

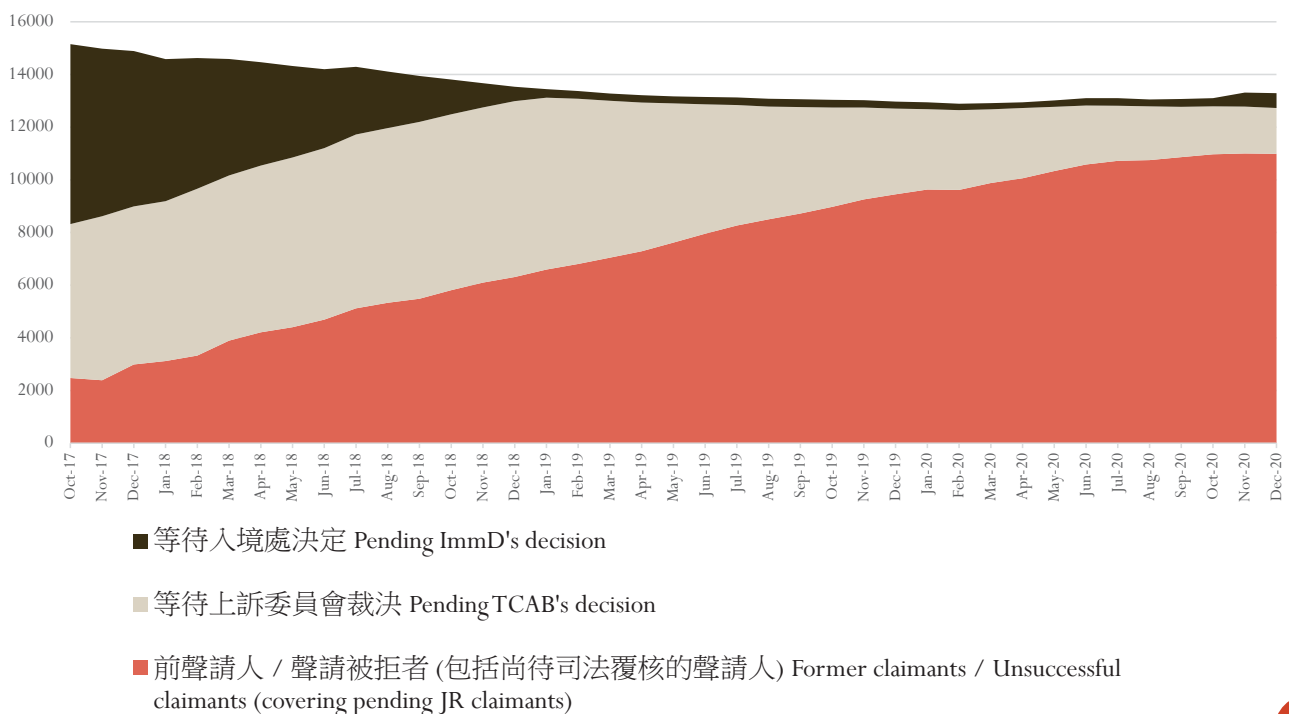
法案委員會第1次會議 1st Meeting of Bills Committee

