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Paper for the House Committee meeting on 16 April 2021

Report of the Bills Committee on Immigration (Amendment) Bill 2020

Purpose

This paper reports on the deliberations of the Bills Committee on Immigration (Amendment) Bill 2020 ("the Bill").

Background

2. Pursuant to several court rulings since 2004, the Administration has reviewed and revised the administrative screening mechanism for torture claims. The revised mechanism, which commenced in December 2009, includes the provision of publicly-funded legal assistance ("PFLA") to torture claimants through the Duty Lawyer Service ("DLS"), enhanced training for personnel responsible for processing and determining the claims and a petition procedure involving adjudicators with legal background who may conduct oral hearing if required.

3. The Immigration (Amendment) Ordinance 2012, which came into operation in December 2012, provides for a statutory process for making and determining claims, including how a torture claim is made, the time limit for a claimant to return the torture claim form, the requirements for the Immigration Department ("ImmD") to arrange screening interviews and issue written notices of decision, etc. It also provides that a claimant who was aggrieved by the decision might lodge an appeal, which would be handled by a statutory Torture Claims Appeal Board ("TCAB").

4. Following judgments by the Court of Final Appeal in *Ubamaka v Secretary for Security*[1] *and C & Others v Director of Immigration and Others*[2], the Administration commenced operating the Unified Screening Mechanism

[1] (2012) 15 HKCFAR 743, FACV 15/2011

[2] (2013) 16 HKCFAR 280, FACV 18-20/2011

("USM") in March 2014 to screen non-refoulement claims on all applicable grounds.[3] The screening procedures of USM follow those of the statutory screening mechanism for torture claims, which have been in place since the enactment of the Immigration (Amendment) Ordinance 2012. Since then, there were increasing numbers of new non-refoulement claims made to ImmD. By early 2016, over 11 000 claims were pending determination by ImmD under USM. To tackle the problem, the Administration commenced a comprehensive review of the strategy of handling non-refoulement claims in 2016, implementing measures in the following areas:

(a) reducing at source the number of non-ethnic Chinese illegal immigrants and overstayers[4] who may lodge non-refoulement claims in Hong Kong;

(b) expediting screening of claims and appeals under USM;

(c) expediting repatriation of the claimants whose claims have been rejected; and

(d) stepping up law enforcement (against crimes such as unlawful employment) and improving detention arrangements.

The Bill

5. The Bill was published in the Gazette on 4 December 2020 and received its First Reading at the Council meeting of 16 December 2020. The main object of the Bill is to amend the Immigration Ordinance (Cap. 115) ("IO") to enhance the efficiency of screening claims by ImmD, prevent delaying tactics, improve the procedures and functions of TCAB, strengthen removal of unsuccessful claimants, and enhance detention and enforcement. It also provides for savings and transitional arrangements relating to the handling of claims.

6. The Bill also seeks to amend the Weapons Ordinance (Cap. 217) ("WO") and the Firearms and Ammunition Ordinance (Cap. 238) ("FAO") to enable members of the Immigration Service to possess arms and weapons otherwise prohibited by those Ordinances.

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[3] A claim by someone subject to be removed from Hong Kong to another country that if removed to that country, he will be subjected to torture, or his absolute and non-derogable rights under the Hong Kong Bill of Rights ("HKBOR") will be violated (including being arbitrarily deprived of his life as referred to in Article 2 and cruel, inhuman or degrading treatment or punishment as referred to in Article 3 of HKBOR), or be persecuted, etc.

[4] Overstayers are persons who entered Hong Kong lawfully (e.g. as visitors) but have remained in Hong Kong in breach of the limit of stay imposed in relation to the permission under section 11(2) of the Immigration Ordinance.

