香港特別行政區政府
保安局

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The Government of the
Hong Kong Special Administrative Region
Security Bureau

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Clerk to Bills Committee on Immigration (Amendment) Bill 2020
Bills Committee of Legislative Council
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong
(Attn: Miss Betty MA)

Dear Ms Ma,

Bills Committee on Immigration (Amendment) Bill 2020

Follow-up matters arising from the discussion at the meeting of 5 February 2021

Further to our reply to the Legal Service Division of the Legislative Council ("LegCo") dated 1 February 2021 (LC Paper No. CB(2)740/20-21(01)), which set out the justifications for some of the legislative proposals in the Immigration (Amendment) Bill 2020 ("the Bill"), the Government provides the following supplementary information in response to the follow-up matters raised at the captioned committee meeting.

(a) **Amendments to the Firearms and Ammunition Ordinance (Cap. 238) and the Weapons Ordinance (Cap. 217) to authorise the Immigration Service to possess arms and ammunition**

2. The Firearms and Ammunition Ordinance (Cap. 238) imposes licensing control on the possession of or dealing in arms or ammunition. It is already provided in the existing ordinance that the relevant provisions on licensing control do not apply to the departments authorised to possess or deal in arms or ammunition on behalf of the Government, which include seven departments, namely the Government Flying Service, the Hong Kong Police Force ("HKPF"), the Hong Kong Auxiliary Police, the Customs and Excise Department, the Correctional Services Department ("CSD"), the Independent Commission Against Corruption and the Agriculture, Fisheries and Conservation Department. The Immigration Department ("ImmD") is one of the disciplined services not covered under the provisions (the other disciplined service not covered is the Fire Services Department). This is mainly because ImmD did not have the business needs in the past to possess arms or ammunition.

3. However, ImmD started to have the business needs to possess arms or ammunition upon taking over the management of the Castle Peak Bay Immigration Centre ("CIC") since April 2010. This is because CIC commenced operation in 2005 for detaining persons who may be detained under the Immigration Ordinance (Cap. 115) ("the Ordinance"). Having regard to the then manpower situation of ImmD and CSD, the Government decided that CSD would be responsible for the management of CIC in the first five years until ImmD took over the management in April 2010. To ensure smooth operation at the early stage after the takeover, ImmD officers have been required to apply to the Commissioner of Police for exemption to possess and use the regulated anti-riot equipment, and training on the use of such equipment has been provided by CSD. Thereafter, as ImmD has accumulated sufficient experience in management and use of the anti-riot equipment concerned, the Government has all along been planning to amend the Firearms and Ammunition Ordinance to include ImmD as a department authorised to possess arms or ammunition on behalf of the Government thereunder, thereby dispensing with the administrative arrangement for ImmD officers to apply to HKPF for exemptions. The Government takes the opportunity of the Bill to effect the relevant amendments.

4. In fact, every head of departments authorised to possess arms or ammunition on behalf of the Government will decide what equipment is to be provided to and used by individual officers having regard to the actual operational needs of the department. Heads of departments also have to ensure that the relevant officers have received sufficient training and that guidelines are put in place on the use and possession of arms or weapons concerned. They are also obliged to maintain strict oversight on whether there is genuine need for the equipment concerned and whether it is used properly. In the event of excessive or improper provision or use of the equipment concerned, the relevant officers and heads of departments will be held accountable, including criminal liability.

5. At present, ImmD officers stationed at CIC are provided with appropriate anti-riot equipment to cope with emergencies that may arise, including violent incidents or even riots. Upon amendment of the Ordinance, ImmD will continue to ensure that officers who have to be provided with the relevant anti-riot equipment are fit for possessing and using the equipment, and to provide them with the necessary training and guidance. The Director of Immigration will also continue to maintain strict oversight on the provision of equipment to ensure that the equipment meets the operational need and is properly used.

6. The position in respect of the Weapons Ordinance (Cap. 217) is similar, under which ImmD is presently not one of the designated departments authorised to carry regulated weapons. At present, some ImmD officers are, as necessary, equipped with non-steel extendible batons for self-defence purpose. As the Government mentioned in the LegCo Brief, to enhance protection of the relevant officers, ImmD is considering providing them with steel extendible batons, which is a weapon subject to control under the Weapons Ordinance.

(b) **Enhanced measures for detention of claimants**

7. In exercising its detention powers, ImmD has all along strictly followed the established detention policy, and in accordance with the relevant legal requirements and legal principles established by the Court. ImmD would take into account all relevant facts and circumstances of the particular case, including whether the person concerned has, among others, committed a serious crime or is likely to pose a threat/security risk to the community, and whether there is any risk of the person absconding and/or (re)offending, etc. The proposed amendments to sections 32(4A) and 37ZK of the Ordinance under the Bill are aimed to enhance transparency and provide unequivocal legal backing to the immigration officers in considering and determining the detention period, while complying with the relevant legal principles. The proposed amendments are modelled on existing section 13D(1A) of the Ordinance, which was introduced in 1991 to deal with the detention arrangement for Vietnamese boat-people back then.

