

For discussion on
1 April 2022

Legislative Council Panel on Security

Proposed Retention of a Supernumerary Post of Assistant Director of Immigration and Upgrading of one Permanent Post of Principal Immigration Officer to the Rank of Senior Principal Immigration Officer in the Immigration Department

PURPOSE

This paper seeks Members' support for –

- (a) retaining a supernumerary post of Assistant Director of Immigration (“**AD of Imm**”) (DS(C)2 or D2-equivalent), designated as Assistant Director (Removal Assessment and Litigation) (“**AD(RAL)**”), under the Removal Assessment and Litigation Branch (“**RAL Branch**”) in the Immigration Department (“**ImmD**”) for three years (from 1 April 2022 to 31 March 2025) to continue steering the handling of non-refoulement claims and to step up the claimant-related measures (“**proposed retention of post**”); and
- (b) upgrading one permanent post of Principal Immigration Officer (“**PIO**”) (DS(O) 38-40) to the rank of Senior Principal Immigration Officer (“**SPIO**”) (DS(C)1 or D1-equivalent) under the Enforcement Branch (“**E Branch**”) in ImmD for strengthening ImmD's enforcement capability (“**proposed upgrading of post**”).

PROPOSED RETENTION OF POST

Background

2. Non-refoulement claimants (“**claimants**”) are illegal immigrants

(“**IIs**”), overstayers or persons who were refused entry by ImmD upon arrival in Hong Kong. They should be removed from Hong Kong in accordance with the Immigration Ordinance (Cap. 115) (“**Ordinance**”) as soon as practicable. The Government implemented a statutory mechanism in December 2012 to determine torture claims, and subsequently commenced in March 2014 the Unified Screening Mechanism (“**USM**”) to screen non-refoulement claims on all applicable grounds¹.

3. Since 2014, there had been an influx of non-ethnic Chinese illegal immigrants (“**NECIIs**”) and an increase in the number of overstayers or persons who were refused entry, resulting in a sharp increase in the number of non-refoulement claims pending screening². The Government commenced in early 2016 a comprehensive review of the strategy of handling non-refoulement claims (“**the comprehensive review**”), with focus on the following areas –

- (a) reducing at source the number of NECIIs and overstayers who may lodge non-refoulement claims in Hong Kong;
- (b) expediting screening of claims and appeals under the USM;
- (c) expediting repatriation of claimants whose claims and appeals (if any) have been rejected; and
- (d) stepping up law enforcement (including against crimes such as unlawful employment) and detention arrangements.

The progress achieved since the comprehensive review is set out at **Annex A**.

Justifications for retaining the AD(RAL) post in ImmD

4. Despite our efforts under the comprehensive review and the concrete progress made, there remain challenges ahead in tackling the issue. While the overall landscape of non-refoulement claims has been stable since 2019, screening of claims was affected by the Coronavirus Disease 2019 (“**COVID-**

¹ A claim made by someone subject to be removed from Hong Kong to another country on the ground that if removed to that country, he or she will be subject to torture, or his/her absolute and non-derogable rights under the Hong Kong Bill of Rights (“**HKBOR**”) (Cap. 383) will be violated (including being arbitrarily deprived of his/her life as referred to in Article 2 and cruel, inhuman or degrading treatment or punishment as referred to in Article 3 of HKBOR), or he or she will be subject to “persecution” with reference to the non-refoulement principle under Article 33 of the 1951 Convention Relating to the Status of Refugees, etc.

² The number of non-refoulement claims pending screening increased from around 6 700 in March 2014 to 9 900 by the end of May 2015. By early 2016, over 11 000 claims were pending determination by ImmD under the USM.

19”) pandemic. Due to the special work arrangements implemented during the pandemic, the provision of publicly-funded legal assistance (“PFLA”) to claimants was interrupted and the commencement of screening procedure was hindered. There was also an increase in the number of new claims received. As at June 2021, the number of new claims pending screening by ImmD rebounded to about 1 500. With the efforts by ImmD and the gradual increase in PFLA quotas, the number of claims pending screening by ImmD was brought down to 455 as at February 2022. Meanwhile, the number of appeals pending handling by the Torture Claims Appeal Board (“TCAB”) stood at around 2 600 by February 2022.

5. Apart from the above, there are some 14 800 claimants remaining in Hong Kong for different reasons, among whom a large proportion have lodged application for leave for applying for judicial review (“JR”) after their claims or appeals have been rejected, thereby delaying their removal from Hong Kong. According to the Judiciary, there were 3 727, 2 367 and 1 675 applications for leave to apply for JR related to non-refoulement claims filed at the Court of First Instance level in 2019, 2020 and 2021 respectively. Despite the enhanced efforts of the Court in expediting the handling of JR leave applications made by unsuccessful claimants, there remained a substantial backlog of such applications. The continued presence of these claimants in Hong Kong necessitates ImmD’s sustained and enhanced efforts in managing them, including their removal, detention where necessary, and enforcement (including against crimes such as illegal employment).

6. Besides, we have seen an upward trend of subsequent claim (“SC”) requests³ made by unsuccessful claimants in the last two years. Since the implementation of USM and up to February 2022, ImmD has cumulatively received 1 353 SC requests. There were 50 requests received in 2018, and 116 in 2019. But the number rose to 446 in 2020 and further to 510 in 2021. There is also tendency for these claimants whose SC requests having been rejected by ImmD resorting to JR again⁴ as an attempt to prolong their illegal

³ Section 37ZO(2) of the Ordinance stipulates that “A person may make a subsequent claim if the person provides sufficient evidence in writing to satisfy an immigration officer that – (a) there has been a significant change of circumstances since the previous claim was finally determined or withdrawn; and (b) the change, when taken together with the material previously submitted in support of the previous claim would give the subsequent claim a realistic prospect of success.”

⁴ Since the implementation of the USM and up to February 2022, ImmD has rejected a total of 778 SC requests, among which 402 have filed JR leave applications against ImmD’s decisions on the SC requests. Of the SC

stay in Hong Kong. To curb the situation, ImmD has already taken steps to expedite processing of the SC requests. The Court also takes note of the trend, and to tackle such abusive acts, the Court has exercised its discretion to grant orders, where appropriate, restricting the persons from initiating any claim-related legal proceedings without leave from the Court. Meanwhile, ImmD has been actively supporting the Department of Justice in identifying appropriate cases for court order applications against those claimants who had sought to exploit the system and to prolong their stay in Hong Kong from initiating further claim-related legal proceedings.

7. In view of the continued challenges facing us, it is necessary to **retain the supernumerary post of AD(RAL)⁵ for three years** to provide continued leadership and professional guidance to the RAL Branch at the directorate level to sustain the progress achieved under the comprehensive review in tackling the issue of non-refoulement claims and to follow through the various initiatives implemented, including the enhancements made under the Immigration (Amendment) Ordinance 2021 (“**Amendment Ordinance**”)⁶, to ensure the smooth operation of the USM, effective and efficient handling of the outstanding claims, appeals, and relevant litigations, as well as the expeditious removal of unsuccessful claimants.