The Bills Committee

7. At the House Committee meeting on 8 January 2021, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Elizabeth QUAT, the Bills Committee has held three meetings with the Administration. The membership of the Bills Committee is in **Appendix I**. A list of organizations and individuals which/who have provided written views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

New statutory standards on screening procedures

New measures to improve the efficiency of procedures

8. Under the existing USM, all claimants must first complete and return a claim form to state all grounds of their claim with all the supporting facts[5] before immigration officers conducting screening interviews with them. Where a claimant's physical or mental condition is in dispute and relevant to the consideration of the claim, ImmD will make arrangements for the claimant to undergo medical examination to ascertain the alleged condition.[6] Members note that the Bill proposes, among others, to introduce new statutory standards applicable to claimants to enhance the efficiency of screening non-refoulement claims. For instance, it is proposed under clause 10 of the Bill that, among others, a new section 37ZAB be added to IO to provide that an immigration officer may require claimants to attend interviews at the date, time and place specified by the officer.

9. Most members are supportive of the proposed amendments to improve the efficiency of USM procedures and prevent uncooperative claimants from using various tactics to delay the screening procedures, such as refusal to confirm interview arrangements and repeated absence from scheduled medical examinations.

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[5] Under IO, claimants must complete and return a claim form within 28 days of ImmD's request to set out why they fear being removed to the torture risk state in order to commence the screening procedures. At the request of Duty Lawyer Service before implementation of USM, claimants are given 21 additional days to return their claim forms by means of administrative measures.

[6] At present, these medical examinations are mainly conducted by medical and health officers of the Department of Health or psychiatrists of the Hospital Authority.

Time limit for submitting claim forms

10. Members note that under the existing arrangement, while claimants must complete and return a claim form within 28 days after commencement of the screening procedures, they are all given 21 additional days to return their claim forms by means of administrative measures. Under the proposed section 37Y(3) of IO, applications for a further period to return the claim form may be allowed on the satisfaction of an immigration officer that the claimants concerned have exercised "all due diligence" to comply with the original deadline and the delay is caused by "circumstances beyond the claimant's control". Some members have expressed concern whether the higher threshold for extension of time for submitting claim forms and the new statutory standards satisfy the high standards of fairness as required by the court. The Legal Adviser to the Bills Committee has also enquired whether claimants will actually be informed in practical terms the standards ("due diligence" and "circumstances beyond the claimant's control") that they are required to meet.

11. On the time limit for submitting claim forms, the Administration has advised that the 28-day statutory period is similar to that of some other countries. For comparison, some countries offer an even shorter period, e.g. 15-day statutory period in Canada.

12. The Administration has further advised that the introduction of the "all due diligence" requirement is consistent with the high standards of fairness required by the court. In determining whether a claimant has exercised "all due diligence" and whether a situation amounts to "circumstances beyond the claimant's control", all relevant facts and circumstances of the individual case will be duly considered. Generally speaking, if the claimant fails to proceed with the claim in accordance with the screening or appeal procedures due to illness or accident which is beyond the claimant's own control, with sufficient evidence in writing to satisfy an immigration officer or TCAB, the situation may be considered as "circumstances beyond the claimant's 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. All in all, claimants are expected to take active steps in fulfilling and complying with the screening procedures in accordance with the law. In any case, while it will be up to the claimant concerned to demonstrate that he/she has exercised all due diligence and that the circumstances are beyond the claimant's control, ImmD/TCAB may still need to seek clarification or elaboration from the claimant as and when necessary.

Language used for communications

13. Under the prevailing practice, unless the claimants can communicate in Chinese or English, publicly-funded simultaneous interpretation services will be arranged for screening interviews conducted by ImmD. The same

arrangement is adopted in oral hearings conducted by TCAB. It is proposed under clause 10 of the Bill that, among others, a new section 37ZAC be added to IO to provide that an immigration officer may direct a claimant to communicate in a language that the officer reasonably considers the claimant is able to understand and communicate in.