8. The "circumstances" set out in the proposed amendments to the above two provisions are the relevant factors which may justify a detention and should be taken into account when considering whether a period of detention is reasonable and lawful, alongside other factors in the specific circumstances of the individual case. At the Bills Committee meeting on 5 February 2021, most members supported the proposed amendments, and there was suggestion that the Government should consider the merit of further adding other "circumstances" in the provisions as factors for consideration, including whether the person concerned is likely to pose a security risk, etc.. This is in fact already one of the factors currently taken into account by ImmD when determining whether a person should be detained. The Court has also affirmed in relevant precedents that it is both reasonable and in compliance with the relevant legal principles for ImmD to consider such factor when exercising its detention powers. The Government will give further considerations to members' suggestion.

9. ImmD will continue to follow the law and relevant legal principles in determining whether a person should be detained under section 32(4A) and/or section 37ZK, taking into account all relevant factors and the circumstances of the particular case. Furthermore, ImmD will conduct regular and timely review of the detention in respect of each individual detainee in accordance with the detention policy and established mechanisms, in order to determine whether the individual should be further detained. Upon conclusion of a detention review, ImmD will notify the person concerned in writing the result of the review with justifications, and will conduct an interview with the person concerned, with the assistance of an interpreter where necessary. These arrangements aim to ensure that the detainees are timely informed and fully aware of the detention decisions and the reasons for such decisions.

Feasibility of setting up reception centres or closed camps to detain all claimants

10. At the Bills Committee meeting on 5 February 2021, a member enquired whether the Government would consider setting up reception centres or closed camps to detain all claimants in order to reduce their security risks and serve as a deterrent. In considering this issue, other than matters to be handled on the legal front, the Government has to take into account various practical issues on land, infrastructure, manpower, management, etc., including whether sufficient formed land could be identified for immediate use for constructing detention centres to accommodate thousands of detainees, and whether the site comes with adequate supporting infrastructure (such as roads, fresh water, electricity and drainage facilities). We also have to carefully strike a balance with other more pressing demands for land, such as housing.

11. Taking the recently renovated and soon to be commissioned Tai Tam Gap Correctional Institution ("TGCI") as an example, with a site area of about 16 000 square metres, the facility is expected to accommodate 160 detainees having taken into consideration the security requirements and other operational arrangements. To provide facilities sufficient for detaining all of the some 13 000 claimants currently in Hong Kong, it is estimated that considerable land resources, huge public expenditure and manpower resources, as well as long construction time would be required.

12. There may be suggestion that priority could be given to detaining the newly arrived claimants and ceasing issuance of recognizance forms to them, thus deterring those who came to Hong Kong with an attempt to abuse the mechanism of non-refoulement claim for economic incentive. Calculating on the basis of an average of about 200 new claims received by ImmD each month currently, and considering that it takes time to screen claims, process appeals and arrange removal, we could arrive at a simple assumption of 2 400 persons to be detained every year. In other words, we have to provide about 15 TGCIs immediately to meet the need for detention if we were to implement the relevant policy, otherwise it might become a mere talk.

13. By reference to TGCI, to accommodate 15 such facilities will require a total of around 240 000 square metres (i.e. about 24 hectares) of land. As far as we understand, the site area of Choi Hung Estate is about 5 hectares, which provides about 7 000 residential units. With 24 hectares of land, there can be 5 Choi Hung Estates, providing at least 35 000 public housing units. If we take into account the fact that some claimants might prolong their stay in Hong Kong by applying for leave for judicial review subsequent to their rejected claims or unsuccessful appeals, the need for detention will become even greater. Apart from the issue of land supply and the time required for construction, we also have to take into account the fact that the claimants come from different countries. Their different backgrounds in terms of culture, religion, etc. might bring about considerable challenges on security and management, which will need to be handled carefully. Drawing from the experience of handling Vietnamese boat-people in the past, details of the detention treatment and operational arrangements also have to be explicitly stated in statue.

14. The above only represents our crude estimation. In considering different options and policies for dealing with the situation, the Government has to evaluate the feasibility of various policies carefully and whether the resources deployed are put to good use for meeting the policy objectives and serving the public interests. At present, we consider it most effective to address the problems arising from claimants by amending the law as soon as possible to enhance the screening procedures and strengthen the measures on intercepting illegal immigrants at source, as well as ImmD's powers of enforcement, removal and detention, while making use the existing detention facilities as far as possible to focus on detaining claimants posing higher security risks to society.