8. Specifically, AD(RAL) will be required to lead the RAL Branch to maintain the momentum on proactively and expeditiously handling the pending claims and SC requests, while meeting the high standards of fairness as required

requests received, 291 claimants had their JR leave applications against their previous claims dismissed by the Court of Final Appeal already.

⁵ The supernumerary post of AD(RAL) in ImmD was first created in mid-2016 alongside with the commencement of the comprehensive review. The post was retained for another three years in 2019 and will expire on 31 March 2022. (Reference: Papers EC(2018-19)23 and FCR(2018-19)91)

⁶ The following major enhanced measures were introduced under the Amendment Ordinance: (a) a claimant must attend interviews upon request by ImmD/TCAB; (b) ImmD/TCAB may direct a claimant to communicate in a language that ImmD/TCAB reasonably considers the claimant being able to understand and communicate in during the screening interview; (c) ImmD/TCAB may make arrangement for a claimant to undergo a medical examination in cases where a physical or mental condition of a claimant is in dispute and the condition is relevant to the consideration of the claim; (d) incorporation of various factors which may justify a longer detention period; (e) empowering the Secretary for Security to make regulations for the implementation of the Advance Passenger Information system; (f) increasing the maximum penalty for an employer employing a person who is not lawfully employable, and stipulating that the director, manager, secretary or partner, etc., of the company concerned may also bear criminal liability; and (g) expediting the removal process by allowing ImmD to commence liaison with relevant authorities for repatriation arrangements (such as applying for necessary travel documents) once a claim has been rejected by ImmD. The Amendment Ordinance took effect on 1 August 2021 already.

by the Court, taking into account the changing trends of claimants, relevant jurisprudence and practices, as well as the operational experience of the USM and the enhanced measures introduced under the Amendment Ordinance. He/she will also guide the RAL Branch in following up the appeals lodged by unsuccessful claimants to TCAB against ImmD's decision. Besides, ImmD would need to continue closely monitoring the latest JR trends and to participate in litigation cases which seek to challenge the operation or basis of the USM to explain the Government's policy and to safeguard public interest. AD(RAL) will be required to provide strategic direction to the RAL Branch and to ensure adequate manpower and resources are deployed for bolstering the capacity in delivering these tasks.

9. As noted above, claimants are IIs and should be removed from Hong Kong as soon as practicable. Since taking over the duties of removing unsuccessful claimants from the E Branch in May 2019, the RAL Branch has succeeded in attaining smooth removal operations despite the challenges posed by the pandemic. Nevertheless, in view of the continuous challenges ahead including the frequently changing flight suspensions or restrictions imposed by different countries amidst the pandemic, and the increasing number of legal challenges against removal, dedicated efforts and directorate steer are crucial to achieving the ultimate goal of removing unsuccessful claimants at the earliest possible time. Besides, when the pandemic recedes and the remaining JR leave applications are gradually handled by the Court in the foreseeable future, it is expected that the number of claimants pending removal will stand high, staging another challenge to ImmD.

10. AD(RAL) will need to steer the RAL Branch to ensure timely and expedient removal of the unsuccessful claimants. The spectrum of efforts would range from close monitoring of the latest trends and situation, devising strategic plans and new measures as necessary, as well as maintaining close and effective communications with different parties (e.g. source countries governments and airlines) to smoothen the re-entry process, taking into account the operational experience and relevant legal requirements.

11. The proposed job duties of AD(RAL) and organisation chart of the RAL Branch are at **Annex B** and **Annex C** respectively.

PROPOSED UPGRADING OF POST

Background

12. The E Branch, under the command of Assistant Director (Enforcement) (“**AD(E)**”), currently comprises two divisions, namely : -

- (a) Enforcement Division (“**E Div**”), headed by PIO(Enforcement) (“**PIO(E)**”), is responsible for the investigation and prosecution of immigration offences, including overstaying; illegal remaining; unlawful employment; using false travel document and making false representation; arrangement of unauthorized entrants; bogus marriages, etc.; as well as the removal and deportation of IIs, overstayers and persons refused permission to land (who are not claimants), and the management of immigration detention centres (viz. the Castle Peak Bay Immigration Centre (“**CIC**”) and the Ma Tau Kok Detention Centre). It is composed of three sub-divisions with 12 sections; and
- (b) Counter Terrorism Division (“**CT Div**”), headed by PIO(Counter-Terrorism Division) (“**PIO(CTD)**”), was set up in June 2018 to handle all counter-terrorism (“**CT**”) related matters. It is composed of two sections, and is responsible for the monitoring and investigation of suspected acts of terrorism; liaison with local, Mainland and overseas law enforcement agencies (“**LEAs**”) for CT intelligence and information exchange; analysis and dissemination of intelligence materials on CT; planning and execution of preventive actions against terrorism; organization of internal CT training and drill exercises, as well as performing periodic reviews on the departmental strategic plans and policies.

13. The existing organisation chart of the E Branch is at **Annex D**.

Justifications for upgrading the PIO(E) post in ImmD

(i) New Enforcement Initiatives under E Branch

14. To tackle the constantly-changing *modus operandi* of immigration offenders, ImmD has been implementing and planning a series of new

enforcement initiatives in the following five major areas:-

(a) Strengthening Enforcement Efforts against Claimants

15. ImmD has been tackling the issue of claimants with a multi-pronged approach, including prevention of arrival of potential claimants at source. E Div will continue to play a key role in this, particularly in respect of enforcement against uncooperative claimants and IIs on various fronts, including to vigorously combat NECIIs smuggling activities in collaboration with local LEAs and Mainland authorities.

16. For instance, in August 2019, ImmD conducted a joint operation codenamed “Ironhill” with the Hong Kong Police Force (“**HKPF**”), the Guangdong Provincial Public Security Department, the Division of Exit-entry Administration of the Shenzhen Municipal Public Security Bureau and the Guangdong Coast Guard Corps, cracking down on a cross-boundary human smuggling syndicate that specialised in arranging Vietnamese nationals to seek illegal entry into Hong Kong. During the operation, a total of 66 suspects, including 13 core syndicate members, were arrested in Guangdong Province and Hong Kong. E Div will continue to work closely with the local and Mainland LEAs to take vigorous action against illegal immigration activities on land and at sea. In 2021, a total of 850 NECIIs were intercepted.

17. Besides, ImmD will continue to step up enforcement actions against illegal employment of claimants, overstayers and other IIs. Following implementation of the Amendment Ordinance, which has expanded the scope of persons prohibited from taking up unapproved employment under section 38AA of the Ordinance and increased the penalty for an employer employing illegal workers, E Div has further strengthened the enforcement efforts to curb illegal employment activities, especially those relating to claimants.

