

Immigration (Amendment) Ordinance 2021 to take effect from August 1

The Immigration (Amendment) Ordinance 2021 (Amendment Ordinance) will take effect from August 1, further improving the handling of non-refoulement claims including enhancing efficiency in screening by the Immigration Department (ImmD) and preventing delaying tactics; improving the procedures and functions of the Torture Claims Appeal Board (TCAB); and stepping up the interception at source, enforcement, removal as well as detention of claimants, etc.

Pursuant to the amended Immigration Ordinance (Chapter 115 of the Laws of Hong Kong), a claimant must attend interviews upon request by the ImmD. If a claimant fails to attend an interview, the ImmD may still decide on the claim. During the screening interview, the ImmD will, if needed, arrange a publicly funded simultaneous interpretation service for a claimant. But under certain unique circumstances, the ImmD may direct a claimant to communicate in a language that the ImmD reasonably considers the claimant being able to understand and communicate in. In addition, 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, the ImmD may make arrangement for such claimant to undergo a medical examination. If a claimant fails to give consent that is necessary to enable a medical examination to be arranged or conducted, undergo the examination or disclose the full medical report, the ImmD may decide not to take into account the disputed physical or mental condition of the claimant.

For the handling of appeals, the amended Immigration Ordinance also authorises the TCAB the aforementioned powers relating to language and medical examinations. If an oral hearing is required, the law stipulates that the notice period should be 28 days before the hearing. In certain unique cases, the TCAB may shorten the notice period to less than 28 days (but not less than seven days in any event) if it considers appropriate.

A spokesman for the Security Bureau said that the above new requirements and arrangements will help enhance the efficiency of the ImmD and the TCAB, as well as effectively prevent the delaying tactics deployed by some claimants. The improved procedures will continue to meet the legal requirements of "high standards of fairness" as laid down by the court.

All claims made after August 1 will be handled in accordance with the requirements under the new provisions. For claims and appeals made before this date but pending decisions by the ImmD or the TCAB, they will be handled in accordance with the savings and transitional provisions under the newly added Schedule 5 to the Immigration Ordinance. The ImmD and the TCAB will update relevant guidelines and documents on August 1, providing clear information to claimants and other relevant parties. Interested parties may then refer to the websites of the ImmD

(www.immd.gov.hk/eng/useful_information/non-refoulement-making-claim.html) and the Secretariat of the TCAB (www.sb.gov.hk/eng/links/tcab/index.html) for details.

On detention, the Government will continue to make use of existing detention facilities to focus on detaining claimants posing higher security risks to the community. Currently, the Castle Peak Bay Immigration Centre of the ImmD has a maximum capacity of 500 detainees, while the recently recommissioned Tai Tam Gap Correctional Institution has a detention capacity of 160, thereby enhancing the ImmD's ability in handling detention cases. The amended Immigration Ordinance also 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. Such factors include whether a person poses, or is likely to pose, a threat or security risk to the community. The new provisions enable the ImmD to consider and decide the period of detention in accordance with the relevant legal principles and detention policy with enhanced transparency and unequivocal legal backing.

To expedite the removal of unsuccessful claimants, the ImmD has been maintaining close liaison with governments and airline companies of major source countries of claimants to enhance the overall efficiency of removal. In addition, the amended Immigration Ordinance stipulates that once a claim has been rejected by an immigration officer, even when the appeal is pending handling, the ImmD may commence liaison with relevant authorities for repatriation arrangements in parallel (such as applying for necessary travel documents) to expedite the removal process.

As regards interception at source and other enforcement measures, the penalties of relevant offences under the amended Immigration Ordinance have been increased. Among them, the maximum fine for an owner of an aircraft and his agent carrying a passenger arriving in Hong Kong without a valid travel document will be increased from \$10,000 to \$100,000. The maximum penalty for an employer employing a person who is not lawfully employable, i.e. an illegal immigrant, overstayer or a person who was refused permission to land, will be significantly increased from a fine of \$350,000 and three years' imprisonment to a fine of \$500,000 and 10 years' imprisonment to reflect the gravity of such offences. The director, manager, secretary or partner, etc, of the company concerned may also bear criminal liability. In that connection, the Government would like to remind all employers not to defy the law and employ illegal workers. The law enforcement agencies will continue to take resolute enforcement action to combat such offences.

In addition, the Secretary for Security is also empowered under the Amendment Ordinance to make regulations for the implementation of the Advanced Passenger Information (API) system, in order to fulfil the international obligation of the Hong Kong Special Administrative Region under the "Convention on International Civil Aviation". In accordance with the standards proposed by the International Civil Aviation Organization, the Government is studying, having regard to overseas experiences, the operational arrangement for the API system, and will make relevant subsidiary

legislation. The Government will consult the Legislative Council (LegCo) on the relevant subsidiary legislation and system arrangement in due course. The API system will be rolled out officially after the LegCo has scrutinised and passed the subsidiary legislation, and approved the funding for developing the required system. It will not take effect at this stage.

"The Government is determined to address the problems arising from non-refoulement claims. Over the past years, the Government has implemented various measures targeting the handling of claims at different stages, and has already made some good progress. Yet, handling of non-refoulement claims is a continuous and crucial task. In view of the challenges in different aspects, the Government needs to rationalise the legislative framework to further strengthen the various measures. Upon the commencement of the Amendment Ordinance, the executive authorities will be able to handle matters related to non-refoulement claims more effectively," the spokesman added.