《2020年入境(修訂)條例草案》 Immigration (Amendment) Bill 2020

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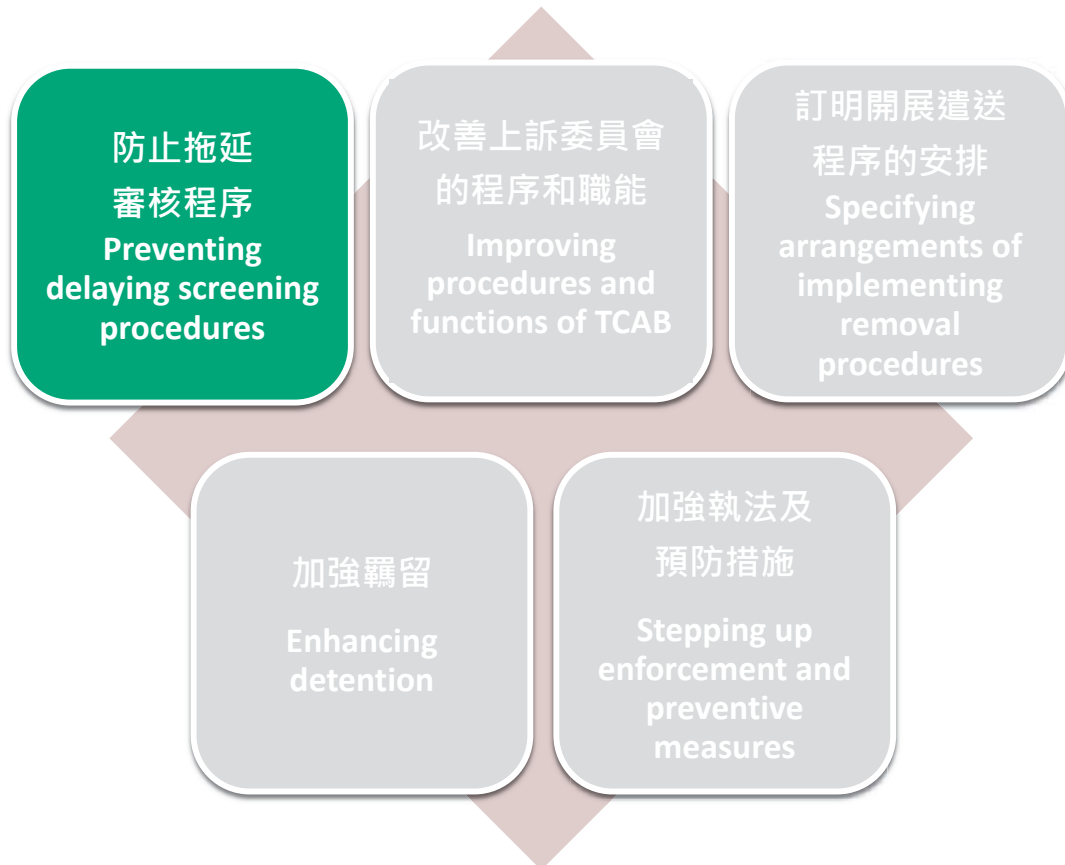
在港的聲請人數 Number of claimants in Hong Kong

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Number of claimants in Hong Kong



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主要修訂建議 Major Amendment Proposals



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主要修訂建議 Major Amendment Proposals

(I) 防止拖延審核程序 Preventing delaying screening procedures

	現用法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
交回表格 Return a claim form	<ul style="list-style-type: none"> 不論聲請簡單或複雜，聲請人均獲給予最少49日（條例規定的28日，另加以行政方式給予的21日）填妥並交回表格 <p>Claimants are given a minimum of 49 days (28 days as provided in the law, plus 21 additional days granted through administrative means) to complete and return the claim form no matter their claim is straightforward or complicated</p>	<ul style="list-style-type: none"> 現時條例所訂的28日法定期限不變 No change to the current 28-day statutory period under the Ordinance 但如有真正需要，可批准以行政方式進一步延長期限的申請 But an application for further extension of the period through administrative means may be granted if there is a genuine need

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主要修訂建議 Major Amendment Proposals

(I) 防止拖延審核程序 Preventing delaying screening procedures

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
審核會面 Screening interview	<ul style="list-style-type: none"> 在聲請人交回聲請表格後，入境處須要求聲請人出席會面 ImmD must require the claimant to attend screening interview after receipt of claim form 入境處以行政措施提前預約審核會面，但部份個案拖延甚久或聲請人拒絕合作 ImmD advances the scheduling of screening interview through administrative measures but some cases were seriously delayed or claimants refused to cooperate 	<ul style="list-style-type: none"> 訂明入境處於展開審核程序時，會以書面通知聲請人出席會面的日期、時間和地點 To specify that ImmD would notify a claimant in writing of the date, time and place of the interview when commencing screening 條例訂明聲請人有責任按入境處的規定出席會面；即使聲請人不出席會面，入境處人員可根據所知的資訊就聲請作出決定 To specify in the Ordinance that it is the claimant's duty to attend interviews so required by ImmD, and even if a claimant fails to attend the interview, ImmD officers may decide on the claim based on available information