14. Most members generally consider that the proposed amendments would prevent claimants from abusing the interpretation service arranged by ImmD/TCAB, such as requesting the use of specific tribal dialects in the interviews or hearings. Some members including Mr Michael TIEN and Dr CHENG Chung-tai have expressed concern about the difficulties for ImmD/TCAB to arrange suitable interpreters, and how the immigration officers will determine the language to be used in the screening interviews, and the factors to be taken into consideration by the officers in determining whether a claimant is able to understand and communicate in a particular language. The Administration has advised that when considering whether a claimant can reasonably understand and communicate in a language, ImmD or TCAB will take into account information and documents submitted by the claimant, previous communications of the claimant with ImmD or TCAB, court documents, other evidence demonstrating whether a claimant can reasonably understand and communicate in another language, etc.

15. Concern has also been raised whether the proposed new section 37ZAC conforms to the high standards of fairness required by the court, which includes the requirement that the claimant should be given every reasonable opportunity to substantiate his claim.

16. The Administration has explained that the proposed provision that ImmD or TCAB may direct a claimant to communicate in a language that ImmD or TCAB reasonably considers the claimant is able to understand and communicate in is intended to prevent and tackle the situation where claimants insist that ImmD or TCAB arrange for an interpreter who can communicate in their rare tribal dialects for conducting the interview or hearing, even when they can reasonably understand and communicate in other languages (e.g. English or the official language of their countries of origin), with the intention to delay the screening process. Members' attention has also been drawn to the adoption of similar practice in relation to the languages used in screening interviews in other countries/places such as Germany, the United Kingdom and the European Union.

17. The Administration has affirmed that ImmD or TCAB will continue to arrange publicly-funded simultaneous interpretation service for the claimants in need. For this purpose, ImmD has hired 11 full-time interpreters to offer interpretation services in six languages used by about 80% of the claimants. Where necessary, ImmD has engaged local part-time interpreters to provide

support for 24 relatively less-used languages. Such arrangement should be able to satisfy the language need of almost all claimants.

18. To ensure that appropriate interpretation services are provided to claimants, Mr Michael TIEN has suggested that the Administration should explore the feasibility of providing overseas interpreters to assist in the screening of claims by way of videoconferencing. The Administration has advised that apart from the consideration of cyber security, it must also ensure that the relevant videoconferencing arrangement can comply with the confidentiality requirement and avoid any information leakage, especially the identity of the claimants. Accordingly, the Administration has advised that while it has currently no plan to engage overseas interpreters via videoconferencing to conduct screening interviews, it will consider engagement of overseas interpreters through parties such as international organizations or relevant agencies as and when necessary.

Medical examinations

19. According to the Administration, there have been cases where claimants claimed to be physically or mentally unfit, who then applied for extension of time limit at various stages of the screening procedures, but were absent from the medical examinations 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 decide on whether the extension application was justified, and the screening process was delayed. It is therefore proposed under clauses 12 and 15 that sections 37ZC and 37ZI of IO be amended respectively to require a claimant to give consent to enable a medical examination to be arranged or conducted, and to undergo the medical examination at the date, time and place specified by the immigration officer; and to provide that if a claimant fails to attend an interview or undergo the medical examination, the immigration officer may nevertheless proceed to make a decision on the torture claim. Most members generally consider that the proposed amendments would plug the loophole.

20. Members are assured that ImmD will continue to make arrangements for claimants to undergo medical examinations to assess a disputed physical or mental condition alleged by a claimant. The claimant will, however, be required to give consent to the arrangement of medical examination, undergo the examination as scheduled and submit timely the full medical reports afterwards.

<u>Improving procedures and functions of TCAB</u>

21. It is provided for under IO that claimants aggrieved by ImmD's decision may lodge an appeal in writing (i.e. Notice of Appeal) to TCAB within 14 days after they are informed of such decision. Noting that most claimants rejected

by ImmD will lodge an appeal and the number of new appeals to be received by TCAB each year is expected to remain at some 1 000, most members have expressed support for the proposed amendments to IO, which relate to the processing of appeals by TCAB, to improve procedures and functions of TCAB. These members have expressed concern as to whether TCAB can cope with the large number of pending appeal cases. To ensure proper use of public money, some members have also called on the Administration to take the opportunity to review the provision of PFLA to all claimants, for instance, by making reference to overseas experience and introducing a cap on PFLA.