18. Separately, to enhance the recognizance reporting mechanism, a new Recognizance Investigation Team (“**RIT**”) was formed in E Div in late 2020 with a view to further tightening the post-recognizance scrutiny and locating the absconders more effectively. Among other strategies, RIT will verify the reported addresses before and after release of detainees on recognizance by regular interviews; and interrogate re-arrested absconders for intelligence such

as common hideouts for further investigation. Since its formation and up to February 2022, the RIT has conducted over 13 600 interviews on recognizance reportees and 1 316 territory-wide field operations to locate the absconders.

(b) Stepping up Enforcement Action against Bogus Marriages and Obtaining Stay by Fraudulent Means

19. ImmD also continues its efforts in combatting illicit acts of Mainland residents/foreigners obtaining residence in Hong Kong by bogus marriages or other fraudulent means. From 2011 to February 2022, E Div investigated 5 542 suspected bogus marriage cases, in which 11 085 persons were arrested and 1 350 of them have been successfully prosecuted.

20. The modus operandi of bogus marriage syndicates has been ever-changing and poses new challenges on immigration investigation work. Apart from recruiting bogus spouses through newspapers in the past, with the advancement of technology, diversified communication means such as social networking applications on mobile phones have been widely used, which has made recruitment of bogus spouses more easily and with a higher chance of avoiding detection. The proposed SPIO will offer more strategic guidance at the directorate level on how to enhance the investigation capability, and spearhead the newly established Cybercrime and Forensics Investigation Group (“**CFIG**”) to more effectively detect and combat the said crimes, among others.

(c) Combatting Immigration-related Computer Crimes

21. Criminals evolve rapidly and many of them have taken advantage of the technological advancement in committing immigration offences, such as making forged identity cards, travel documents, false instruments by using electronic devices, or arranging bogus marriages and human smuggling activities by using social media platforms. On the other hand, preservation and collection of digital evidence have become critical during the investigation and prosecution against crimes perpetrated through technologies. It is therefore important for ImmD to equip itself with sufficient technological equipment and expertise in order to enhance enforcement and prevention against immigration-related cyber-crimes. To this end, a new specialised unit, i.e. CFIG, was set up under E Div in September 2021 to assist frontline investigators in the analysis and restoration of digital evidence, and in giving

testimony during prosecution in court. The proposed SPIO will offer more strategic guidance at directorate level for the work in this area.

(d) Strengthening Enforcement Efforts against Trafficking in Persons (“TIP”)

22. The Government established a high-level “Steering Committee to Tackle TIP and to Enhance Protection of foreign domestic helpers (“FDHs”)” and promulgated an Action Plan in March 2018. The Action Plan outlines a package of multi-faceted measures to address the problem of TIP and protect FDHs. Amongst the various new initiatives, ImmD set up a new Foreign Domestic Helpers Special Investigation Section (“FIS”) under E Div in December 2019 to step up scrutiny of FDH visa and extension applications to facilitate identification of potential TIP victims and cases of exploited FDHs. In 2021, ImmD conducted around 3 100 initial screenings under the TIP victim screening mechanism, among which around 1 700 cases were screened by the FIS. The proposed SPIO will provide leadership at the directorate level to ensure the effective implementation of the Action Plan by ImmD.

(e) Enhancing CIC’s Capability in Emergency Situations

23. The composition of detainees at CIC has gradually changed over the past years with an increasing number of detainees being claimants with different nationalities and background. An increasing number of detainees are discharged prisoners who had been convicted of serious criminal offences such as murder, wounding, drug trafficking, robbery, burglary, etc.

24. This has posed challenges to ImmD in managing CIC in terms of the number and diversity of the detainees, and disciplinary issues so arising. For better management of the detainees in CIC, an Emergency Response Team has been set up to handle large-scale riots and emergency situations, as well as to perform special operations such as special search.

25. To expand the detention capacity and enhance the management of claimants under detention, the Tai Tam Gap Correctional Institution (“TGCI”) of the Correctional Services Department (“CSD”) was re-commissioned on 28 May 2021 for detaining claimants posing higher security risk to the community. For the smooth transfer of detainees from CIC to TGCI and effective handling of claimants under detention, ImmD has been in active and close liaison with

CSD on a daily basis. As at February 2022, 204 and 111 claimants were detained at CIC and TGCI respectively.

26. The proposed SPIO will offer high-level steer in formulating and launching new initiatives at the immigration detention centres, including improving the centres' daily operations and effective deployment of anti-riot tactics in response to emergency situations; as well as closely liaising with CSD in handling challenges against detention and treatment in detention facilities.

(ii) Diversifying Duties and Increasing Workload of E Branch

27. Over the years, the functions and duties of E Branch have substantially increased in terms of variety, breadth, depth and complexity in response to the ever-changing modus operandi of IIs and criminals. To effectively combat the increasingly complicated immigration crimes and threats, the establishment of E Branch has also been expanding. As at February 2022, E Branch had an establishment of over 1 000 staff, comprising 944 posts (i.e. 852 service grade posts and 92 civilian posts) under E Div and 66 posts under CT Div (i.e. 65 service grade posts and 1 civilian post). The size of E Div has increased by 13 times from its initial 69 posts when it was established in 1972⁷.

28. In June 2018, CT Div was established to formulate CT strategies involving immigrants and relevant enforcement actions; liaise with local, Mainland and overseas LEAs, as well as consulates in Hong Kong for intelligence exchange; and represent ImmD in the Inter-departmental Counter Terrorism Unit. The branch head, AD(E), who is heavily committed to the rising demand for the enforcement initiatives as set out above, will continue to carry out high-level strategic planning and overall management of E Branch on an on-going basis. The proposed SPIO will focus on the execution of various enforcement initiatives and closely monitor the progress of implementation. As and when necessary, he/she will give steer on how to enhance the supervision, direction and management of the various initiatives. In short, having regard to the expanding scope of responsibilities under E Branch, it is necessary to upgrade the PIO(E) post to the SPIO rank⁸ to play a stronger

⁷ E Div was formerly known as the Investigation Division when it was set up in February 1972.

⁸ As compared with the formation of other disciplined services, for example the HKPF, their bureaux involved in investigation of crimes under the Crime Wing are all headed by a Chief Superintendent of Police (equivalent to the SPIO rank). The upgrading of the PIO(E) post to the SPIO rank will be on par with the crime bureaux with comparable establishments in other discipline services.

supervisory role from the perspective of operation, for assisting AD(E) in enhancing the overall enforcement capabilities in combatting existing and new immigration crimes, as well as to provide stronger support at the directorate level in supervising and managing the increasing workload of E Branch.