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主要修訂建議 Major Amendment Proposals

(I) 防止拖延審核程序 Preventing delaying screening procedures

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
要求以最精通的語言（例如某部落方言）進行審核會面 Request to conduct the screening interview in most proficient language (e.g. a tribal dialect)	<ul style="list-style-type: none"> 如聲請人不能以中文或英文溝通，入境處會盡量按聲請人要求安排其可用以溝通的語言的即時傳譯，但條例沒有訂明如何處理不合作、不合理或故意拖延程序的情況 If a claimant cannot communicate in Chinese or English, ImmD will, as far as practicable, arrange simultaneous interpretation as requested by the claimant in a language that the claimant can communicate in. However, the Ordinance does not specify how to handle uncooperative, unreasonable situation or situation with claimants deliberately prolonging the screening procedures 	<ul style="list-style-type: none"> 訂明若入境處合理地認為聲請人可理解某語文（例如英語或其原居國家的法定語文）並溝通，入境處可指示聲請人以該語文溝通 To specify that if ImmD reasonably considers that a claimant is able to understand and communicate in a language (e.g. English or the official language of the claimant's country of origin), ImmD may direct the claimant to communicate in that language

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主要修訂建議 Major Amendment Proposals

(I) 防止拖延審核程序 Preventing delaying screening procedures

	現有的法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
醫療檢驗及醫學報告 Medical examination & medical report	<ul style="list-style-type: none"> 即使聲請人不斷缺席醫療檢驗或拒絕合作，法例沒有具體訂明處理辦法 Even if a claimant repeatedly fails to attend medical examinations or refuses to cooperate, the Ordinance does not specify how to handle it 	<ul style="list-style-type: none"> 訂明如聲請人沒有就醫療檢驗的安排給予同意、沒有接受醫療檢驗，或沒有向入境處披露整份醫學報告，入境處可決定不考慮該聲請人有爭議的身體或精神狀況 To prescribe that if a claimant fails to give consent to the arrangement of medical examination, undergo the examination or disclose the full medical report to ImmD, ImmD may decide not to take into account a disputed physical or mental condition alleged by the claimant

主要修訂建議 Major Amendment Proposals



主要修訂建議

Major Amendment Proposals

(II) 改善上訴委員會的程序和職能 Improving procedures and functions of TCAB

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
上訴通知 Notice of Appeal	<ul style="list-style-type: none"> 上訴通知須符合上訴委員會主席指明的格式，但沒有條文訂明上訴委員會應如何處理並非以指定形式填寫，或未填妥或未簽名的通知 <p>The Notice of Appeal must be in a form specified by the Chairperson of TCAB. However, there is no provision specifying how TCAB should handle the notice that is not in the specified form or not duly completed or signed</p>	<ul style="list-style-type: none"> 訂明上訴委員會將不會跟進並非以指定形式填寫，或未填妥或未簽名的上訴通知 <p>To stipulate that TCAB will take no action in relation to the Notices of Appeal that are not in the specified form or not duly completed or signed</p>

主要修訂建議

Major Amendment Proposals

(II) 改善上訴委員會的程序和職能 Improving procedures and functions of TCAB

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
逾時提出上訴 Lodging a late appeal	<ul style="list-style-type: none"> 法例規定上訴委員會在考慮逾時上訴時，可考慮上訴委員會所知悉的「任何其他相關事實的事項」，有關說法容易引起爭議 <p>The law prescribes that when considering a late appeal, TCAB could take into account “any other relevant matters of fact” within its knowledge, hence easily leading to disputes</p>	<ul style="list-style-type: none"> 修改條文以訂明上訴委員會只會考慮聲請人就沒有在14日期限內將上訴通知送交存檔所提供的理由和支持證據，而不會考慮其他事宜 <p>To amend the law such that TCAB will only take into account reasons and supporting evidence given by the claimant for failing to file the Notice of Appeal within the 14-day period, but not other matters</p>