22. The Administration has advised that there were over 6 500 pending appeals at the peak period. As at 31 October 2020, there were 93 TCAB members (including the Chairperson and six Deputy Chairpersons). However, only the Chairperson of TCAB has the power to assign members to hear and determine appeals, decide the order in which appeals and matters are to be heard or determined, and to give directions on the practice and procedures in hearing and determining an appeal. To ensure the effective management of TCAB, it is proposed under clause 25 that, among others, Schedule 1A to IO be amended to provide that TCAB Chairperson may delegate specified powers and functions under IO to a Deputy Chairperson and nominate a member of the board to preside over a hearing if a three-person board[7] is to be appointed to consider an appeal. The Administration considers that such arrangement would provide more flexibility to TCAB without affecting claimants' interests. Coupled with the provision of additional manpower support for TCAB's secretariat, it is expected that TCAB would be able to complete hearings and decide on the some 1 700 pending appeals (as at 31 October 2020) by 2021 the earliest.

23. The Administration has advised that PFLA is provided to all claimants in need at ImmD's screening stage without a statutory limit, which is different from the practice of other countries (such as Canada and the United Kingdom) where a statutory limit is set. Whether PFLA will continue to be provided during the appeal stage would be assessed by the same lawyer representing the claimant in the original screening process based on the merits of the case. As TCAB will screen the appeals by way of "rehearing", i.e. reconsidering all the applicable grounds put forward by the appellants, it is presumably that the claimants do not need to prepare for the hearing afresh, the Administration considers such arrangement for providing PFLA to be reasonable and fair to claimants. It also satisfies the high standards of fairness as required by the court. That said, the Administration is reviewing the provision of PFLA to claimants and will consider whether there is merit to impose a statutory limit as suggested by some members.

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[7] At present, if a three-member board is appointed, the law requires that the board must comprise the Chairperson or one of the Deputy Chairpersons, who will preside over the hearing.

Removal arrangements for unsuccessful claimants

24. Under clause 9, it is proposed that section 37Z of IO be amended to provide that the making of a torture claim would not preclude the Government from liaising with any party (including a torture risk state), for the purpose of making arrangements for the removal of the claimant, after the claim is rejected, a revocation decision is made in relation to the torture claim, or the torture claim is withdrawn.

25. Some members have expressed concern that for the purpose of making arrangements for the removal of a claimant, the Government may disclose to the torture risk state that the claimant has lodged a non-refoulement claim in Hong Kong and thus endanger the safety of the claimant and his/her associates. Clarification has also been sought as to whether a claimant whose claim has already been rejected by ImmD and TCAB but who has applied for leave to apply for judicial review would be removed, and if so, whether such removal infringes the right of claimants to institute legal proceedings in courts against the acts of the executive authorities and their personnel as far as Articles 35 and 41 of the Basic Law ("BL") are concerned.

26. The Administration has advised that to enhance removal efficiency in respect of unsuccessful claimants, it is 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 arrangements for removal (such as issuance of travel documents). The Government will not disclose to such authorities whether the person concerned has lodged any non-refoulement claim in Hong Kong when making arrangements for removal. Besides, ImmD will not execute removal of a claimant with a pending appeal to TCAB. It is pointed 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 apply for judicial review. As and when the legal proceedings have been disposed of, ImmD will proceed to remove the claimant concerned as soon as practicable.

27. The Administration has stressed that irrespective of the outcome of the 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 so as to maintain effective immigration control.

Detention

28. Under clauses 5 and 16 of the Bill, it is proposed that sections 32(4A) and 37ZK of IO, which concern detention pending removal/deportation and detention pending final determination respectively, be amended to provide for new circumstances under which the length of detention of a person would be considered as reasonable and lawful. Such new circumstances under section

37ZK of IO include, among others, whether there is a large number of claims or appeals pending screening or determination by ImmD or TCAB at the same time, whether the final determination of a claim or the removal of a claimant is directly or indirectly prevented or delayed by the claimant's own action or lack of action, and factors that are not within the control of the Director of Immigration ("D of Imm").

