

For discussion on  
8 January 2019

**Legislative Council Panel on Security**

**An Update on the Comprehensive Review of  
the Strategy of Handling Non-refoulement Claims:**

**Proposals to Amend the Immigration Ordinance (Cap. 115)**

**Purpose**

This paper briefs Members on the latest progress of the Government's review of the Immigration Ordinance (Cap. 115), and seeks Members' views on the further proposals being considered.

**Background**

2. The Government consulted the Legislative Council ("LegCo") Panel on Security in July 2018 on some of the proposals to amend the Immigration Ordinance<sup>1</sup>, which focused on improving the procedures of screening non-refoulement claims and handling appeals. Since then, we have further reviewed other relevant areas and other amendment proposals being considered are set out in paragraphs 4 to 22 below.

3. As regards the latest updates on the handling of claims, please see **Annex A**.

**Amendments to the Immigration Ordinance**

Time limit for making a claim

4. Some consider that claimants should be required to lodge their claims as soon as possible after their illegal entry, overstaying or being

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<sup>1</sup> LC Paper No. CB(2)1751/17-18(01)

refused of entry, without any delay. We agree that persons in genuine need should lodge claims within a reasonable period of time, instead of doing so only when they are arrested after illegally staying in Hong Kong for a long time. However, a blanket policy not to handle any late claims across the board may not meet the high standards of fairness as required by the Court.

5. In order to discourage the abuse of screening procedures to delay repatriation, and to strike a balance between maintaining an effective immigration control on the one hand and taking into consideration claimants' need of time for lodging claims on the other, we are **considering** adding provisions to provide that a claimant is required to lodge a claim **within three months** from the date on which he meets the requirements for lodging a non-refoulement claim (i.e. from the date of illegal entry into, overstaying in or being refused to enter Hong Kong). Late claims will not be handled, unless the claimant can prove that he has exercised all due diligence to comply with the original deadline, but still could not lodge the claim in a timely manner due to "exceptional" and "uncontrollable" circumstances.

#### Removal procedures

6. Under the prevailing policy and practice of the Government, removal action will be temporarily suspended by the Immigration Department ("ImmD") if a removee lodged relevant applications for judicial review ("JR").

7. According to the information provided by the Judiciary, the number of applications for leave to JR in relation to non-refoulement claims received by the Court of First Instance ("CFI") of the High Court has drastically increased since 2017 by over 10 times from 103 in 2015 and 80 in 2016 to 1 006 in 2017. In 2018, as at mid-December, there were close to 3 000 applications to CFI for leave to JR in relation to non-refoulement claims.

8. We have been maintaining communication with the Judiciary in respect of the handling of non-refoulement claims, including the latest figures of claims and appeals, and the expedition in the handling of appeals by the Torture Claims Appeal Board ("TCAB"), etc., so as to facilitate timely preparation of the Judiciary in terms of its manpower and resources to cater for any latest development.

9. The Unified Screening Mechanism (“USM”) was established following court decisions, ensuring that claimants would have every reasonable opportunity to substantiate their claims under sufficient procedural safeguards. Each claimant is also provided with publicly-funded legal assistance and professional interpretation services. Claimants aggrieved by ImmD’s decision may lodge an appeal without any merits test, and the appeals are considered by TCAB independently. Members of TCAB include former judges or magistrates, as well as overseas and local experts with relevant experience. Such safeguards ensure that the procedures of USM meet the high standards of fairness as required by the Court. According to the information currently available, of all the JR leave applications in relation to non-refoulement claims since 2017, the Court has so far dealt with more than 1 000 applications. Leave was granted for only some 20 (about 2%) applications, and the remaining ones were rejected.

10. Given that the number of claimants applying for leave to JR the decisions relating to their claim has continued to increase, and as a result more and more rejected claimants are stranded in Hong Kong for a prolonged period of time, we are **considering** adding provisions to provide that, notwithstanding that the persons have applied for relevant JR or legal aid, ImmD may remove them from Hong Kong unless leave to JR has already been granted by the Court.

