passage of the Bill;</li> <li>(b) the estimated time required to repatriate the some 13 000 claimants remaining in Hong Kong; and</li> <li>(c) the measures of further increasing detention facilities for non-refoulement claimants, especially for those who had committed serious crimes in Hong Kong.</li> </ul> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) In 2019-2020, the expenditure related to the handling of non-refoulement claims was over 950 million. Owing to inflation, it was expected that</li> </ul>	

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		<p>the expenditure for 2020-2021 would not be less than 950 million;</p> <p>(b) apart from improving the procedures for the handling of claims and prevention of abuse upon passage of the Bill, the legislative amendments would assist in reducing at source the number of non-ethnic Chinese illegal immigrants and overstayers who might lodge non-refoulement claims, as well as expediting the repatriation of unsuccessful claimants; and</p> <p>(c) the Government had been exploring if more detention facilities could be made available for detaining the claimants pending removal and during screening of their claims, in particular those who had committed serious crimes, so as to minimize the security threats posed to the society. TGCI, which would commence operation shortly, was one of the examples.</p>	
014443 - 014809	Chairman Dr Junius HO Admin	<p>Dr Junius HO's suggestions on:</p> <p>(a) better utilization of detention facilities;</p> <p>(b) further increasing the penalties for employing persons who were not lawfully employable and against carrier of potential claimants to significantly strengthen the deterrence effect; and</p> <p>(c) facilitating substantiated claimants in job seeking and social integration.</p> <p>The Administration noted Dr HO's views and said that employment applications by substantiated claimants would be considered exceptionally and on a case-by-case basis. Besides, school placement would be arranged for claimants who were school-age children.</p>	
014810 - 014835	Chairman	Closing remarks	