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(II) 改善上訴委員會的程序和職能 Improving procedures and functions of TCAB

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
口頭聆訊 Oral hearing	<ul style="list-style-type: none"> 上訴委員會須在聆訊前最少28天前通知聆訊各方 TCAB must inform all parties not less than 28 days before the hearing 當上訴人缺席已約定的口頭聆訊，上訴人可在7個工作天內就其缺席提供解釋，上訴委員會可考慮安排另一次聆訊 In the event that an appellant is absent from a scheduled oral hearing, the appellant can provide an explanation of his absence within seven working days and TCAB may consider re-arranging a hearing 	<ul style="list-style-type: none"> 上訴委員會如認為適當，可把口頭聆訊的通知期縮短至少於28日 TCAB may shorten the notice period for oral hearings to less than 28 days where appropriate 上訴人就其缺席提供解釋的期限縮短至3個工作天 The time period for the appellant to provide an explanation of his absence is shortened to three working days

主要修訂建議 Major Amendment Proposals

(II) 改善上訴委員會的程序和職能 Improving procedures and functions of TCAB

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
要求以最精通的語言（例如某部落方言）進行上訴聆訊 Request to conduct the appeal hearing in his most proficient language (e.g. a tribal dialect)	<ul style="list-style-type: none"> 如上訴人不能以中文或英文溝通，上訴委員會會盡量按上訴人要求安排其可用以溝通的語言的即時傳譯，但條例沒有訂明如何處理不合作、不合理的情況 If an appellant cannot communicate in Chinese or English, TCAB will, as far as practicable, arrange simultaneous interpretation as requested by the appellant in a language that the appellant can communicate in. However, the Ordinance does not specify how to handle uncooperative or unreasonable situation 	<ul style="list-style-type: none"> 訂明若上訴委員會合理地認為上訴人可理解某語文（例如英語或其原居國家的法定語文）並溝通，上訴委員會可指示上訴人以該語文通訊 To specify that if TCAB reasonably considers that an appellant is able to understand and communicate in a language (e.g. English or the official language of the claimant's country of origin), TCAB may direct the appellant to communicate in that language

主要修訂建議 Major Amendment Proposals

(II) 改善上訴委員會的程序和職能 Improving procedures and functions of TCAB

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醫療檢驗及 醫學報告 Medical examination & medical report	<ul style="list-style-type: none"> 即使上訴人不斷缺席醫療檢驗或拒絕合作，法例沒有具體訂明處理辦法 Even if an appellant repeatedly fails to attend medical examinations or refuses to cooperate, the Ordinance does not specify how to handle it 	<ul style="list-style-type: none"> 訂明如上訴人沒有就醫療檢驗的安排給予同意、沒有接受醫療檢驗，或沒有向上訴委員會披露整份醫學報告，上訴委員會可決定不考慮該上訴人有爭議的身體或精神狀況 To prescribe that if an appellant fails to give consent to the arrangement of medical examination, undergo the examination or disclose the full medical report to TCAB, TCAB may decide not to take into account a disputed physical or mental condition alleged by the appellant

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主要修訂建議 Major Amendment Proposals

(II) 改善上訴委員會的程序和職能 Improving procedures and functions of TCAB

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
上訴委員會運作 Operation of TCAB	<ul style="list-style-type: none"> 如主席因傷病、離港或其他因由，無法以主席身份行事，可指定一名副主席代主席行事 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 	<ul style="list-style-type: none"> 加入條文，主席可在有需要時將一些指定權力和職責（例如選出委員進行聆訊、安排聆訊先後次序等），授權某副主席 To add provisions to prescribe that the Chairperson may delegate the specified powers and functions (e.g. assign member(s) to hear and determine an appeal, decide the order in which appeals are to be heard or determined) to Deputy Chairpersons

