

**Statement of Hong Kong Bar Association (“HKBA”)
on Security Bureau’s clarifications on Immigration (Amendment) Bill 2020**

1. The clarifications provided by the spokesperson for the Security Bureau, given on 13 February 2021 (“**the Press Release**”) in relation to the intended scope of the Immigration (Amendment) Bill 2020 (“**the Bill**”) are appreciated.
2. As pointed out in the HKBA's Further Submission on the Bill dated 11 February 2021, clause 3 of the Bill as presented to the Legislative Council, empowers the Secretary for Security (“**the Secretary**”) to make regulations to empower the Director of Immigration (“**the Director**”) to direct that “a passenger or a member of the crew of a carrier” (which, on its face, include Hong Kong residents) “may or may not be carried on board the carrier”. On the face of the Bill, it could have the effect of barring Hong Kong residents from boarding an aircraft or any other means of transportation either coming to or departing from Hong Kong. The Press Release clarifies that the intended scope of the power is far more limited, being concerned only with inbound passengers and crew to prevent non-refoulement claimants from entering Hong Kong, and that Hong Kong residents’ freedom to travel and right to enter or leave Hong Kong will not be affected.
3. In light of these clarifications, even taking into account the more generic nature of the primary legislation, it is desirable for clause 3 of the Bill to be amended to reflect the limited scope that is intended so as to give clearer guidance relating to the scope of the regulations to be made. To reflect the true intention of clause 3 of the Bill it should be amended to make clear that the Director’s power to prohibit the carriage of any person on board a carrier is exercisable only in relation to inbound flights heading to Hong Kong but not departing flights. The primary legislation should further state that such power of prohibition does not affect in any way the right of a Hong Kong resident and person with the right to enter and remain in the HKSAR.

Dated: 16 February 2021.