(iii) Coordinating the Enforcement Efforts under E Branch

29. In view of the aforementioned increasing complexity and ever-changing modus operandi of immigration crimes, coupled with the highly volatile global terrorism trend and heightened risk of terrorism in recent years, the proposed SPIO will take up the supervisory role of CT Div as well, while PIO(CTD) will remain the head of CT Div to oversee and guide the daily operation of the Division. This will help ensure more coordinated enforcement efforts of the E Div and CT Div, and provide better and more direct support to AD(E) at the directorate level, hence facilitating the high-level decision-making process which is often time-critical and politically sensitive. The proposed SPIO will partially alleviate the current heavy duty of AD(E) in the strategic planning of enforcement works, formulation of the related long-term objectives, and overseeing the operation of the E Branch.

(iv) Fostering Partnership with Mainland and Overseas Stakeholders

30. Immigration offences are fast-evolving and often transcend jurisdictional boundaries. In this regard, ImmD has to establish and maintain close working partnership with local, Mainland and overseas LEAs in combating cross-boundary immigration crimes; exchanging experiences and intelligence; and also participate in international working groups and conferences, etc. The proposed SPIO at the directorate level will enhance ImmD's representation at such high-level meetings, working groups or conferences, and facilitate the cultivation of a close relationship with the commanding officers of overseas and Mainland authorities.

31. The proposed organisation chart of E Branch is at **Annex E**, and the proposed job description of SPIO(Enforcement) ("**SPIO(E)**") is at **Annex F**.

NON-DIRECTORATE SUPPORT

Proposed retention of post

32. The proposed supernumerary AD(RAL) post will continue to be supported by a total of 279 existing non-directorate posts, including 203 permanent posts and 76 time-limited posts.

Proposed upgrading of post

33. The proposed SPIO(E) post will be supported by a total of 1 009 existing non-directorate posts, including 919 permanent posts and 90 time-limited posts.

ALTERNATIVES CONSIDERED

Proposed retention of post

34. AD(E) is currently responsible for enforcement against all immigration crimes, illegal immigration prevention, management of CIC, removal of IIs (other than claimants), as well as overall management of the CT measures of ImmD. Enforcement-related workload has grown significantly in the past few years, ranging from the need to continue the momentum on anti-NECIIs measures, cracking down of TIP syndicates, maintaining enforcement against unlawful employment, to stepping up enforcement on other areas such as CT and bogus marriage. AD(E) is expected to continue to be heavily engaged in the said enforcement-related matters at least in the coming three years, and has no capacity to take up the duty to lead the work of the RAL Branch should the supernumerary post of AD(RAL) lapse in end March 2022. It is also not feasible for other ADs of Imm to absorb the duties of AD(RAL) amidst their already very heavy workload. A summary of the existing duties of all ADs of Imm is at **Annex G**.

Proposed upgrading of post

35. We have critically examined the possibility of redeployment of the existing directorate officers in ImmD to take up the work of the proposed

SPIO(E) post. As mentioned above, AD(E) is heavily engaged given the increasing workload and the sizeable establishment of the E Branch, which requires an experienced directorate officer to share out his/her supervisory and managerial duties. All other ADs of Imm are fully committed to and occupied with duties in their respective schedules.

36. The two existing SPIOs in ImmD, namely SPIO(Airport) and SPIO(Border) Rail, are also hard pressed by heavy responsibilities of supervising their Divisions' operations in upholding immigration control while facilitating the mobility of travelers. They are also responsible for making recommendations on the immigration control policy and coordinate control point development projects, which require their full long-term commitment. SPIO(Airport) is responsible for supervising the Airport Division, comprising 982 staff, on all immigration control matters at one of the world's busiest international airports, as well as other on-going initiatives, including supporting the further growth in air traffic upon the commissioning of the Three-Runway System at the Hong Kong International Airport. SPIO(Border) Rail, likewise, is fully engaged in supervising the Border (Rail) Division, which has an establishment of 1 430 staff, on immigration control matters at four boundary control points serving railing passengers, namely Lo Wu, Hung Hom, Lok Ma Chur Spur Line and Express Rail Link West Kowloon. In short, they do not have spare capacity to take up the work of the proposed SPIO(E) post.

FINANCIAL IMPLICATIONS

37. The two proposals, viz. the proposed retention of the supernumerary AD of Imm post (DS(C)2 or D2 equivalent) and proposed upgrading of the permanent PIO post to SPIO, will bring about an additional notional annual mid-point salary of \$2,440,400. A breakdown is shown below.

Post	No. of post	Notional annual salary cost at mid-point (\$)	Full annual average staff cost (\$)
AD of Imm	1	2,283,600	3,400,000 ⁹
SPIO	1	1,923,600	2,775,000 ¹⁰
PIO	(1)	(1,766,800)	(2,717,000) ¹⁰
Total	1	2,440,400	3,458,000

38. The additional full annual average staff cost, including salaries and staff on-cost, of the two proposals is \$3,458,000. We have included the necessary provision in the 2022-23 draft Estimates of ImmD to meet the cost of the above two proposals and will reflect the resources required in the Estimates of subsequent years.

ESTABLISHMENT CHANGES

39. The establishment changes in ImmD for the past four years are as follows –

Establishment (Notes)	Number of Posts				
	Existing (as at 1 January 2022)	As at 1 April 2021	As at 1 April 2020	As at 1 April 2019	As at 1 April 2018
A	12+(1)	12+(1)	12+(1)	12	12+(2)
B	2 495	2 486	2 445	2 423	2 151
C	6 616	6 619	6 518	6 454	5 912
Total	9 123+(1)	9 117+(1)	8 975+(1)	8 889	8 075+(2)

Notes:

- A – ranks in the directorate pay scale or equivalent
- B – non-directorate ranks, the maximum pay point of which is above MPS 33 or equivalent
- C – non-directorate ranks, the maximum pay point of which is at or below MPS point 33 or equivalent
- () – Number of supernumerary directorate post

⁹ Based on figures available in 2021-22.

¹⁰ Based on figures available in 2020-21.

ADVICE SOUGHT

40. Members are invited to comment on the two staffing proposals. Subject to Members' views, we will seek the recommendation of the Establishment Subcommittee and approval of the Finance Committee.

Security Bureau
Immigration Department
March 2022

**Progress Achieved since the Implementation of the Comprehensive Review of
the Unified Screening Mechanism in 2016**

	Achievements	Latest Progress
1. Screening	<ul style="list-style-type: none"> ● Since 2016, the Immigration Department (“ImmD”) has introduced a number of administrative measures to streamline the workflow, alongside additional manpower and resources, to expedite the screening of claims. ● The average time for ImmD to handle a claim has reduced by 60% (from about 25 weeks previously to about 10 weeks at present); and the previous backlog of claims pending screening by ImmD was cleared in early 2019. ● The Immigration (Amendment) Ordinance 2021 (“the Amendment Ordinance”) which took effect on 1 August 2021 has further enhanced ImmD’s screening efficiency and prevented possible delaying tactics by claimants. For instance, ImmD can now direct a claimant to communicate in a language 	<ul style="list-style-type: none"> ● Due to the special work arrangements implemented during the pandemic, the provision of publicly-funded legal assistance (“PFLA”) was interrupted and the commencement of screening procedure was hindered. There were also an increase in the number of new claims received. ● As at June 2021, the number of new claims pending screening by ImmD rebounded to about 1 500. With the efforts by ImmD and the gradual increase in PFLA quotas, the number of claims pending screening was brought down to 455 as at February 2021.