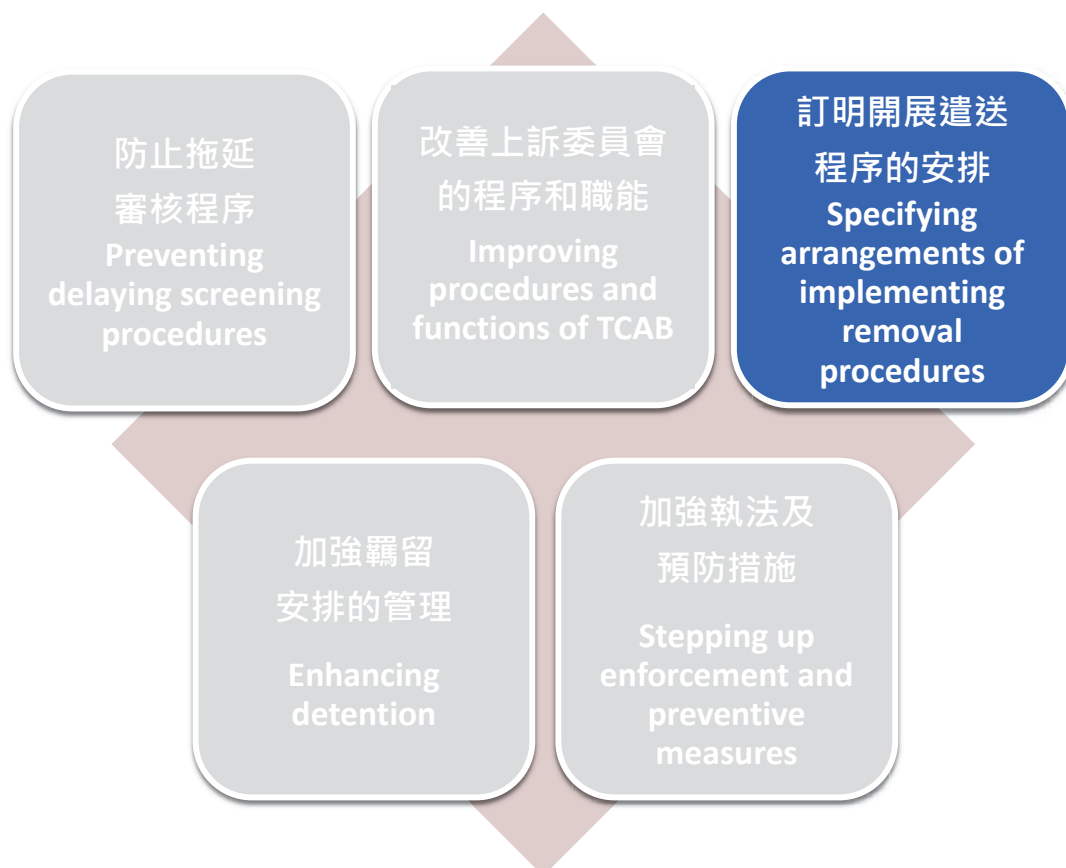
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主要修訂建議 Major Amendment Proposals

(II) 改善上訴委員會的程序和職能 Improving procedures and functions of TCAB

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
上訴委員會運作 Operation of TCAB	<ul style="list-style-type: none"> 如主席決定指派三名委員進行聆訊，該聆訊必須由主席或副主席主持 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 	<ul style="list-style-type: none"> 主席可指派任何委員主持有關聆訊 The Chairperson may assign any member to preside the hearing