### Detention

11. At present, sections 32 and 37ZK of the Immigration Ordinance respectively empower ImmD to detain a person pending removal and during screening of his non-refoulement claim. The detention power exercised by ImmD is subject to the common law *Hardial Singh* principles, under which ImmD cannot continue to detain a person if it cannot complete the removal or screening procedures within a reasonable period of time.

12. Drawing reference to the provisions and case law in the handling of Vietnamese migrants in the past, we are **considering** adding provisions that, in considering whether a period of detention is reasonable, other than the progress of removal and screening of claims, other relevant factors should also be taken into account, such as whether there are a large number of claims or appeals pending screening by ImmD or TCAB at the same time, whether any procedures were hindered directly or indirectly by the person being detained, or whether there are other

situations beyond the control of ImmD (e.g. some countries need more time to issue travel documents), notwithstanding that the removal procedures or the screening process is delayed, it will not be unreasonable for ImmD to continue the detention. Further, we are **considering** stipulating that, where it is believed that a person may pose a threat to life or property, the detention of such person may go on, despite any common law principles.

### Unlawful employment

13. To reduce the economic incentives for non-refoulement claimants to take up unlawful employment, ImmD has continued to step up targeted inspection and intelligence gathering against venues such as factories, restaurants and cafes, food processing plants, premises under renovation, recycling centres, container depots and warehouses, etc. in relevant districts, and to conduct raids as appropriate.

14. Currently, if any person who entered Hong Kong illegally or who is subject to a removal or deportation order takes up any employment, whether paid or unpaid, or establish or join in any business, he may be prosecuted under section 38AA of the Immigration Ordinance, and is liable to a maximum fine of \$50,000 and up to three years' imprisonment.

15. However, for persons who entered Hong Kong as visitors, if they are arrested for unlawful employment after overstaying but before they have been issued with a removal order or a deportation order, they are not subject to the said section 38AA. Instead, ImmD can only prosecute them for breaching their conditions of stay, for which the maximum penalty is a fine of \$50,000 and two years' imprisonment.

16. We are **considering** amending section 38AA, so that the latter can also be prosecuted under the amended provision, making the penalty to be imposed on them for taking up unlawful employment consistent with that on illegal immigrants.

17. In addition, persons employing illegal workers are liable to a maximum penalty of a fine of \$350,000 and three years' imprisonment. To further reduce the economic incentives for potential claimants to come to Hong Kong, and to strengthen our efforts in combating the offence of employing persons who are not lawfully employable, we are **considering** amending the relevant provisions to increase the penalties for employing

persons who are not lawfully employable pursuant to the above amended section 38AA to a maximum fine of \$500,000 and 10 years' imprisonment.

### Preventing potential claimants from entering Hong Kong

18. At present, section 40 of the Immigration Ordinance provides that if a passenger who arrives in Hong Kong in an aircraft does not have a valid travel document<sup>2</sup>, the owner of the aircraft and his agent shall be guilty of an offence and liable to a fine of \$10,000. To further reduce the number of potential claimants entering Hong Kong, and to impose heavier responsibilities on airlines to check whether their passengers can enter Hong Kong legally, we are **considering** increasing the maximum fine to \$100,000.

### Implementing latest ICAO requirement

19. Separately, we note that the International Civil Aviation Organization ("ICAO") has updated the Convention on International Civil Aviation ("CICA") in 2018, including a new requirement for its members to put in place the Advanced Passenger Information ("API") system. Under the API, airlines are required to provide passenger information to the immigration authorities in the destination countries before flight departure. Many countries (e.g. the United States of America, Canada and Australia) have already implemented the API in order to further expedite clearance procedures and reduce unnecessary delays. We are **considering** adding provisions to empower the Secretary for Security to make regulations requiring airlines (or other means of transportation) or their owners or agents to provide passenger information to ImmD before the departure of flights (or other means of transportation) coming to Hong Kong; and, when necessary, authorising ImmD to request airlines (or their owners or agents) not to allow individual persons to board the plane (or means of transportation) to Hong Kong. Implementation of the above CICA requirements could enhance the

