

Security Bureau responds to media enquiries on the Immigration (Amendment) Bill 2020

A spokesman for the Security Bureau said today (February 13) in response to media enquiries that the proposed provision in the Immigration (Amendment) Bill 2020 (the Bill) to empower the Secretary for Security to make regulations in relation to the provision of passenger information by carriers is intended for fulfilling the international obligation of the Hong Kong Special Administrative Region under the "Convention on International Civil Aviation".

The spokesman said, "In 2018, the International Civil Aviation Organization (ICAO) updated the "Convention on International Civil Aviation", including imposing a new mandatory requirement for its members to put in place the Advance Passenger Information (API) system. According to the requirements, airlines need to provide passenger and crew member information to immigration authorities of the destination port before flight departure. So far, over 90 countries already have the API system in place, including the Member States of the European Union, the United States of America, Canada and Australia."

Introduction of the API system by ICAO is to enhance international civil aviation safety and also to facilitate the immigration authorities around the world to implement more effective control. Implementation of the said requirements will not only allow faster passenger clearance at control points, but will also enhance the enforcement capability of the Immigration Department (ImmD), thereby help strengthen our measures to prevent potential non-refoulement claimants from entering Hong Kong. ImmD is formulating the operational details of the system, and in the process it will make reference to the relevant guidelines from ICAO and the implementation experience of other countries. Relevant stakeholders will also be consulted on their views in due course. Subject to Legislative Council's (LegCo) enactment of the Bill, the Government will prepare the relevant subsidiary legislation, which will then be subject to negative vetting of LegCo.

The spokesman also pointed out, "According to the general practice, the enabling provisions to be stipulated in the main ordinance are usually crafted in more generic and concise terms, while the subsidiary legislation to be made thereunder will set out the operational details with provisions in more specific terms. The making of relevant regulations will also require the scrutiny and passage by LegCo. The Government already set out the objectives of the concerned provision in the LegCo brief on the Bill submitted to LegCo. At the meetings of the Bills Committee held on January 20 and February 5, the Government also elucidated clearly to LegCo and the public the background of the system and the proposed provision, and addressed the questions from LegCo members in detail."

The spokesman emphasised, "The freedom to travel and the right to enter or leave Hong Kong of Hong Kong residents are guaranteed under Article 31 of the Basic Law and Article 8(2) of the Bill of Rights under the Hong Kong Bill of Rights Ordinance (Cap. 383). The proposed API system is intended to require the provision of passenger information on flights heading to Hong Kong, rather than departing flights. The right of Hong Kong residents to enter or leave Hong Kong is not affected. The Government will ensure that the operation of the API system will conform with the Basic Law and the Hong Kong Bill of Rights.

The above information has been covered in the information provided to LegCo by the Government. In regard to the recent written submission by the Hong Kong Bar Association to LegCo, in which the Association's standpoint about the relevant provision failed to reflect correctly the objectives of the provision and relevant facts, and led to unnecessary misunderstanding, we feel disappointed. The Government will continue to provide LegCo and the public with full elucidation through the discussion at the Bills Committee and other channels so as to ensure clear understanding of the issue.