主要修訂建議 Major Amendment Proposals



主要修訂建議 Major Amendment Proposals

(III) 訂明開展遣送程序的安排 Specifying arrangements of implementing removal procedures

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
遣送程序 Removal procedures	<ul style="list-style-type: none"> 條例未有訂明入境處可於甚麼時候就聲請被拒者開展遣送程序（例如申請所需旅行證件） No provision on when ImmD could commence the removal procedures for unsuccessful claimants (e.g. issuance of necessary travel documents) 入境處一般會在所有審核聲請、上訴及相關司法覆核（如有的話）程序全部完結後，才開始有關工作 ImmD generally commences the removal procedures after all the screening, appeal and related JR procedures (if any) are completed 	<ul style="list-style-type: none"> 訂明在聲請已被入境處駁回後，即使聲請人仍在等候處理上訴，在不透露有關人士是否已提出聲請的前提下，特區政府可以同時與相關當局就遣返安排聯絡 To prescribe that even though the appeal is pending, once the claim has been rejected by ImmD, the HKSAR Government may, on the prerequisite of not disclosing whether the person concerned has filed a claim, liaise with the relevant authorities for repatriation arrangements in parallel

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主要修訂建議 Major Amendment Proposals



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Major Amendment Proposals

(IV) 加強羈留 Enhancing detention

	現行法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
羈留 Detention	<ul style="list-style-type: none"> 法例賦權入境處可羈留非法入境者，包括等候遣返、等候免遣返聲請決定的人。在行使有關權力時，入境處須按相關法律原則行事，如入境處預計不能在合理時間內完成遣送或審核程序，不應繼續羈留相關人士 <p>ImmD is empowered under the law to detain illegal immigrants pending removal, or pending final determination of a non-refoulement claim, etc. In exercising such power, ImmD has to follow the relevant legal principles, according to which ImmD should not continue to detain the person if ImmD expects that it cannot complete the removal or screening procedures within a reasonable period of time</p>	<ul style="list-style-type: none"> 就羈留的時間是否合理，訂明經考慮以下一系列相關因素後，包括當時入境處或上訴委員會是否同時要審核或處理大量聲請或上訴個案；被羈留者是否直接或間接拖延任何程序；以及是否有不受入境處控制的情況等，若認為合理，不會因此裁定為不合法。修例後，如有被羈留者向法院申請反對入境處的羈留決定，法庭亦須考慮上述因素 <p>To specify that the detention is not unlawful by reason of the period of the detention if that period is reasonable having regard to a series of relevant factors, including whether there is a large number of claims or appeals pending screening by ImmD or TCAB at the same time; whether any procedure is hindered directly or indirectly by the person being detained; and whether there are situations beyond the control of ImmD, etc. Upon amendment, the court would need to consider the above factors if a detainee raises objection to the court on ImmD's detention decision</p>

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Major Amendment Proposals

(IV) 加強羈留 Enhancing detention

	現行法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
羈留設施管理 Management of detention facilities	<ul style="list-style-type: none"> 為安全管理理由，派駐羈留中心的入境處人員獲配備合適的防暴裝備。但入境處人員並未如其他執法部門獲授權管有槍械、彈藥及武器等 <p>For security control reasons, officers deployed at the detention centres have been equipped with suitable anti-riot equipment. But unlike other law enforcement agencies, immigration officers are not authorised to possess arms, ammunition or weapons, etc.</p> <ul style="list-style-type: none"> 個別入境處人員需定期向警務處處長申請豁免批准。同時，基於現時管有這些裝備的限制，入境處需依靠懲教處向其人員提供所需的訓練 <p>Individual ImmD officers have to apply for exemptions from the Commissioner of Police regularly. Because of this constraint, ImmD also has to rely on the Correctional Services Department to provide training to its frontline staff</p>	<ul style="list-style-type: none"> 修訂《火器及彈藥條例》及《武器條例》，把入境處事務隊納入豁免名單，與其他紀律部隊一樣無須就管有武器、火器和彈藥受有關條例的牌照限制，從而減輕入境處及警務處處理相關申請的行政負擔，並讓入境處可更靈活地調派人手及更有能力自行進行人員訓練，提高羈留中心應付緊急情況及進行執法行動的能力。 <p>To amend the Firearms and Ammunition Ordinance and the Weapons Ordinance to include Immigration Services in the list of exemption similar to other disciplinary forces, such that they are no longer subject to the licensing requirements of relevant ordinances on the possession of arms, ammunition and weapons, etc., hence lessening the administrative burden of ImmD and Police in handling relevant applications. ImmD will also have more flexibility in staff deployment and capacity to conduct staff training on its own, thereby enhancing its capability in handling emergencies and taking enforcement actions at detention centres</p>