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<sup>2</sup> Under the Immigration Ordinance, a valid travel passport means a passport furnished with a photograph, or any other document establishing to the satisfaction of an immigration officer or immigration assistant the identity and nationality of the holder of the document, or a document issued by or on behalf of a competent authority of any country or territory to its holder for the purpose of identification or travel. Separately, a document is not a valid travel document unless it bears, or its holder has obtained, a visa which was issued by or on behalf of the Director of Immigration and is in force on the date on which its holder arrives in Hong Kong. Nevertheless, the Director of Immigration may exempt from this visa requirement any person or any class or description of persons.

enforcement capability of ImmD and allow faster passenger clearance at control points. It will also strengthen our measures to prevent potential claimants from entering Hong Kong.

### Grounds of claims

20. There have been comments that the existing USM screens claims through a hybrid of statutory mechanism for torture claims and administrative measures for non-refoulement claims on all other applicable grounds, and that is undesirable. We are **considering** making relevant amendments to provide a comprehensive legal basis to USM.

### “Exceptional” and “uncontrollable” circumstances

21. In the previously proposed amendments, including extension of timeframe for submission of claim form, evidence and appeal, the requirements of “exceptional” and “uncontrollable” circumstances were added. Such requirements will also apply to applications for extension or rescheduling in respect of other procedures. Whether an application could meet the requirements of “exceptional” and “uncontrollable” circumstances will depend on the circumstances of the case and the reasons provided by the claimant. These circumstances may not be easily generalised.

22. However, to enhance clarity and certainty, we are **considering** adding provisions setting out that some obvious delaying tactics seen before, including circumstances that are already known or reasonably predictable to the claimant but no appropriate steps have been taken; delaying the screening on the pretext of making request for information; and claimed medical condition without any medical certificate, etc., cannot be considered as “exceptional” and “uncontrollable” circumstances, so that ImmD and TCAB can handle applications for extension or rescheduling with a legal backing, thereby reducing procedural abuse.

### **Advice sought**

23. Members are invited to comment on the amendment proposals to the Immigration Ordinance being considered by the Government as set out in paragraphs 4 to 22 above (the further amendment proposals and those that were presented to the Panel on Security in July 2018 are

summarised at **Annex B**). Subject to Members' views and the progress of our legislative review, our target is to submit an amendment bill to LegCo in the first half of 2019.

**Security Bureau  
Immigration Department  
January 2019**

**Latest figures of non-refoulement claims under USM  
(as at end November 2018)**

<b>(I) Overall situation of claims (no. of cases)</b>	
(a) Pending determination by ImmD	920
(b) Claims withdrawn or where no further action could be taken	6 677
(c) Claims determined by ImmD	
● Substantiated	77
● Rejected	
- No appeal lodged	1 105
- Appeal lodged ( <i>see Table below</i> )	14 405
<b>Total of non-refoulement claims<sup>^</sup></b>	<b>23 184 (cases)</b>

<b>(II) Situation of appeals (no. of cases)</b>	
(a) Pending determination by TCAB	6 477
(b) Appeals withdrawn or where no further action could be taken	1 691
(c) Appeals determined by TCAB	
● Substantiated	48
● Rejected	6 189
<b>Total of appeals</b>	<b>14 405 (cases)</b>

<sup>^</sup> After implementation of USM in March 2014, as at end November 2018, ImmD received a total of 16 485 non-refoulement claims. Together with the 2 501 torture claims pending screening previously, and the 4 198 claims on other grounds such as cruel, inhuman or degrading treatment or punishment lodged before implementation of USM, there were a total of 23 184 claims requiring ImmD's screening under USM.