(c) **Written submissions on the Bill**

15. To date (as at 23 February 2021), the Bills Committee have received a total of 29 submissions on the Bill from organisations and individual members of the public. The Government's consolidated response to the submissions is at **Annex**.

(d) **Major differences between legislative proposals under the Bill and those discussed earlier by the LegCo Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims ("the Subcommittee")**

16. The Government has maintained dialogue with LegCo, the two legal professional bodies and the relevant non-governmental organisations ("NGOs") regarding the comprehensive review on the strategy of handling non-refoulement claims ("comprehensive review"), including the claim screening procedures and other related matters. Based on the experience in screening non-refoulement claims, as well as the relevant removal, detention and enforcement works in the past, and with reference to the overseas laws and practices in this regard, the Government has proposed a series of amendments to the Ordinance and sought the views of the aforesaid parties on the proposals.

17. Since the commencement of the current term of LegCo in October 2016, the Government has, on five occasions, reported to the LegCo Panel on Security about the work and progress of the comprehensive review, including consulting and exchanging views with Panel members particularly on the proposed amendments to the Ordinance in July 2018 and January 2019 respectively. In parallel, between March 2018 and January 2019, the Subcommittee focused on exploring matters related to non-refoulement claims, during which a deputation hearing was held in October 2018. A total of 37 bodies/individuals attended the hearing and expressed their opinions on non-refoulement claims, including the proposed amendments to the Ordinance. Besides, eight bodies/individuals not attending the hearing also provided their views by written submissions. Apart from the deputation hearing, the Subcommittee conducted six meetings and paid a visit to the CIC. The work on non-refoulement claims over the past years was thoroughly deliberated and the Subcommittee has provided the Government with valuable views on various aspects.

18. One of the objectives to amend the Ordinance is to ensure that while the high standards of fairness are upheld in the screening work, the processing of claims and appeals can be efficiently finished within the shortest time possible, and the unsuccessful claimants are promptly removed from Hong Kong. In the course of consulting LegCo, the two legal professional bodies and the other relevant NGOs as mentioned above, the Government has carefully listened to their views on various legislative proposals. Among them, some individuals and organisations have expressed concern over some of the amendments proposed by the Government, including the proposals on shortening the statutory timeframe for submitting claim forms/lodging appeals; setting a time limit for making claims; tightening the arrangements of submitting documents to ImmD; allowing the removal to proceed even if the claimant concerned has applied for leave to judicial review or legal aid; and continuing the detention of a claimant despite any common law principles if it is considered that he/she may pose a threat to life or property, etc.

19. Fully taking into account the views of LegCo, the two legal professional bodies and other relevant NGOs, and considering that ImmD had basically cleared the backlog of claims accumulated over the years in early 2019 and the handling of pending appeals is expected to be completed by mid of this year at the earliest, the Government has decided to focus the legislative amendment exercise on the more pressing areas, such as plugging the loopholes in the screening procedures, expediting the handling of appeals, and strengthening the powers of ImmD in respect of enforcement, removal and detention as appropriate. As for the above proposals with which some individuals and organisations have expressed concern, the Government did not include them in the Bill now submitted to LegCo for scrutiny. The Government will continue to closely monitor the figures of illegal entry, new claims received and appeals lodged, and make reference to the actual circumstances upon the enactment and implementation of the newly amended Ordinance. The Government will continue to listen to the views of various parties, and conduct a review and consider whether further amendment proposals to the Ordinance will be necessary.

20. In conclusion, the Bill currently under scrutiny has fully taken into account the views of LegCo, the two legal professional bodies and other relevant NGOs, and it has struck an appropriate balance between protecting the rights of claimants and promptly handling non-refoulement claims as far as practicable. The Government believes that the current proposed amendments are in conformity with the high standards of fairness as required by the Court, while helping to expedite the handling of cases and removal of unsuccessful claimants, which will be in the interests of all claimants and members of the public.