	Achievements	Latest Progress
	that ImmD reasonably considers he/she being able to understand and communicate in during the screening interview; and may make arrangement for him/her to undergo a medical examination in case where his/her physical or mental condition is in dispute and the condition is relevant to the consideration of the claim.	
2. Appeal	<ul style="list-style-type: none"> ● Since ImmD has expedited the screening process in 2016, the number of appeals against ImmD's decisions lodged to the Torture Claim Appeal Board ("TCAB") has increased significantly. ● To cope with the increased caseload, the Government appointed more members to TCAB and enhanced the manpower and other supporting facilities for the TCAB Secretariat. The number of TCAB members increased from 26 to 93 as at end 2020. ● With the dedicated efforts of TCAB, the number of appeals pending handling by TCAB had dropped from the peak of over 6 500 in 	<ul style="list-style-type: none"> ● Similar to the screening by ImmD, the handling of appeals by TCAB was interrupted by the special work arrangement implemented during the pandemic. ● The number of outstanding appeals has rebounded slightly. As at February 2022, the number of appeals pending handling by TCAB stood at around 2 600. TCAB will continue its efforts to clear up the outstanding cases with the enhanced procedures introduced under the Amendment Ordinance.

	Achievements	Latest Progress
	<p>2018 to about 1 700 by the end of 2020.</p> <ul style="list-style-type: none"> ● The Amendment Ordinance has provided TCAB with powers similar to ImmD in enhancing efficiency and preventing delaying tactics. Besides, it has empowered TCAB to shorten the notice period for oral hearing to less than 28 days (but not less than seven days in any event). 	
3. Illegal immigrants intercepted	<ul style="list-style-type: none"> ● ImmD has commenced special operations with other local law enforcement agencies (“LEAs”) and the Mainland authorities since mid-February 2016, taking sustained enforcement action against illegal immigration activities of non-ethnic Chinese illegal immigrants (“NECIIs”). ● With the concerted efforts of all parties, the number of NECIIs intercepted had plunged from 3 819 in 2015 to 639 in 2018, representing a drop of 83%. 	<ul style="list-style-type: none"> ● ImmD and other LEAs will continue collaborating closely with the Mainland authorities to combat illegal immigration activities. In 2021, 850 NECIIs were intercepted, similar to that in 2019 (859 NECIIs intercepted) and 24% lower than that in 2020 (1 121 NECIIs intercepted).

	Achievements	Latest Progress
4. Enforcement	<ul style="list-style-type: none"> ● ImmD has stepped up enforcement actions against non-ethnic Chinese (“NEC”) illegal workers, with a total of 758 targeted operations conducted in 2017, up from 353 operations conducted in 2015. 	<ul style="list-style-type: none"> ● ImmD continued with its enforcement actions against illegal employment in the midst of the pandemic. In 2021, a total of 844 targeted operations were conducted against NEC illegal workers with 544 NEC illegal workers and 289 employers arrested. ● Following the implementation of the Amendment Ordinance on 1 August 2021, the maximum penalty for an employer employing an illegal worker has been significantly increased from a fine of \$350,000 and three years’ imprisonment to a fine of \$500,000 and 10 years’ imprisonment. ● In view of this development, the Court has laid down sentencing guidelines on an employer employing a prohibited employee¹ and the sentencing benchmark has raised from the previous 3 months’ imprisonment to 15 months’ imprisonment

¹ Under section 17I(7) of the Immigration Ordinance (Cap. 115), prohibited employee means a person who is prohibited from taking any employment or establishing or joining in any business under section 38AA.

	Achievements	Latest Progress
		in order to enhance the deterrence effect.
5. Detention	<ul style="list-style-type: none"> ● Under section 32 and section 37ZK of the Immigration Ordinance (Cap. 115), a claimant may respectively be detained pending removal or deportation from Hong Kong and pending final determination of claim. ImmD all along has strictly followed the established detention policy, and in accordance with the relevant legal requirements and legal principles established by the Court, in the detention of claimants. ● The Amendment Ordinance stipulates that, in addition to the specific circumstances of individual cases, various factors which may justify a longer detention period should also be taken into account in considering whether a period of detention is reasonable and lawful. The factors include, among others, whether a person poses, or is likely to pose, a threat or security risk to the community. 	<ul style="list-style-type: none"> ● Claimants pending removal or deportation from Hong Kong and pending final determination of their claims may be detained at the Castle Peak Bay Immigration Centre (“CIC”), which has a maximum capacity of 500. Following the re-commissioning of Tai Tam Gap Correctional Institution in May 2021 for the detention of claimants posing higher security risk to the community, the overall detention capacity of claimants has been increased by one-third. ● The number of claimants detained at the above two institutions stood at 315 as at February 2022².

² Since the outbreak of COVID-19 pandemic in early 2020, the number of detainees held at CIC has been reduced for disease prevention control reason and also the need to spare some spaces for holding newly admitted detainees to undergo a period of segregation and conduct COVID-19 tests.

	Achievements	Latest Progress
6. Removal	<ul style="list-style-type: none"> ● ImmD is committed to removing unsuccessful claimants from Hong Kong as soon as practicable in accordance with the prevailing laws and policy so as to maintain effective immigration control and to safeguard public interest. ● The number of claimants removed had increased from 650 in 2014 to 2 520 in 2017 and 2 527 in 2018. In 2019, 1 618 claimants were removed. 	<ul style="list-style-type: none"> ● The removal of unsuccessful claimants could be affected by various factors, which include the applications for leave to apply for judicial review lodged by quite a number of claimants in recent years, as well as the limited availability of flights or other travel restrictions imposed during the pandemic. ● Despite heavy interruption to international travel during the pandemic, ImmD had managed to remove from Hong Kong 632 claimants in 2020, and 753 in 2021. ● ImmD will continue to expedite the removal procedures, including maintaining close liaison with governments of major source countries and airlines, with a view to enhancing the overall efficiency in the removal of unsuccessful claimants. ● With the Amendment Ordinance coming into force, ImmD can now commence liaison with relevant authorities (including

	Achievements	Latest Progress
		other governments) for repatriation arrangements (such as applying for necessary travel documents) once a claim has been rejected, hence facilitating earlier removal of unsuccessful claimants.