<b>(III) Situation of claimants remaining in Hong Kong (no. of persons)</b>	
(a) Claimants whose claims or appeals were pending determination <sup>#</sup>	7 700
(b) Claimants imprisoned, remanded, involved in ongoing prosecution or investigation process, or otherwise still in Hong Kong	1 600
(c) Claimants applied for JR or in the course of other litigation procedures	3 100
(d) Claimants of whom the removal is being arranged (including seeking re-entry documents and arranging air passage)	1 600
<b>Total</b>	<b>Approx. 14 000 (persons)</b>

# Including those with claims rejected by ImmD in the past 14 days but yet to lodge an appeal

**Major Amendment Proposals to the Immigration Ordinance**

(\* consulted with the LegCo Panel on Security in July 2018)

**(I) Tighten / Specify statutory timeframes**

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Deadline for making a claim	<ul style="list-style-type: none"><li>● Eligible persons (e.g. subject or liable to removal) may lodge a non-refoulement claim any time</li></ul>	<ul style="list-style-type: none"><li>● To provide that a non-refoulement claim must be lodged within 3 months upon being eligible, unless ImmD is satisfied that despite having exercised all due diligence, the person failed to lodge a claim before the deadline due to “exceptional” and “uncontrollable” circumstances</li></ul>
Submission of claim form*	<ul style="list-style-type: none"><li>● 49 days [Statutory period of 28 days + 21 additional days given upon request by the Duty Lawyer Service]</li></ul>	<ul style="list-style-type: none"><li>● To tighten the statutory timeframe (e.g. to 14 days)</li><li>● To cease the administrative arrangement to give 21 additional days</li></ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
	<ul style="list-style-type: none"> <li>● ImmD requests a claimant to submit the completed claim form together with any documentary evidence in support of the claim through administrative measures</li> </ul>	<ul style="list-style-type: none"> <li>● To require a claimant to submit all available documents with the claim form, and a list stating the outstanding documents that will be submitted later with details</li> </ul>
Screening interview(s)*	<ul style="list-style-type: none"> <li>● ImmD must require the claimant to attend screening interview after receipt of claim form</li> <li>● ImmD advances the scheduling of screening interview through administrative measures</li> </ul>	<ul style="list-style-type: none"> <li>● To provide that ImmD may require a claimant to attend interview in writing when commencing screening procedures (i.e. upon ImmD's request to a claimant to complete claim form)</li> </ul>
Lodging appeal*	<ul style="list-style-type: none"> <li>● Appeal should be lodged in writing within 14 days after the claim is rejected</li> </ul>	<ul style="list-style-type: none"> <li>● To tighten the timeframe (e.g. to 7 days)</li> </ul>
Oral hearing*	<ul style="list-style-type: none"> <li>● TCAB must inform all parties concerned not less than 28 days before the date of hearing</li> </ul>	<ul style="list-style-type: none"> <li>● To tighten the timeframe to not less than 7 days before the date of hearing so as to conduct a hearing as soon as possible if needed</li> </ul>