21. For further enquiries, please contact the undersigned at 2810 2099.

Yours sincerely,

(Ronald Ho)
for Secretary for Security

c.c. Immigration Department
Department of Justice

Bills Committee on Immigration (Amendment) Bill 2020
Key issues in written submissions and the Government's response

Item	Issue	Government's response
1.	**Measures to enhance screening efficiency of the Immigration Department and prevent delaying tactics**	
(a)	**Language used for communications**	Under the existing practice, the Immigration Department ("ImmD") will provide publicly-funded simultaneous interpretation service during screening interviews for claimants who cannot communicate in Chinese or English. The same arrangement is adopted in oral hearings conducted by the Torture Claims Appeal Board ("TCAB"). For this purpose, ImmD has hired a total of 11 full-time interpreters to offer services in six languages used by most claimants, providing support for the majority of cases. In addition, where necessary, ImmD has engaged local part-time interpreters to provide support for 24 relatively less-used languages. Although the above simultaneous interpretation service has largely been able to provide appropriate support to the majority of cases, there have been cases where claimants could reasonably understand and communicate in other languages (e.g. English or the official languages of their countries of origin), but they still insisted ImmD or TCAB to arrange for the service of an interpreter who could communicate in their rare tribal dialects for conducting the interview/hearing, thereby seriously obstructing the smooth handling of their claims/appeals. Therefore, the Government has proposed the relevant amendments to prevent such delaying tactics. Under the amended provisions, ImmD/TCAB may direct a claimant to communicate in a language that ImmD/TCAB reasonably considers the claimant is able to understand and communicate in. When considering

		whether a claimant can reasonably understand and communicate in a language, ImmD/TCAB will take into account information and documents submitted by the claimant, previous communications of the claimant with ImmD/TCAB, court documents, other evidence demonstrating the claimant's proficiency in another language, etc. Indeed, there have been court cases where the claimants quoted the lack of interpretation service during screening or appeal proceedings as one of the grounds for judicial review ("JR"), but the claims were rejected by the Court. In one case, all court documents, including the affirmation filed in support of the leave application, the notice of appeal and the written submission in support of that appeal, were written in English. The Court was of the view that either the applicant was conversant in the English language or she had access to language assistance as she deemed necessary (see *Sharma Poonam [2019] HKCA804* at paragraph 17). We should point out that after the proposed amendments are put in place, ImmD/TCAB will continue to arrange publicly-funded simultaneous interpretation service for the claimants in need. The provisions will enable ImmD/TCAB to tackle the situation if and when a claimant seeks to deploy the above reason as an excuse to delay the processing of the case. ImmD and TCAB will continue to comply with the high standards of fairness in handling claims.
(b)	**Medical examination**	Currently, in case where a claimant's physical or mental condition is in dispute and relevant to the consideration of claims, ImmD/TCAB will make arrangement for such claimant to undergo medical examinations to ascertain the alleged

		condition. The medical examination arranged by ImmD/TCAB will be conducted by qualified doctors of the Hospital Authority or the Department of Health. If it is stated in the medical report that the claimant, given his/her physical or mental condition, is unfit for an interview or submission of information in relation to the claim, ImmD/TCAB will, having regard to the circumstances, consider suspending the handling of the case, and will request the claimant or his/her legal representative to submit the latest medical reports after medical examination is regularly received by the claimant for appropriate arrangement and follow-up. However, there have been cases where claimants alleged to be physically or mentally unfit, applied for extension of time limit at various stages of the screening procedures, but were absent from the medical examination arranged by ImmD/TCAB, or refused to submit the relevant medical reports, or only submitted part of the medical report to ImmD/TCAB. As a result, ImmD/TCAB could not make objective judgment on whether the extension application was justified, and hence the screening process was delayed. Given the above cases of deliberate delay arising from the medical examination arrangement, the Government considers it necessary to plug the loophole. The proposed amended provisions mainly target three types of circumstances, namely failure to give consent for medical examination arranged by ImmD/TCAB, failure to undergo an arranged medical examination, and failure to disclose the medical report in full after examination. Such provisions aim at preventing claimants from deliberately causing delay to the screening procedures by abusing the medical examination arrangement in future.

(c)	**Arrangement of screening interviews**	At present, after a claim form is received by ImmD, ImmD will arrange the claimant to attend screening interview(s) with an immigration officer to provide information and answer questions relating to the claim. However, there were cases of serious delay and obstruction to the smooth handling of claims due to uncooperative claimants refusing to confirm interview arrangement with ImmD or failing to attend or complete the scheduled interviews, sometimes repeatedly. The relevant amended provisions aim to stipulate clearly that it is the claimant's duty to attend interviews as required by ImmD in order to enhance the screening efficiency of claims and prevent the delaying tactics concerned. In any event, ImmD will ensure that a claimant has ample opportunities to make representation and provide information for his/her claim during the screening process before its decision is made, so as to meet the high standards of fairness as required by the Court.
(d)	**Time limit for submitting claim forms and new statutory standards on other screening procedures**	As with the current practice, claimants may, before the submission deadline, submit a written application to the immigration officer for extending the time limit to returning the claim form. Their applications will be considered if they have exercised "all due diligence" to comply with the original deadline and the delay was caused by circumstances "beyond control". This will ensure that claimants will continue to have every reasonable opportunity to state their grounds of claims and supporting facts while reducing the chance for procedural abuse. In determining whether a claimant has exercised "all due diligence" and whether a situation amounts to "circumstances beyond a claimant's control", all relevant circumstances of individual cases would be duly considered. While it is

