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Pilot Scheme Office for Provision of Publicly-funded Legal Assistance
for Non-refoulement Claimants - Amendment of Immigration Ordinance

27/07/2021 16:19

From: [REDACTED]/SB/HKSARG

To:

Bcc:

Dear Pilot Scheme Lawyers (PSLs),

As you may be aware, the Immigration (Amendment) Ordinance 2021 (the Amendment Ordinance) will come into effect on 1 August 2021. The Amendment Ordinance seeks to further improve the handling of non-refoulement claims by enhancing efficiency in screening by the Immigration Department (ImmD); 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. For further details, please refer to the press release issued by the HKSAR Government on 19 July 2021 under the following link -

<https://www.info.gov.hk/gia/general/202107/19/P2021071900357.htm>

2. You may also refer to the Amendment Ordinance at the Government website -

<https://www.gld.gov.hk/egazetter/pdf/20212518/es1202125187.pdf>

3. In relation to the screening process of non-refoulement claims under the Unified Screening Mechanism, the following amendments are highlighted for your attention -

(i) **Submission of non-refoulement claim form**

At present, claimants are in general given 49 days (28 days as provided under the Immigration Ordinance, plus 21 days granted through administrative means) to complete and return the claim form. Upon the commencement of the Amendment Ordinance, the 28-day statutory period for a claimant to complete and return a claim form is maintained; and extension of the period will only be considered by ImmD on a case-by-case basis. Your attention is drawn to section 8 of the Amendment Ordinance which amends section 37Y (3) (b) of the Immigration Ordinance and sets out the circumstances under which an application for extension of the period may be granted.

(ii) **Screening interview and language used for communications**

A new section 37ZAB is added to the Immigration Ordinance which requires claimants to attend interviews at the date, time and place specified by an immigration officer. A new section 37ZAC is also added to enable an immigration officer to specify the language to be used by a claimant for communications. Pursuant to section 37ZI of the Immigration Ordinance, a decision may still be made

by an immigration officer even if a claimant has failed to attend an interview. Please refer to sections 10 and 15 of the Amendment Ordinance for details.

(iii) Medical Examination

A new section 37ZC (1A) is added to the Immigration Ordinance to require a claimant to give consent to enable a medical examination to be arranged or conducted. Section 37ZC(3) of the Immigration Ordinance is amended to require a claimant to disclose the full medical report within 3 working days after a request for disclosure is made by an immigration officer. The new section 37ZC (4) empowers an immigration officer to decide not to take into account the disputed physical or mental condition of a claimant in certain circumstances. Even if a claimant has failed to give consent to enable a medical examination to be conducted, to undergo a medical examination arranged or to disclose the full medical report, a decision may still be made by an immigration officer under section 37ZI (1) of the Immigration Ordinance. For details, please refer to sections 12 and 15 of the Amendment Ordinance.

(iv) Transitional Arrangement

For claims and appeals made before 1 August 2021 but pending decisions by 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. We understand from ImmD that they have sent letters to individual claimants having outstanding claims through their legal representatives to inform them of the arrangement.

4. ImmD will revise the "Notice to Persons Making a Non-refoulement Claim", "Non-refoulement Claim Form", "Supplementary Claim Form" and "Processing Non-refoulement Claims under the USM" to reflect the spirit of the amendment in accordance with the Amendment Ordinance. We understand from ImmD that the updated version of the relevant notices and forms will be uploaded to ImmD's website with effect from the commencement date of the Amendment Ordinance.

5. In light of the new requirement for submission of the non-refoulement claim form, PSO will line up the Initial Conference between PSLs and claimants as early as possible (preferably within 3 - 5 working days subject to availability of interpreters) after completion of PSO's means test with the claimants. PSO will also remind PSLs of the need to complete and return claimants' non-refoulement claim form within 28 days from the date of ImmD's letter to claimants on "Serving of Notice and Non-refoulement Claim Form" when we request PSLs to return the "Confirmation Form for Case Acceptance". Besides, PSLs are requested to make early submission of the forms on "Request for Assistance in Arranging Conference Room/ Interpretation Services" and "PSL's Request Form for Arranging Translation Services" if relevant facilities and services are required.

6. If you have further enquiries, please feel free to contact me at [REDACTED]
Thank you for your attention.

Regards,
[REDACTED]