**(II) Tighten extension application / absent arrangement**

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Extension of deadline to submit claim form*	<ul style="list-style-type: none"> <li>● If ImmD is satisfied that, by reason of special circumstances, it would be unjust not to allow a further period for the claimant to return claim form, ImmD may allow such further period</li> </ul>	<ul style="list-style-type: none"> <li>● To provide that a claimant may apply for extension of deadline only if he has exercised all due diligence to comply with the original deadline, but failed to do so due to “exceptional” and “uncontrollable” circumstances</li> </ul>
Screening interview / Medical examination: Absence or rescheduling*	<ul style="list-style-type: none"> <li>● No specific provision</li> <li>● ImmD requests a claimant to provide a reasonable explanation with proof regarding his absence from scheduled interview or medical examination within a specified time frame through administrative measures</li> </ul>	<ul style="list-style-type: none"> <li>● Application for re-scheduling must be submitted before the original date</li> <li>● Those who are absent must submit a written application not later than a specified period (e.g. 3 working days), if they wish to re-arrange an interview / examination</li> <li>● May approve re-scheduling / re-arrangement only if the claimant has exercised all due diligence but could not attend due to “exceptional” and “uncontrollable” circumstances</li> </ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Absence from appeal hearing*	<ul style="list-style-type: none"> <li>● If the claimant was absent from the hearing, TCAB must give him a written notice that the claimant may submit a written explanation of the absence within 7 days, or TCAB may proceed to determine an appeal in his absence</li> <li>● May re-schedule a hearing if it is satisfied that the claimant’s absence was due to reasonable cause</li> </ul>	<ul style="list-style-type: none"> <li>● To remove the requirement of written notice</li> <li>● To tighten the timeframe for explaining the absence</li> <li>● To provide that TCAB will not re-arrange the hearing unless the absence is due to “exceptional” and “uncontrollable” circumstances</li> </ul>
“Exceptional” and “uncontrollable” circumstances	<ul style="list-style-type: none"> <li>● No relevant interpretation</li> </ul>	<ul style="list-style-type: none"> <li>● The following circumstances (common delaying tactics) will not be considered as “exceptional” or “uncontrollable”:</li> <li>(i) circumstances that are already known or reasonably predictable to the claimant, unless all practicable steps have been taken to mitigate the effect;</li> <li>(ii) obtaining information or documents (including a data access request made under the Personal Data (Privacy) Ordinance); and</li> </ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
		(iii) claimed medical condition but the claimant is not able to produce a medical certificate setting out the particulars of the condition

**(III) Tackle other delay tactics**

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Furnishing voluminous documents that are clearly irrelevant to ImmD or TCAB*	<ul style="list-style-type: none"> <li>● No provision on how to handle the situation</li> </ul>	<ul style="list-style-type: none"> <li>● To provide that a claimant must pinpoint the parts of the documents which are relevant to his claim, and explain their relationship; otherwise they will not be considered</li> </ul>
Refusal to submit the medical report after the medical examination*	<ul style="list-style-type: none"> <li>● No provision on how to handle the situation</li> <li>● Credibility of the claimant will be damaged if he fails to disclose his medical report, if any, to ImmD or TCAB</li> </ul>	<ul style="list-style-type: none"> <li>● To provide that if a claimant refused to submit the medical report, the physical or mental condition so claimed will not be considered</li> </ul>
Request to conduct the screening interview / appeal hearing in the claimant's most proficient language (including the tribal dialect)*	<ul style="list-style-type: none"> <li>● No provision on how to handle the situation</li> <li>● For a claimant who cannot communicate in Chinese or English, ImmD or TCAB will arrange simultaneous interpretation service in a language as requested by the claimant as far as practicable</li> </ul>	<ul style="list-style-type: none"> <li>● To provide that if a claimant is reasonably supposed to understand and to be able to communicate in another language, the interview / hearing needs not to be conducted in the claimant's most proficient language</li> </ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Submitting a claim again upon rejection or withdrawal (subsequent claim)*	<ul style="list-style-type: none"><li>● After the claim is finally determined or withdrawn, if there has been a “significant change” of circumstances which would give the further claim a realistic prospect of success, a claimant may make a “subsequent claim” to ImmD</li><li>● No relevant provision on the requirement of submitting documentary evidence for a “subsequent claim”</li></ul>	<ul style="list-style-type: none"><li>● To provide that any further documentary evidence submitted by the claimant must only relate to matters that happened after the previous claim was finally determined or withdrawn</li></ul>