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主要修訂建議 Major Amendment Proposals

(V) 加強執法及預防措施 Stepping up enforcement and preventive measures

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
打擊非法工作 Combatting unlawful employment	<ul style="list-style-type: none"> 根據條例第38AA條，任何非法來港或受遣送離境令或遞解離境令規限的人，如接受僱傭工作（無論有薪或無薪）或開辦或參與任何業務，可被檢控 Any person who entered Hong Kong illegally or who is subject to a removal or deportation order, may be prosecuted if taking any employment (whether paid or unpaid) or establish or join in any business 逾期逗留的旅客在當局向其發出遣送離境令或遞解離境令前，如因非法工作而被捕，則不屬干犯該罪行 Overstaying visitors arrested for unlawful employment before being issued with a removal order or deportation order are not subject to the above offence 	<ul style="list-style-type: none"> 修訂該條文，使逾期逗留並接受僱傭工作的旅客可同樣被該條文檢控，其刑罰與接受僱傭工作的非法入境者相同 To amend the provision so that overstaying visitors who take any employment will also be liable to be prosecuted under that provision and subject to the same penalty level as illegal immigrants taking any employment

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主要修訂建議 Major Amendment Proposals

(V) 加強執法及預防措施 Stepping up enforcement and preventive measures

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
打擊非法工作 Combating unlawful employment	<ul style="list-style-type: none"> 任何人僱用不可合法受僱的人（包括非法入境者、逾期逗留或被拒入境的旅客）為僱員，即屬犯罪，可處罰款港幣\$350,000及監禁3年 <p>Any person who is the employer of a person not lawfully employable (including illegal immigrants, overstayers or visitors refused permission to land) commits an offence and is liable to a fine of HK\$350,000 and to imprisonment for 3 years</p>	<ul style="list-style-type: none"> 大幅提高僱用非法入境者、逾期逗留或被拒入境的旅客（包括所有免遣返聲請人）等不可合法受僱的人的罰則至可處罰款港幣\$500,000及監禁10年 <p>To significantly increase the punishment for employing illegal immigrants, overstayers or visitors refused permission to land (including all non-refoulement claimants), who are not lawfully employable, to a fine of HK\$500,000 and to imprisonment for 10 years</p>

主要修訂建議 Major Amendment Proposals

(V) 加強執法及預防措施 Stepping up enforcement and preventive measures

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
提高接載可能 提出聲請的人 的罰則 Increasing penalties against carrier of potential claimants	<ul style="list-style-type: none"> 乘飛機抵達香港的乘客，如未帶備有效旅行證件，則飛機的擁有人及其代理人即屬犯罪，經定罪後，可處第3級罰款（即港幣\$10,000） <p>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)</p>	<ul style="list-style-type: none"> 提高罰款至第6級（即港幣\$100,000） <p>To increase the fine to level 6 (i.e. \$100,000)</p>