29. According to the Administration, in exercising its detention powers, 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 or security risk to the community, and whether there is any risk of the person absconding and/or (re)offending, etc. The Legal Adviser to the Bills Committee has pointed out that under clauses 5 and 16, it is proposed that factors that directly or indirectly prevent or delay the claimants' removal that are not within the control of D of Imm can also be taken into consideration in deciding whether a period of detention is reasonable and lawful. She has sought clarification as to whether the proposed amendments conform to the *Hardial Singh* principles, in particular, the principle that a person may only be detained for a period that is reasonable in all circumstances, and if before the expiry of the reasonable period for detention, it becomes apparent that D of Imm would not be able to effect deportation within that reasonable period, D of Imm should not seek to detain the person any further.

30. The Administration has affirmed that the proposed additional factors to be included in IO to determine the reasonableness of the detention period conform to the *Hardial Singh* principles. The "circumstances" set out in the proposed amendments to sections 32(4A) and 37ZK 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 with other factors in the specific circumstances of the individual case. It is pointed out that in considering the detention period, there may be circumstances beyond the control of ImmD, for instance, time required to issue travel documents by the source countries, difficulty in making removal flight arrangement due to epidemic outbreak, etc. The proposed new section 37ZK(2)(d) has set out the various factors which may justify a longer period of detention. The Administration has further pointed out that the proposed amendments are modelled on the existing section 13D(1A) of IO, which was introduced in 1991 to deal with the detention arrangement for Vietnamese boat-people in the past which is compliance with relevant legal principles.

31. The Administration has stressed that the proposed amendments aimed at enhancing transparency and providing unequivocal legal backup to the immigration officers in considering and determining the detention period, while complying with the relevant legal principles. ImmD will continue to conduct regular and timely review of the detention in respect of each individual detainee

in accordance with the detention policy and established mechanism. Upon conclusion of a detention review, ImmD will notify the person concerned in writing of the result of the review with justifications, and will conduct an interview with the person concerned, with the assistance of an interpreter where necessary. That said, detainees can apply to the court for *habeas corpus* to challenge ImmD's detention decision.

32. Most members have expressed support for the proposed amendments. Some members, including Ms Elizabeth QUAT, Dr Junius HO and Ms YUNG Hoi-yan, have suggested that the Administration should consider the merit of adding a new factor, namely whether the person concerned is likely to pose a threat or security risk to the community, for determining the reasonableness of the detention period. The Administration has advised that the court has affirmed in relevant precedents that it is both reasonable and in compliance with the relevant legal principles for ImmD to consider such factors when exercising its detention powers. Having regard to members' views and the fact that the mentioned factor has been taken into account by ImmD when deciding whether a person should be detained, the Administration will propose amendments to the proposed sections 32(4A) and 37ZK to further specify that whether the person poses or is likely to pose a threat or security risk to the community should be taken into account in deciding the reasonableness and lawfulness of a period of detention.

Setting up reception centres or closed camps to detain all claimants

33. Some members including Ms Elizabeth QUAT, Dr Junius HO and Ms YUNG Hoi-yan have expressed the view that the Administration should seriously consider identifying more suitable detention facilities for setting up reception centres or closed camps to detain all claimants in order to reduce their security risks to the community and deter potential claimants from coming to Hong Kong with an attempt to take up unlawful employment while making false non-refoulement claims.

34. The Administration has advised that the Castle Peak Bay Immigration Centre[8] ("CIC") is the only detention facility currently in use for such purpose, which can accommodate about 500 immigration detainees. The recently renovated Tai Tam Gap Correctional Institution (and soon to commence operation) is expected to accommodate additional 160 detainees, enhancing the overall detention capacity by one-third. It is pointed out that apart from matters to be handled on the legal front, the Government has to take into account various practical issues such as land resources, infrastructure, manpower and management in order to provide facilities sufficient for detaining the some 13 000 claimants currently in Hong Kong. While it is challenging to

[8] Castle Peak Bay Immigration Centre operates round-the-clock for the detention of persons pending removal or pending final determination of their claims in accordance with IO.

identify land that is immediately available for constructing detention centres, the Administration has reiterated to members that in principle, claimants posing higher security risks to the community would be detained as far as practicable.