**(IV) Removal & detention**

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Removal procedures*	<ul style="list-style-type: none"><li>● Does not provide when ImmD could commence the removal procedures for rejected claimants (e.g. issuance of necessary travel documents)</li><li>● ImmD generally commences repatriation after all the screening and appeal procedures (if any) are completed</li></ul>	<ul style="list-style-type: none"><li>● To provide that even though the appeal is pending, once the claim has been rejected by an immigration officer, the HKSAR Government may liaise with the relevant authorities for repatriation arrangements in parallel</li></ul>
Removal procedures	<ul style="list-style-type: none"><li>● The existing provisions do not provide whether ImmD can remove a claimant who has lodged a JR</li><li>● Under the prevailing policy and practice, ImmD would suspend the removal procedures once notified that the claimant has lodged a relevant JR leave application</li></ul>	<ul style="list-style-type: none"><li>● To provide that even though the claimant has lodged a JR or legal aid application, ImmD can still proceed to remove him (unless leave has been granted by the Court)</li></ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Detention	<ul style="list-style-type: none"><li>● The existing provisions empower ImmD to detain illegal immigrants and other related persons who are pending screening of their non-refoulement claims and/or during removal procedures. These detention powers are subject to common law restrictions, and ImmD cannot continue to detain such persons if it cannot complete the removal procedures (including the screening process) within a reasonable period of time</li></ul>	<ul style="list-style-type: none"><li>● To specify that the detention is not unlawful by reason of the period of the detention if that period is considered reasonable having regard to a series of relevant factors, including the number of persons pending screening of non-refoulement claims or removal; the manpower and financial resources allocated to such works; whether the removal / screening of claim is directly or indirectly hindered by the person; and other factors that are not within the control of ImmD or TCAB</li><li>● To provide that ImmD may continue to detain persons who would pose a threat to life or property if not detained, without being subject to any common law principles</li></ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Management of detention facilities*	<ul style="list-style-type: none"><li>● Currently immigration officers are not authorised, unlike most other law enforcement agencies (e.g. the Government Flying Service, Hong Kong Police Force, Customs and Excise Department, and Correctional Services Department (“CSD”)), to possess arms or ammunition, etc.</li><li>● ImmD has to regularly apply for exemptions from the Commissioner of Police, and rely on CSD to provide training to its frontline staff</li></ul>	<ul style="list-style-type: none"><li>● To amend the Firearms and Ammunition Ordinance (Cap. 238) and the Weapons Ordinance (Cap. 217), so as to authorise immigration officers to possess arms, ammunition, etc., thus strengthening staff training and deployment flexibility, and further enhancing ImmD’s capability in emergency response</li></ul>

**(V) Other amendments**

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Duties of ImmD / TCAB*	<ul style="list-style-type: none"><li>● According to local case law, the burden of proof of a non-refoulement claim rests with the claimant. Nevertheless, as “high standards of fairness” must be achieved when handling the claim, depending on the circumstances of individual cases, the screening procedures should still be based on “joint endeavour” by the claimant and ImmD / TCAB</li></ul>	<ul style="list-style-type: none"><li>● For making clear the rights and duties, to specify that the duties of ImmD and TCAB do not include assisting the claimants to substantiate their claims / appeals, e.g. ImmD and TCAB do not have the duties to:<ul style="list-style-type: none"><li>- assist claimants to gather information</li><li>- provide information relating to their claims / appeals, unless such information may be unfavourable to their claims / appeals, and the claimants may comment on such information</li></ul></li></ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Unlawful employment	<ul style="list-style-type: none"> <li>● Any person who, having landed in Hong Kong unlawfully; or in respect of whom a removal order or a deportation order is in force, must not take any employment, whether paid or unpaid, or establish or join in any business</li> <li>● The provision above does not include overstayers or refused landing passengers without being issued a removal order or deportation order</li> </ul>	<ul style="list-style-type: none"> <li>● To expand the provision to cover overstayers or persons who were refused permission to land even without a removal order or a deportation order, thus aligning the penalty on unlawful employment of such persons with that of illegal immigrants</li> </ul>
Unlawful employment	<ul style="list-style-type: none"> <li>● Employer of a person not lawfully employable (including illegal immigrants, overstayers or persons who were refused permission to land) is liable to a fine of \$350,000 and to imprisonment for 3 years</li> </ul>	<ul style="list-style-type: none"> <li>● To impose heavier penalty on the employer of illegal immigrants, overstayers or persons who were refused permission to land (including non-refoulement claimants) who are not lawfully employable to a fine of \$500,000 and to imprisonment for 10 years</li> </ul>
Unlawful employment*	<ul style="list-style-type: none"> <li>● Any person who is the employer of a person not lawfully employable (including illegal immigrants, overstayers or persons refused permission to land) commits an offence</li> </ul>	<ul style="list-style-type: none"> <li>● To expand the coverage of employment of a person not lawfully employable, by stipulating that if any body corporate employs anyone who is not lawfully employable, and the</li> </ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
		<p>offence is proved to be committed with the consent or connivance of any director, manager, secretary or other similar officers of that body corporate, or attributable to the negligence on the part of such persons, then the director, manager, secretary or other similar officers shall be taken to have committed the like offence</p> <ul style="list-style-type: none"><li>● If a partner in a partnership employs anyone who is not lawfully employable, and the offence is proved to be committed with the consent or connivance of, or is attributable to the negligence on the part of, any other partner in the partnership or any other person concerned in the management of that partnership, then that other persons shall be taken to have committed the like offence</li></ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Preventing potential claimants from entering Hong Kong	<ul style="list-style-type: none"><li>● If a passenger who arrives in Hong Kong in an aircraft does not have a valid travel document, the owner of the aircraft and his agent shall be guilty of an offence and shall be liable on conviction to a fine at level 3 (i.e. \$10,000)</li></ul>	<ul style="list-style-type: none"><li>● To increase the fine to level 6 (i.e. \$100,000)</li></ul>
Implementing latest ICAO requirement	<ul style="list-style-type: none"><li>● The current provision does not empower ImmD to implement the API system</li></ul>	<ul style="list-style-type: none"><li>● To empower the Secretary for Security to make regulations requiring airlines (or other means of transportation) or their owners or agents to provide their passenger information to ImmD before the flight (or other means of transportation) coming to Hong Kong, and authorising ImmD to request airlines (or their owners or agents) not to allow individual persons to board the plane (or means of transportation) to Hong Kong when necessary</li></ul>