		infeasible to generalise on what amounts to "circumstances beyond a claimant's control", generally speaking, if the claimant fails to proceed with the claim in accordance with the screening or appeal procedures (such as failure in submitting information or documents in relation to the claim or appeal, or failure in attending any interview, hearing or medical examination as required) due to illness or accident which is beyond his/her own control, the situation may be considered as "circumstances beyond control". In determining whether a claimant has exercised "all due diligence" so as to avoid the relevant failure or non-compliance from happening, a common-sense approach will be adopted. For instance, if a claimant has endeavoured to try alternative means of conveyance during a traffic incident on the way to attend a screening interview or hearing, and taken the first available opportunity to inform ImmD/TCAB of the hiccups or incident, the claimant can provide evidence to the satisfaction of ImmD/TCAB about the occurrence of such circumstances or their relevance to the claimant's failure to fulfill or comply with the screening procedures, and hence their due diligence exercised. The introduction of the "all due diligence" requirement is consistent with the high standards of fairness required in the procedures for dealing with claims. It is firmly established in previous court cases that the high standards of fairness do not entitle the claimant, having stated a claim, "to simply sit back and require the Director to disprove it" and the exercise of determining whether a claim made is valid must be one of "joint endeavour" (see *TK v Jenkins & Anor [2013] 1 HKC 526* at paragraph 25). The introduction of the "all due diligence" requirement is plainly consistent with the above.

		In conclusion, claimants are expected to take active steps in fulfilling and complying with the screening procedures. Whether they have exercised all due diligence and a situation amounts to "circumstances beyond control" will need to be considered on a case-by-case basis. While it would not be practical to set objective standards or guidelines, ImmD/TCAB will, as with the current practice, take into consideration all relevant facts and circumstances, and consider whether the claimant has made diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge any obligation, and in this context, is in conformity with the screening procedures. In any case, while it will be up to claimants concerned to demonstrate that he/she has exercised all due diligence and that the circumstances are beyond his/her control, ImmD/TCAB will still need to seek clarification or elaboration from him/her as and when necessary.
2.	**Improving the procedures and functions of TCAB**	
(a)	**Notice of appeal**	Pursuant to the Immigration Ordinance ("Ordinance"), persons whose claim is not substantiated may lodge an appeal to TCAB in the specified form. As the Ordinance currently does not provide for how TCAB should handle a notice of appeal ("NOA") that is not duly completed or signed, we have proposed to stipulate the approach of treating such NOAs as invalid so as to avoid unnecessary disputes. In fact, ImmD will issue to a claimant a notice of decision and a blank NOA form when the claim is determined as unsubstantiated. At present, all claimants in need are provided with publicly-funded legal assistance ("PFLA") at the screening stage. Upon receipt of ImmD's notice of decision, the legal

		representative of the claimant will provide explanation and legal advice to the claimant and notify him/her of his/her right to appeal and the relevant requirements. In this connection, generally claimants should understand clearly that NOAs must be duly completed or signed. As such, we believe that the approach of treating NOAs not duly completed or signed as invalid will not cause injustice and is justified.
(b)	**Late appeal**	At present, TCAB will take into account the statement of reasons contained in an NOA, documentary evidence in support of the reasons and "any other relevant matters of fact" within its knowledge when considering whether to allow a late appeal. For example, TCAB will generally take into consideration the difficulties faced by an appellant if he/she is being detained when the appeal is lodged. Given the broad-brush description of "any other relevant matters of fact", TCAB may be questioned, when handling a late appeal, as to whether it has taken into account matters that do not directly relate to the reasons for late filing but relate to the content of the appeal itself, such as the credibility of grounds raised by the appellant for his/her claim. On the other hand, there are recent court rulings which are of the view that the said provision requires TCAB to also consider the grounds of claim. Hence, to a certain extent, TCAB would already need to make detailed consideration of the entire claim when handling the late appeal, which is tantamount to advancing the screening procedures before the late appeal is allowed and the hearing is conducted. We are of the view that when considering a late appeal, TCAB should only take into account the reasons for and the relevant evidence on late filing of the appeal,