Measures to enhance law enforcement relating to non-refoulement claimants

Combating unlawful employment

35. Clause 23 of the Bill seeks to amend section 38AA of IO to the effect that a person, who has been given permission to land in Hong Kong pursuant to section 11(1) of IO, remains in Hong Kong in breach of the limit of stay imposed under section 11(2) of IO (e.g. overstaying visitors) would be prohibited from taking any employment and establishing any business.

36. In respect of the rationale for the proposed amendments to section 38AA of IO, the Administration has explained that at present, if any person who enters Hong Kong illegally or is issued with a removal order 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 IO, and is liable on conviction to a fine of $50,000 and imprisonment for three years. However, if an overstaying visitor who is arrested for unlawful employment before a removal order or deportation order is issued against him/her, he/she can only be prosecuted for breaching a condition of stay under section 41 of IO, of which the maximum penalty is a fine of $50,000 and imprisonment for two years. To properly reflect the seriousness of the offence and effectively combat unlawful employment, the Administration considers it necessary to amend section 38AA of IO such that persons taking up unlawful employment in Hong Kong while overstaying 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. Members have expressed support for the proposed amendments to combat unlawful employment and reduce the economic incentive for potential claimants to enter and stay at Hong Kong.

37. It is also proposed under clause 4 that, among others, section 17I of IO be amended to increase the penalties for employing a person who is not lawfully employable under the amended section 38AA of IO from a maximum fine of $350,000 and three years' imprisonment to a maximum fine of $500,000 and 10 years' imprisonment. As to whether the proposed level of penalty is proportionate to the severity of the offence, the Administration considers that the proposed level of penalty would increase the deterrent effect and send a clear message to the community that unlawful employment is a serious offence. Members' attention is drawn to the fact that the current penalty level was last revised in 1996 and that the court may take into account all relevant factors of a case and impose a penalty level below the prescribed maximum. The Administration will continue to liaise with the source countries and enhance relevant publicity on issues relating to illegal working in Hong Kong.

Implementing an Advance Passenger Information system

38. Under clause 3, it is proposed that a new section 6A be added to IO to empower the Secretary for Security ("S for S") to make regulations to, among others, provide for the supply to D of Imm of information relating to the passengers or crew members of a carrier, and empower D of Imm to direct that a passenger or member of the crew of a carrier may or may not be carried on board the carrier.

39. The Administration has explained to the Bills Committee that the proposed new section 6A is to fulfil the international obligation of the Hong Kong Special Administrative Region under the Convention on International Civil Aviation. In 2018, the International Civil Aviation Organization ("ICAO") updated the Convention, including imposing a new mandatory requirement for its members to put in place the Advanced Passenger Information ("API") system. According to the requirement, airlines need to provide passenger and crew information to the immigration authorities in the destination countries before flight departure.

40. Noting that the operational details of the proposed API system, including the handling of records and personal data to be collected, are yet to be drawn up, members have enquired about details of information and data to be collected under the proposed API system and the use of such information and data. The Legal Adviser to the Bills Committee has asked the Administration to elaborate on whether the proposed API system would adopt the same or similar approach in handling passengers' and crew members' personal data currently collected and used by ImmD. The Administration has advised that pursuant to the existing IO, an immigration officer or a chief immigration assistant can require the captain of a ship/an aircraft to provide personal particulars of the passengers and crew members on their arrival at Hong Kong. In practice, prescribed particulars of passengers are required to be provided when necessary, and in accordance with the Immigration Regulations (Cap. 115A). For crew members, in order to verify their identity, crew identification documents and General Declaration have to be provided. The Administration has further advised that the data to be collected under the proposed API system would be similar to the personal information that ImmD would have access to when the relevant persons are presented for immigration clearance upon their arrival in Hong Kong. The personal data collected would continue to be handled with care and in full compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486). The Administration has added that the regulations to be made under the proposed new section 6A would set out the operational details with provisions in more specific terms, which would be subject to the negative vetting procedure of the Legislative Council ("LegCo"). The Administration has stressed that before implementing the API system, it will consult the aviation industry and stakeholders concerned.