Proposed Job Description of Assistant Director (Removal Assessment and Litigation) (AD(RAL))

Post Title : AD(RAL)

Rank : Assistant Director of Immigration (DS(C)2 or D2-equivalent)

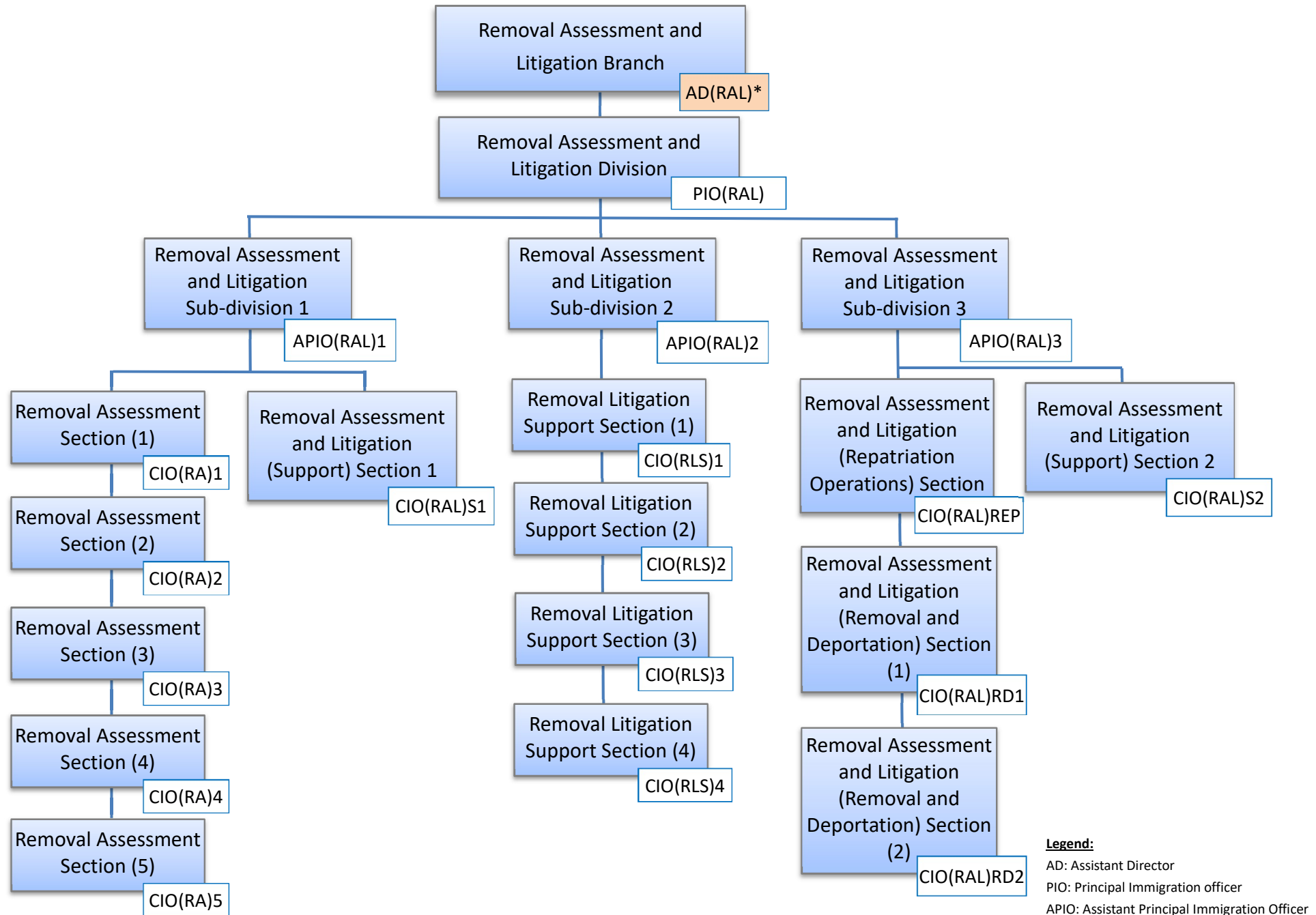
Responsible to : Deputy Director of Immigration

Duties and Responsibilities –

1. To manage and oversee the Removal Assessment and Litigation Branch comprising the Removal Assessment and Litigation Division underpinned by three sub-divisions, responsible for screening of non-refoulement claims, handling appeal/petition and litigation cases relating to non-refoulement claims and removal of non-refoulement claimants respectively.
2. To take forward the comprehensive review of the strategy of handling non-refoulement claims, including the expeditious screening of claims and removal of unsuccessful claimants.
3. To propose and evaluate new measures identified under the comprehensive review from operational, enforcement and removal perspectives, and to formulate plans for their implementation as required.
4. To identify feasible administrative measures for further streamlining the existing screening procedures and consider means of allocating existing manpower and resources effectively, with a view to increasing the number of claims determined and expediting the removal of unsuccessful claimants as far as possible.
5. To oversee the implementation of the Immigration (Amendment) Ordinance 2021 for enhancing the screening of claims and measures in respect of removal and detention of claimants.
6. To oversee and make strategic recommendations on handling appeals and litigation matters related to non-refoulement claims, enforcement and removal.