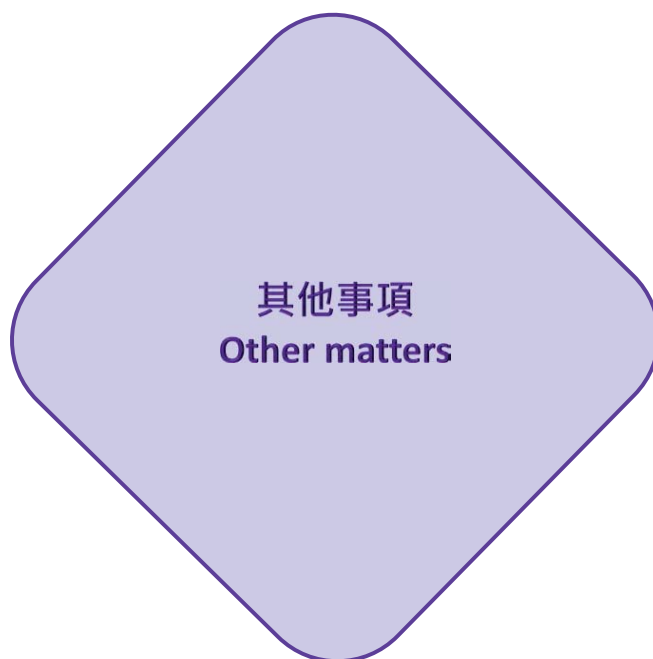
主要修訂建議 Major Amendment Proposals

(V) 加強執法及預防措施 Stepping up enforcement and preventive measures

	現有法例 / 安排 Existing Provision/ Arrangement	修訂建議 Amendment Proposals
旅客資料預報 Advance Passenger Information (API)	<ul style="list-style-type: none"> 沒有具體規定 No specific provision 	<ul style="list-style-type: none"> 賦權保安局局長可制訂規例，以落實預先通報旅客資料系統。在該系統下，航空公司須在航機起飛前向入境處提供全機乘客和機組人員資料；如有需要，入境處可發出「不准登機」指示，拒絕個別有可能提出聲請的人或預計將不准入境人士登機赴港。 <p>To empower S for S to make regulations to implement the API. Under API, airlines are required to provide passenger and crew information to ImmD before flight departure. If necessary, ImmD could issue “no-board” directives on the spot to reject individual potential claimant or person expected to be denied entry from boarding and heading to Hong Kong</p>

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主要修訂建議 Major Amendment Proposals



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主要修訂建議

Major Amendment Proposals

(VI) 其他事項 Other matters

	<p style="text-align: center;">現有法例 / 安排 Existing Provision/ Arrangement</p>	<p style="text-align: center;">修訂建議 Amendment Proposals</p>
<p style="text-align: center;">撤銷決定的理由 Grounds for revocation</p>	<ul style="list-style-type: none"> • 條例訂明入境處可撤銷已確立聲請，理由包括 — <ul style="list-style-type: none"> (a) 提交的資料或文件證據屬虛假或具誤導性； (b) 有資料早前並未披露；及 (c) 由於聲請人或有關存在酷刑風險國家的情況有所改變，導致聲請的風險已不再存在 The Ordinance provides that ImmD may revoke a substantiated claim and the grounds include — <ul style="list-style-type: none"> (a) false or misleading information or documentary evidence was submitted; (b) certain information was previously not disclosed; and (c) the risk giving rise to the claim has ceased to exist due to changes in circumstances of the claimant or the Torture Risk State • 雖然從未發生已確立聲請撤銷的情況，但經審視相關條文後，我們認為第(c)款涵蓋的範圍太窄，應賦予入境處較大彈性以應對可能出現的所有情況 Although there has never been any case of revocation of a substantiated claim, upon reviewing the provisions, it is considered that the scope of coverage in paragraph (c) is too narrow and ImmD should be given greater flexibility to cater for all future possible circumstances 	<ul style="list-style-type: none"> • 修訂條文令當有關聲請的風險已不再存在時（不論是否因聲請人或有關存在風險國家的情況有所改變），可撤銷已確立的聲請 To amend the provision such that a substantiated claim may be revoked so long as the risk giving rise to the claim has ceased to exist (whether or not it is due to changes in circumstances of the claimant or the Risk State) • 加入條文令當入境處經考慮到目前的所有情況後，若認為有關聲請不應獲確立，亦可撤銷該聲請 To add that if, upon review of all the prevailing circumstances, ImmD is of the view that the claim should not be accepted as substantiated, it may also revoke the claim