41. The Legal Adviser to the Bills Committee has enquired whether S for S's proposed new power under clause 3 would expand the scope of the power of D of Imm to prohibit any person, including Hong Kong residents, to enter or leave Hong Kong, and whether such power conforms to BL 31 and Article 8(2) of the Bill of Rights under the Hong Kong Bill of Rights Ordinance (Cap. 383) ("BORO") concerning Hong Kong residents' freedom to travel and to enter or leave Hong Kong.

42. The Administration has advised that the API system, being a requirement by ICAO, is intended to enhance aviation security and facilitate immigration authorities around the world to exercise more effective immigration control on visitors. It is highlighted that the API system would only apply to flights bound for Hong Kong. So far, 97 countries/places already have the API system in place, including the Member States of the European Union, the United States of America, Canada and Australia. The Administration has pointed out that the freedom to travel and the right of Hong Kong residents to enter or leave Hong Kong are guaranteed under BL 31. The Bill also conforms to BL and BORO. The Administration therefore considers it not necessary to spell out in the Bill that the proposed power of D of Imm would not affect the rights of Hong Kong residents and persons with the right to enter or stay in Hong Kong. The Administration has stressed that while D of Imm would carefully exercise the proposed new power under clause 3, the provisions mainly seek to prevent potential claimants, or those who had been previously issued with a deportation order, from entering Hong Kong again.

43. Members also note that clause 24 seeks to increase the penalty that may be imposed on the owner of an aircraft in which a passenger who does not have a valid travel document arrives in Hong Kong from a level 3 fine (i.e. $10,000) to a level 6 fine (i.e. $100,000). Members generally raise no objection to increasing the penalty against the carrier concerned. In response to some members' concern about a ten-fold proposed increase in the penalties, the Administration has explained that there are some 200 cases each year relating to passengers arriving in Hong Kong in an aircraft without a valid travel document. To reflect the gravity of the consequence of the owner of an aircraft and his agent for breaching the duty, it is proposed to increase the maximum fine to $100,000. That said, written explanation will be sought from airlines, when necessary, during investigation.

Amendments to the Weapons Ordinance and the Firearms and Ammunition Ordinance

44. Clauses 27 and 28 seek to amend WO and FAO for the purpose of designating the Immigration Service as one of the classes of persons who may possess articles classified as "prohibited weapon" under WO and "arms" and "ammunition" as defined in FAO on behalf of the Government, to enable

immigration officers to handle emergencies and take enforcement actions at detention centres.

45. Some members including Mr Michael TIEN and Dr CHENG Chung-tai have expressed concern about the need for the proposed amendments to WO and FAO. These members are also concerned whether the proposed amendments would extend the use of new firearms and weapons by immigration officers at CIC and other detention centres, if so set up. They have enquired about the circumstances that have brought about the need for changes to be made in relation to the deployment of armed immigration officers at CIC.

46. The Administration has explained that at present, ImmD officers stationed at CIC are provided with appropriate anti-riot equipment (such as pepper spray and 37mm single shot launcher) to cope with emergencies that may arise, including violent incidents or even riots. The concerned 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 the Correctional Services Department ("CSD"). According to the Administration, CIC commenced operation in 2005. Having regard to then manpower situation of ImmD and CSD, it was 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. As ImmD has accumulated sufficient experience in management and use of the anti-riot equipment concerned, it has all along been the Administration's plan to amend FAO and to include ImmD as a department being authorized to possess arms or ammunition on behalf of the Government thereunder, thereby dispensing with the administrative arrangement for ImmD to apply to the Police Force for exemptions. As regards the proposed amendment to WO, the Administration has advised that similar to the position in respect of FAO, ImmD is presently not one of the designated departments authorized to carry regulated weapons, such as steel extendible batons. In the circumstances, the Administration takes the opportunity of the current legislative exercise to effect the relevant amendments.