		but not "other relevant matters of fact" that do not relate to the late filing, so as to ensure that late appeals could be handled in a fair, objective and efficient manner. Therefore, we have proposed to delete the requirement that TCAB may take into account "any other relevant matters of fact within its knowledge", so as to avoid unnecessary disputes and facilitate the appeal process.
(c)	**Notice period for oral hearing of appeal**	When handling appeals, TCAB would screen the claims by way of "rehearing", i.e. reconsidering all the applicable grounds put forward by an appellant for the non-refoulement claim. Given that a claimant should have provided all the justifications and supporting documents in relation to his/her claim in the screening stage, presumably he/she does not need to much time to prepare for the hearing afresh. If the appellant has substantial grounds for requiring more time to prepare for the hearing, he/she may apply to TCAB to postpone the hearing. Upon hearing representations of all parties, TCAB will decide whether to approve the request for postponing the hearing and give other appropriate directions. To enhance efficiency and ensure prompt handling of appeals lodged by claimants with genuine needs (particularly the detainees), we have proposed to authorise TCAB to give less than 28 days' notice as necessary, but the notice must not be given less than 7 days before the hearing date. The change will allow greater flexibility for TCAB to, having regard to the actual circumstances of individual cases (e.g. whether the appellant would pose a potential security risk to the community, or whether the appellant is being detained), call a hearing within a shorter but reasonable timeframe where necessary, with a view to processing the appeals as soon as possible. In general, TCAB may still, having regard to the actual circumstances, serve the notice of hearing to all parties not

		less than 28 days before the hearing.
(d)	**Notice of presenting new evidence**	Currently, an appellant who wishes to present any new evidence at a hearing must file with TCAB a written notice to that effect and serve a copy of the notice on ImmD. The notice must indicate the nature of the evidence and explain why the evidence was not made available to ImmD before. To ensure that the appeal procedures will not be delayed indefinitely by a deliberate attempt to present new evidence, the proposed amended provisions will specify the time limit for presenting new evidence, i.e. within 7 days after filing an NOA. TCAB will, as with established practice, determine whether to allow further evidence to be presented after taking into account the circumstances of individual cases. If an appellant misses the deadline, he/she may still provide sufficient evidence in writing to TCAB's satisfaction that he/she has exercised "all due diligence" to comply with the original deadline, and the delay was caused by circumstances "beyond control". TCAB will consider such applications.
3.	**Removal arrangement for unsuccessful claimants**	Non-refoulement claimants are illegal immigrants, overstayers or persons who were refused entry upon arrival in Hong Kong, who have no lawful status to remain in Hong Kong. As such, when their claims and appeals (if any) are rejected under the Unified Screening Mechanism ("USM"), they must be removed from Hong Kong as soon as possible in order to maintain effective immigration control and safeguard public interest. To remove unsuccessful claimants more efficiently, we have proposed in the Bill that after a claim is rejected by an immigration officer, the Government may in parallel liaise with the relevant authorities for the purpose of making arrangement for removal (such

		as issuance of travel documents). When making removal arrangement, the Government will not disclose to the relevant authorities whether the relevant removee has lodged a non-refoulement claim in Hong Kong. Besides, ImmD will not execute removal of a claimant with a pending appeal to TCAB. We would also like to point out that under the existing removal policy, ImmD will suspend removal of an unsuccessful claimant if the person has filed an application for leave to JR. When the legal proceedings have been disposed of, ImmD will proceed to remove the claimant from Hong Kong as soon as practicable. We would like to stress that irrespective of the outcome of their non-refoulement claims, claimants are not entitled to lawful stay in Hong Kong. If their claims are rejected, ImmD will immediately remove them to their countries of origin.
4.	**Treatment of detainees**	ImmD has all along strictly followed the relevant provisions under the Immigration (Treatment of Detainees) Order (Cap. 115E) ("the Order") to ensure proper treatment of all detainees. Detainees at the Castle Peak Immigration Centre ("CIC") are accorded the treatment as stipulated by the Order, covering matters such as food, drinking water, medical examination, personal hygiene, communication and meeting with relatives and legal advisers, channels for lodging complaints and visits by the Justices of the Peace ("JPs"), etc. All arrangements for detainees at CIC are also implemented in strict accordance with the established procedures to ensure fair and proper treatment. Any detainee who is dissatisfied with the treatment or arrangements during detention may lodge a complaint with the Office of The Ombudsman, visiting JPs or ImmD immediately. ImmD will handle the complaints seriously in compliance with