Existing Organisation Chart of Removal Assessment and Litigation Branch

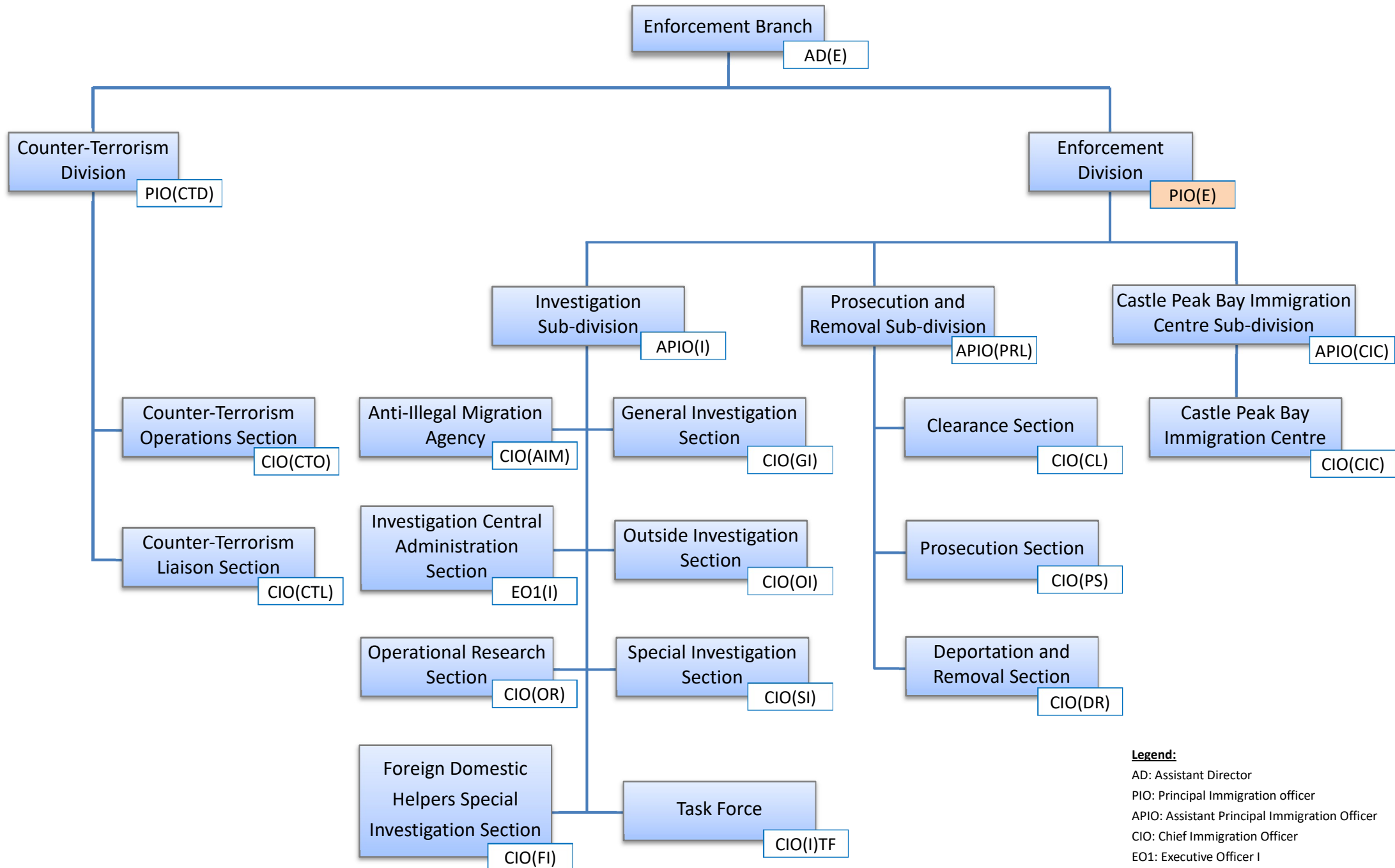
Annex C



* Supernumerary post to be lapsed on 1 April 2022

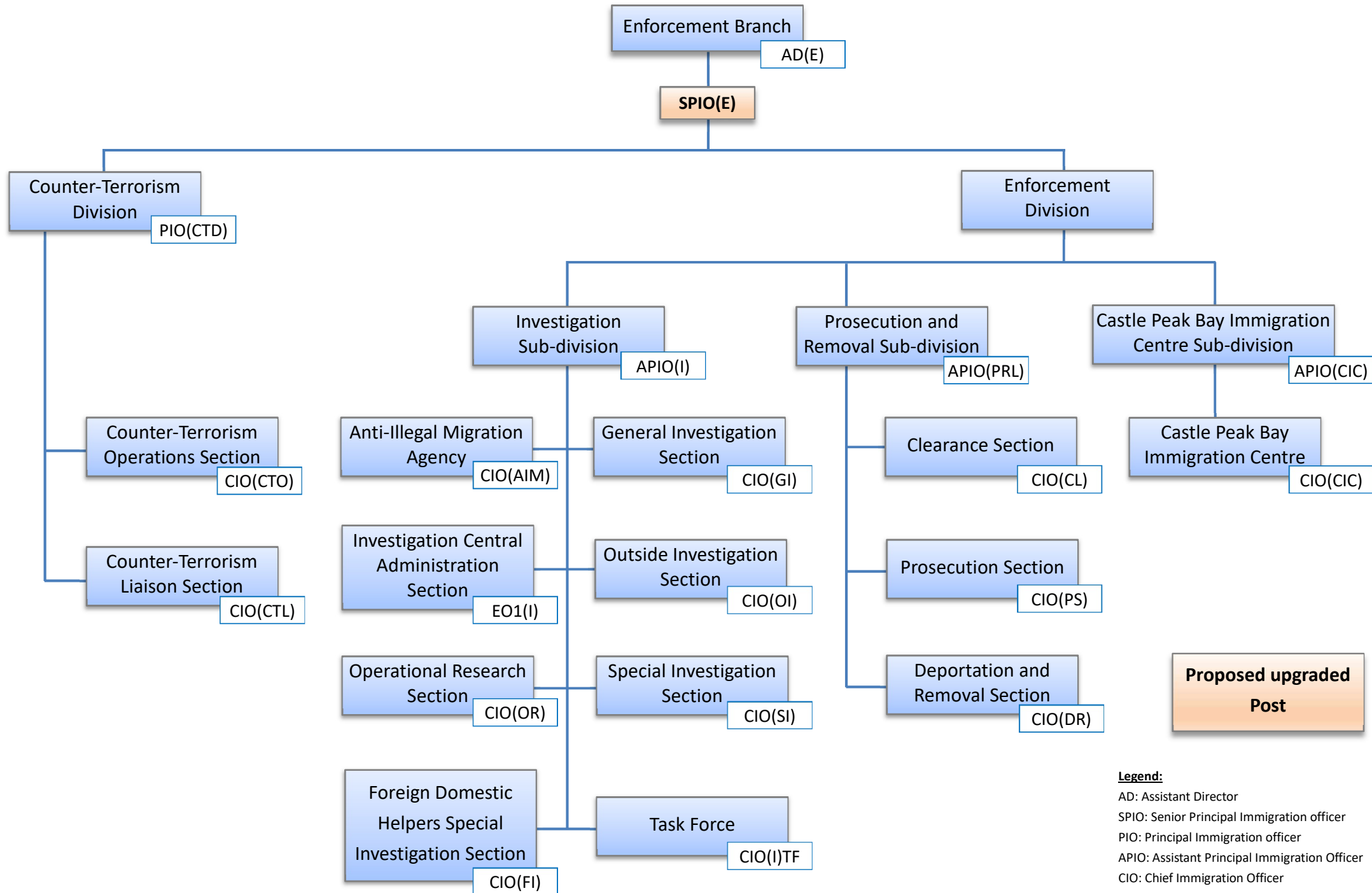
Existing Organisation Chart of Enforcement Branch

Annex D



Proposed Organisation Chart of Enforcement Branch

Annex E



Proposed Job Description of SPIO(E)

Post Title : Senior Principal Immigration Officer (Enforcement)

Rank : Senior Principal Immigration Officer (DS(C)1 or D1-equivalent)

Responsible to : Assistant Director (Enforcement) (“**AD(E)**”)

Duties and Responsibilities

1. To assist AD(E) in managing and overseeing the Enforcement Division (“**E Div**”) (comprising the Investigation Sub-division, Prosecution and Removal Sub-division, and Castle Peak Bay Immigration Centre Sub-division) and Counter-Terrorism Division (“**CT Div**”).
2. To develop and coordinate departmental enforcement and counter-terrorism (“**CT**”) strategies and initiatives and monitor their implementation; and to evaluate the effectiveness of the strategies and initiatives and propose further enhancements as and when necessary.
3. To make recommendations on the policies of E Div and CT Div to the seniors, so as to ensure all the current laws, policies and procedures are complied with, kept under review, and accurately reflected in departmental standing orders and other instructions; and to regularly review objectives and assign responsibilities within the E Div and CT Div.
4. To oversee the overall handling of cases and deal with the case work of the E Div and CT Div which is required of his/her consideration or decision.
5. To act as departmental liaison officer for effective communication and coordination with other bureaux/departments and stakeholders.