	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Operation of TCAB*	<ul style="list-style-type: none"> <li>● If the Chairperson is unable to act as Chairperson by reason of illness, absence from Hong Kong or any other cause, the Chairperson may designate a Deputy Chairperson to act in the place of the Chairperson</li> </ul>	<ul style="list-style-type: none"> <li>● To add provisions to provide that the Chairperson may delegate specified powers and functions (e.g. assigning member(s) to hear and determine an appeal, deciding the order in which appeals are to be heard or determined) to a Deputy Chairperson</li> </ul>
Operation of TCAB*	<ul style="list-style-type: none"> <li>● If the Chairperson decided to assign three members to hear and determine an appeal, the hearing must be presided by the Chairperson or Deputy Chairperson</li> </ul>	<ul style="list-style-type: none"> <li>● The Chairperson may assign any member to preside the hearing</li> </ul>
Notice of Appeal*	<ul style="list-style-type: none"> <li>● The Notice of Appeal must be in a form specified by the Chairperson of TCAB</li> <li>● No provision specifying how TCAB should handle the incomplete or unsigned notice</li> </ul>	<ul style="list-style-type: none"> <li>● To stipulate that TCAB must regard the incomplete or unsigned Notice of Appeal as invalid</li> </ul>



	<b>Existing Provision/Arrangement</b>	<b>Amendment Proposals under Consideration</b>
Grounds of claim	<ul style="list-style-type: none"><li>● The existing USM screens claims through a hybrid of statutory mechanism for torture claims (i.e. to substantiate a claim if there are substantial grounds for believing that the claimant would face a risk of torture if removed to his home country) and administrative means for non-refoulement claims on all other applicable grounds</li></ul>	<ul style="list-style-type: none"><li>● To make relevant amendments to provide a comprehensive legal basis for USM</li><li>● To provide that whether a non-refoulement claim is accepted as substantiated, there must be substantial grounds for believing that the claimant would face a real, foreseeable and present risk of severe and irreparable harm if removed to a Risk State. The risk must be personal to the claimant, and that he would face the risk in any part of the state without any state protection</li></ul>

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