		the law and the established procedures. On the other hand, ImmD has been providing training for frontline officers to enhance their responsiveness to emergencies. Such training covers, among others, scenario training, resistance control, escort technique and use of the relevant anti-riot equipment, aiming to ensure colleagues' adequate capability in handling the daily operation of CIC and responding to emergencies. Professional training is also offered at CIC in collaboration with other law enforcement agencies, including crisis management and negotiation courses offered by the Police, for enhancing the professional knowledge of officers. In the event of any special incident at CIC, officers will assess the urgency and severity of the incident having regard to the actual circumstances, and take necessary and appropriate actions with proportionate level of use of force in line with the departmental guidelines, so as to prevent deterioration of the incident and protect the safety of the detainees and staff. We must emphasise that no violence or malpractice would be tolerated by ImmD. Any person who alleges to have experienced violence during detention should immediately make a complaint with ImmD or report to the Police for assistance. ImmD and the law enforcement agencies concerned will certainly handle the complaints according to the law in a serious and fair manner. Please refer to paragraphs 2 to 6 under heading (a) in the main reply for the proposal of including ImmD as one of the departments authorised to possess arms or ammunition and prohibited weapons on behalf of the Government under the Firearms and Ammunition Ordinance and the Weapons Ordinance respectively.

5.	**Combating unlawful employment**	At present, if any person who enters Hong Kong illegally or is issued a removal or deportation order takes paid or unpaid employment, or establishes or takes part in any business, the person is liable to be prosecuted under section 38AA of the Ordinance, and liable on conviction to a fine of $50,000 and imprisonment for 3 years. However, if an overstaying visitor who has not yet been issued with a removal or deportation order is arrested for unlawful employment, he/she is not caught by section 38AA. In such cases, ImmD can only charge the person for breaching a condition of stay under section 41 of the Ordinance, of which the maximum penalty is a fine of $50,000 and imprisonment for 2 years. To properly reflect the seriousness of the offence and effectively combat unlawful employment, the Government considers it necessary to amend section 38AA of the Ordinance such that overstaying visitors taking up unlawful employment can also be prosecuted under this section, so as to bring them on par with the penalties for other illegal immigrants working illegally in Hong Kong.
6.	**Advance Passenger Information system**	The proposed provision in the Bill to empower the Secretary for Security to make regulations in relation to the provision of passenger information by carriers is intended for fulfilling the international obligation of the Hong Kong Special Administrative Region ("HKSAR") under the "Convention on International Civil Aviation". To comply with the relevant requirements, we are obliged to implement an Advance Passenger Information ("API") system with legal backing. According to the requirements, airlines need to provide passenger and crew member information to ImmD before flight departure. It will only apply to flights heading to Hong Kong. So far, over 90 countries already have the API system in place, including the Member States of the European Union, the

		United States of America, Canada and Australia. The scope of the Immigration Ordinance mainly covers immigration matters. In fact, there is no provision in the Immigration Ordinance that prohibits any person from leaving Hong Kong. According to the general practice, the enabling provisions to be stipulated in the main ordinance are usually crafted in more generic terms, while the subsidiary legislation to be made thereunder will set out the operational details with provisions in more specific terms. The making of relevant regulations will also require the scrutiny and passage by the Legislative Council ("LegCo"). The regulations to be made by the Government in due course will fully reflect so with relevant details set out in more specific terms. In addition, before implementing the API system, the Government will consult the aviation industry and concerned stakeholders, and will seek funding approval from the Finance Committee of LegCo as required. Besides, in the event that the International Civil Aviation Organization may in the future impose any further requirements, an enabling provision in more generic terms may allow some flexibility, thereby obviating the need for further amendment. We do not consider it necessary to specify in the relevant enabling provision that it would be applicable to inbound flights only. Besides, the freedom to travel and the right to enter or leave Hong Kong of Hong Kong residents are guaranteed under Article 31 of the Basic Law. Prior to introducing the Bill into LegCo, the Government has assured that the Bill conforms to the Basic Law, including the provisions on human rights. Accordingly, we do not consider it necessary to spell out further in the main ordinance that the proposed authority will not affect the rights of Hong Kong

		residents and persons with the right to enter and stay in Hong Kong.
7.	**Improving the treatment of substantiated claimants**	The United Nations Refugees Convention and its 1967 Protocol have never applied to Hong Kong, and non-refoulement claimants in Hong Kong are not treated as "asylum seekers" or "refugees". They are illegal immigrants, overstayers or persons who were refused entry, and have no legal status to remain in Hong Kong. Irrespective of the outcome of their claims, they have no right to work in Hong Kong. In February 2014, the Court of Final Appeal ruled in *GA & Others v. Director of Immigration [(2014) 17 HKCFAR 60]* that substantiated claimants and refugees recognised by the United Nations High Commissioner for Refugees ("UNHCR") have no constitutional or other legal rights to work in Hong Kong. Nevertheless, under exceptional circumstances, the Director of Immigration may exercise his discretion to consider, on a case-by-case basis, applications for permission to take employment. The HKSAR Government will continue to work closely with UNHCR, including the arrangement of resettlement of substantiated non-refoulement claimants to a third country by UNHCR. The Government will continue, through a non-governmental organisation commissioned by the Social Welfare Department, providing humanitarian assistance to non-refoulement claimants during their presence in Hong Kong pending outcome of their claims in order to avoid them from becoming destitute, while ensuring that this would not give rise to any magnet effect which may have serious implications on the long-term sustainability of such assistance and the immigration control of Hong Kong.