47. The Administration has further advised that after effecting the proposed amendments to FAO and WO, ImmD would have more flexibility in staff deployment and capacity to conduct staff training on its own, thereby enhancing its capacity in handling emergencies and taking enforcement actions at detention centres. The Administration has stressed that there is no change to ImmD's existing use of regulated anti-riot equipment and weapons. D of Imm would continue to maintain strict oversight on the provision of equipment to ensure that the equipment meets the operational needs and is properly used and stored.

Commencement and transitional arrangements

48. Members note that the Bill proposes to add a new Schedule 5 to IO to provide for the savings and transitional arrangements relating to the handling of torture claims (e.g. if a claim is pending a decision, the pre-amended IO would continue to apply) made under IO before the commencement of the enacted Ordinance if the Bill is passed by LegCo.

49. The Bill, if passed, would come into operation on a date to be appointed by S for S by notice published in the Gazette. Members note that the Administration would propose an amendment to the Bill to specify that the Bill, if passed, would come into operation on 1 August 2021. Members raise no objection to the proposed commencement date.

Amendments proposed to the Bill

50. The proposed amendments to be moved by the Administration to the Bill as mentioned in paragraphs 32 and 49 above are in **Appendix III**. Members raise no objection to these proposed amendments. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate

51. Subject to the Administration moving the proposed amendments to the Bill, the Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 28 April 2021.

Advice sought

52. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
14 April 2021

Appendix I

Bills Committee on Immigration (Amendment) Bill 2020

Membership list *

Chairman	Hon Elizabeth QUAT, BBS, JP
Members	Hon CHAN Hak-kan, BBS, JP Dr Hon Priscilla LEUNG Mei-fun, SBS, 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 YUNG Hoi-yan, JP Hon CHAN Chun-ying, JP Hon LUK Chung-hung, JP Dr Hon CHENG Chung-tai (Total : 12 members)
Clerk	Miss Betty MA
Legal adviser	Miss Joyce CHAN

* Changes in membership are shown in **Annex to Appendix I**.

Annex to Appendix I

Bills Committee on Immigration (Amendment) Bill 2020

Changes in membership

Member	**Relevant date**
Hon YUNG Hoi-yan, JP	Since 5 February 2021
Hon Mrs Regina IP LAU Suk-yee, GBS, JP	Up to 5 February 2021

Appendix II

Bills Committee on Immigration (Amendment) Bill 2020

List of organizations/individuals which have provided written submissions

1. Andrew Gardener
2. Anthony LI
3. Eddie YUEN
4. Mr KAN Hang Chiu
5. Ms Lorin SIU
6. Mary YAO
7. Methodist International Church, HK
8. Mr Jim
9. Nga Man Wong
10. Phyllis WONG Mei-fung
11. Roshan Melwani
12. Stephen WONG
13. The Vine Church
14. TM Kwok
15. Tony NG
16. Tony Wong
17. Watermark Community Church
18. A member of the public

19. A member of the public

20. Mr LI Chung-chi, Member of Yuen Long District Council

21. CIC Concern Group

22. Daly & Associates

23. Hong Kong Bar Association

24. Hong Kong Dignity Institute

25. International Chamber of Commerce

26. 梁小姐

27. Miss YEUNG

28. Refugee Concern Network

Immigration (Amendment) Bill 2020

Amendments to be moved by the Secretary for Security

Clause	Amendment Proposed
1(2)	By deleting "a day to be appointed by the Secretary for Security by notice published in the Gazette" and substituting "1 August 2021".
5	In the proposed section 32(4A)(e), by deleting "and".
5	In the proposed section 32(4A), by adding— "(ea) whether the person poses, or is likely to pose, a threat or security risk to the community; and".
16(2)	In the proposed section 37ZK(2)(c), by deleting "and".
16(2)	In the proposed section 37ZK(2), by adding— "(ca) whether the claimant poses, or is likely to pose, a threat or security risk to the community; and".