6. To represent the department at high-level meetings with Mainland /foreign governments and other organisations, attend international conferences and working groups on immigration investigation and CT matters.

**Duties and Existing Work Priorities of
Assistant Directors (“ADs”) in the Immigration Department
 (“ImmD”)**

At present, ImmD has seven AD posts responsible for heading the seven branches of ImmD, namely, the Control (“C”) Branch, Enforcement (“E”) Branch, Information Systems (“IS”) Branch, Management and Support (“MS”) Branch, Personal Documentation (“PD”) Branch, Removal Assessment and Litigation (“RAL”) Branch, and Visa and Policies (“VP”) Branch with responsibilities as set out below –

(I) C Branch – headed by AD(C)

AD(C) is responsible for leading the C Branch in maintaining immigration control by denying entry of undesirables and preventing wanted criminals from departure and facilitating the mobility of tourists and business visitors. The C Branch comprises the Airport Division, the Border (Rail) Division, the Border (Vehicles) Division and the Harbour Division. The Airport Division enforces immigration control over passengers and aircrew entering and leaving Hong Kong by air. The Border (Rail) Division comprises four control points, serving railway passengers at Lo Wu, Hung Hom, Lok Ma Chau Spur Line and Express Rail Link West Kowloon. The Border (Vehicles) Division comprises six land boundary control points at Lok Ma Chau, Man Kam To, Sha Tau Kok, Shenzhen Bay, Hong Kong-Zhuhai-Macao Bridge and Heung Yuen Wai, serving cross-boundary passengers and vehicles. The Harbour Division comprises the Harbour Control Section, the Macau Terminal Section, the China Ferry Terminal Section, the Tuen Mun Ferry Terminal Section and the Kai Tak Cruise Terminal Section which carry out immigration control over people movements by passenger liners, ferries and cruise liners.

(II) E Branch – headed by AD(E)

AD(E) is responsible for spearheading the E Branch which

comprises the Enforcement Division and the Counter-Terrorism Division. The Enforcement Division is responsible for formulating and implementing policies in respect of investigation, deportation and removal, as well as managing the Castle Peak Bay Immigration Centre for the detention of persons of 18 years old or above. In particular, the Enforcement Division is responsible for combating crimes of trafficking in persons and exploitation of foreign domestic helpers, bogus marriage, and handling the prosecution of immigration-related offences. The Counter-Terrorism Division is responsible for formulating and reviewing departmental strategic plans, policies and standing procedures relating to counter-terrorism intelligence and liaison matters.

(III) IS Branch – headed by AD(IS)

AD(IS) is responsible for formulating and implementing strategies on information system and related matters, as well as record managements and data privacy management of ImmD. The IS Branch comprises four functional divisions. The Information Systems (Development) Division is responsible for formulating and implementing ImmD's information systems strategy, and developing new systems to meet the future business needs. The Information Systems (Production) Division is responsible for management and security of information systems in operation, as well as ongoing enhancement of the systems and related processes. The Technology Services Division provides technical support for the maintenance and development of computer systems in ImmD. The Records and Data Management Division is responsible for handling all issues relating to data privacy, access to information and management of departmental records.

(IV) MS Branch – headed by AD(MS)

AD(MS) is responsible for formulating and implementing policies on human resources management and development of the Immigration Service. It comprises three divisions, namely the Service Management Division, the Quality Assurance Division and the Immigration Service Institute of Training and Development.

The Service Management Division deals with matters relating to welfare, conduct and discipline of service staff and public relations. The Quality Assurance Division is responsible for matters relating to management audit, review of complaints from the public, implementation of the new Immigration Headquarters project and relevant relocation exercises. The Immigration Service Institute of Training and Development is responsible for recruitment, training, development and deployment of service staff.

(V) PD Branch – headed by AD(PD)

AD(PD) is responsible for formulating and implementing policies on personal documentation. The PD Branch comprises the Documents Division and the Registration of Persons Division. The Documents Division deals with applications for the Hong Kong Special Administrative Region (“**HKSAR**”) passports and other HKSAR travel documents, handles matters relating to the implementation of the Chinese Nationality Law in Hong Kong, and processes registration of births, deaths and marriages. The Registration of Persons Division processes applications relating to claims to right of abode under the Basic Law, issues identity cards to Hong Kong residents, maintains records on registration of persons, negotiates visa-free travel arrangements for HKSAR residents, and provides assistance to Hong Kong residents in distress outside Hong Kong. The Registration of Persons Division is also responsible for implementation of the territory-wide identity card replacement exercise.

(VI) RAL Branch – headed by AD(RAL)

AD(RAL) is responsible for formulating and implementing policies on handling non-refoulement claims. AD(RAL) oversees the RAL Branch which is responsible for screening claims for non-refoulement protection on all applicable grounds lodged by persons not having the right to enter and remain in Hong Kong. The RAL Branch is also tasked to take forward the comprehensive review of the strategy of handling non-refoulement claims, including implementation of the Immigration (Amendment) Ordinance 2021,

handle appeals/petitions and litigation cases relating to non-refoulement claims, and execute removal of unsuccessful claimants.

(VII) VP Branch – headed by AD(VP)

AD(VP) is responsible for formulating and implementing policies on managing pre-entry immigration control through the visa and entry permit systems. The VP Branch comprises the Visa Control (Policies) Division and the Visa Control (Operations) Division. Their major areas of work include formulating and reviewing policy and assessment procedures on visa matters with a view to meeting the changing needs of Hong Kong, facilitating visitors and enhancing operational efficiency and effectiveness of the visa and entry permit systems; processing various types of immigration applications in accordance with approved policies, such as applications for entry into Hong Kong for visit, employment, investment, training, residence or study, applications for extension of stay from visitors and temporary residents, applications for Certificate of Entitlement (“COE”) to the Right of Abode in HKSAR; and handling appeals/petitions/judicial reviews relating to COE and visa control matters.