8.	**Provision of publicly-funded legal assistance at the appeal stage**	Under the USM, ImmD must handle non-refoulement claims through procedures meeting the high standards of fairness and offer claimants reasonable opportunities to establish their claims, including the provision of PFLA. According to a court ruling, non-refoulement claimants have the right to access to legal assistance during the screening procedures. If claimants are unable to afford so, the Government must provide legal assistance to them out of public funds. According to the relevant requirements, the Government has been providing PFLA to all claimants in need at the screening stage, covering the main procedures including submission of claim forms, screening interviews and written notifications of ImmD's decision to claimants, etc. As for the appeal stage, claimants lodging appeals would continue to receive PFLA if they satisfy the merits test. In fact, the Court of First Instance of the High Court has stated in a previous ruling that the volume of non-refoulement claims is very large, and that the time and resources spent on screening these claims is immense (see *AW HCAL 91/2013*). In another ruling, the Court considers that high standards of fairness do not require the HKSAR Government to provide PFLA for the communication between claimants and the Director of Immigration during all stages of claims (see *Ram Chander HCAL 305/2017*). Currently, if a claimant intends to lodge an appeal against ImmD's decision, the lawyer who has been advising him/her under PFLA will assess whether there are merits for appeal. If the appeal is justified according to the merits test, the claimant will continue to be provided with PFLA at the appeal stage. Throughout the screening procedures, the lawyer who has been advising the claimant under PFLA should be the one who is most familiar with the merits of claim and hence a suitable party to assess whether there are merits for appeal

		based on the facts of individual cases and the relevant decisions made by ImmD. The relevant lawyers, who have received dedicated training arranged or endorsed by the two legal professional bodies, are all independent, competent and professional, and thus would duly consider the merits of each case and continue to provide the necessary legal assistance to the claimant at the appeal stage if considered justified. We consider that the existing arrangement is appropriate, and would not compromise the efficiency or fairness of the appeal procedures.
9.	**Suggestion on publishing TCAB's decisions**	TCAB must observe strict confidentiality. The publication of appeal decisions by TCAB may potentially put the claimants or their families in grave danger, even if the decisions are anonymized. The suggestion of publishing appeal decisions by TCAB must be considered prudently. For the time being, TCAB still has to focus its resources on processing pending appeals in full swing. It will also take time to study the suggestion in detail before coming to a conclusion on whether to publish its decisions and how this would be done, taking into account such factors as its own resources and actual operation.
10.	**The Government's description of the overall situation of non-refoulement claims**	In the brief earlier submitted by the Government to LegCo, there was description about the surge in the number of claims over the past years. The description was based on objective figures and reflected the relevant facts. As a reference, the USM was implemented in March 2014, screening non-refoulement claims on all applicable grounds in one go. As at end 2015, a total of 10 922 claims were pending screening, of which 6 360 (around 60%) were new claims which had never been lodged before the commencement of USM (i.e. they were not torture claims previously lodged prior to commencement of USM). In fact, since the commencement of USM in March 2014, ImmD received 4 634 and 5 053 newly-lodged non-refoulement claims in the remaining ten months of 2014 and

		the whole year of 2015 respectively. All in all, from the release of the two rulings by the Court of Final Appeal to end 2015, the total number of non-refoulement claims received by ImmD exceeded 14 000 cases. In other words, in the mere span of 22 months, the number of newly-lodged claims soared by 331% (from a monthly average of 102 claims between 2010 and 2013 to a monthly average of 440 claims between March 2014 and end 2015). Of the claims pending screening as at end 2015, around 80% of the claimants were from five South Asian or Southeast Asian countries, namely Vietnam (21%), India (19%), Pakistan (18%), Bangladesh (12%) and Indonesia (10%). Separately, the number of non-ethnic Chinese illegal immigrants intercepted increased from 1 218 persons in 2013 (a monthly average of 102 persons) to the peak of 3 819 persons in 2015 (a monthly average of 318 persons), before falling gradually to 2 221 persons in 2016 (a monthly average of 185 persons), 893 persons in 2017 (a monthly average of 74 persons) and 639 persons in 2018 (a monthly average of 53 persons). The above figures reflect to a certain extent that the numbers of illegal immigrants and non-refoulement claims have indeed increased in correspondence to the overall arrangements for or court rulings on claims over the past years. Hence the description of the overall situation of non-refoulement claims set out in the brief is not inappropriate.