

# Immigration Detention Legal Self-Help Toolkit

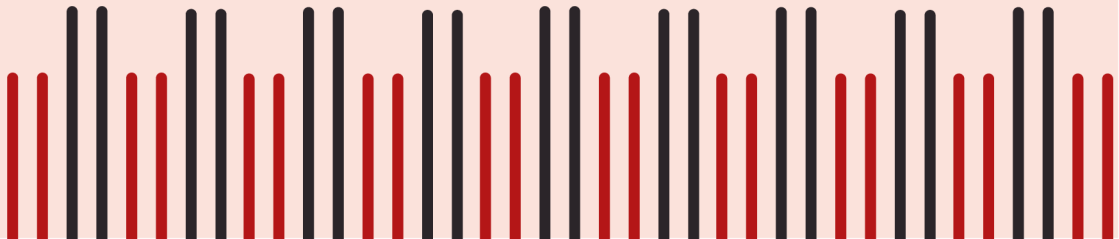
a community guide on immigration detention

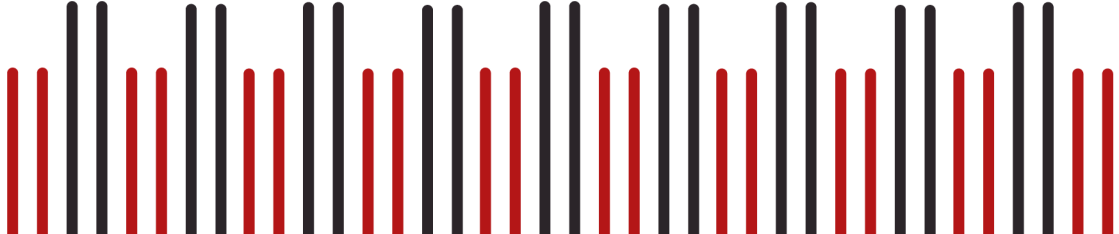
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## TOOLKIT 1: PREPARING FOR THE RISK OF DETENTION



NOTE: THIS MANUAL IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE. TALK TO YOUR LAWYER IF YOU NEED ANY SPECIFIC LEGAL ASSISTANCE.





# Table of Contents

<b>Overview</b> .....	i
-----------------------	---

<b>Introduction</b> .....	
---------------------------	--

0.1 What is Immigration Detention?.....	1
---	---

0.2 Why might I be detained?.....	2
-----------------------------------	---

<b>Scenario 1: I am worried about being detained</b> .....	
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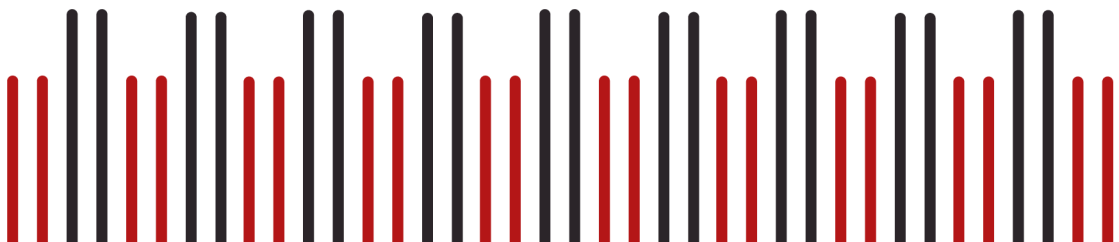
1 Introduction.....	5
---------------------	---

1.1 Am I at risk of being detained?.....	6
--	---

1.2 How can I lower my risk of detention?.....	9
--	---

1.3 How can I prepare for detention, if I'm at risk?.....	11
---	----

1.4 Where can I get help, if I'm at risk of being detained?....	16
---	----



# Overview

This is a toolkit for people who may have an immigration detention problem. If you are an asylum seeker, have no legal immigration status in Hong Kong, or are friends and family of someone in this situation, you may find helpful information and guidance in this toolkit.

**This toolkit is for informational purposes only and does not constitute legal advice. You should consult a lawyer to seek legal advice if you need specific assistance.**

## How to Use the Self-Help Kit

There are five (5) sections of this toolkit. Each section aims to provide information and guidance, based on different scenarios that you may face relating to immigration detention. You can find the section most relevant to you, based on the scenario you are in:

Scenario	Toolkit No.
#1: I am worry that I might be detained	#1: Preparing for Risk of Detention
#2: I am currently being detained	#2: Addressing Your Detention
#3: I was or am being mistreated in detention	#3: Addressing Conditions in Detention
#4: I need help from a lawyer	#4: Getting Legal and Other Support
#5: I need information about my USM/refugee claim	#5: Navigating the USM

# SELF-HELP KIT GUIDE

## I HAVE A DETENTION PROBLEM

### SCENARIO 1: I might be detained

*READ:* Risk of detention  
(Booklet 1)

Understanding risk of  
detention (Section 1.1)

Lowering detention  
risks (Section 1.2)

Preparing for detention  
(Section 1.3)

### SCENARIO 2: I am currently being detained

*READ:* Addressing  
Detention (Booklet 2)

*Option 1:*  
Release

*Action 1:*  
ImmD review  
(Section  
2.3.1)

*Action 2:*  
Court to order  
release  
(Section  
2.3.2)

Release on  
recognizance  
(Section  
2.2.3)

*Option 2:*  
Departure

*Action 3:*  
Voluntary  
return  
(Section  
2.4.1)

*Action 4:*  
Forcible  
removal  
(Section  
2.4.2)

### SCENARIO 3: I was or am being mistreated in detention

*READ:* Addressing  
Mistreatment in  
Detention (Booklet 3)

*Option:*  
File  
Complaint  
(Section  
3.2.1)

*Option:*  
Seek civil  
remedies  
after  
release  
(Section  
3.2.2)

# SELF-HELP KIT GUIDE

## I WANT LEGAL HELP OR INFORMATION

**SCENARIO 4:**  
I want legal assistance  
or help from a lawyer

*READ:* Getting Legal Help  
(Booklet 4)

Getting free legal  
support (Section 4.1.1)

Finding private  
representation (Section  
4.1.2)

NGOs and Other  
Support Organizations  
(Section 4.2)

**SCENARIO 5:** I need  
information about my  
USM/refugee claim

*READ:* Navigating the USM  
and My Refugee Claim  
(Booklet 5)

Making a Non-  
Refoulement Claim  
(Section 5.3)

Appealing your Immd  
Decision (Section 5.4)

The Judicial Review  
Process (Section 5.5)

**SCENARIO 6:** I have  
other questions

*READ:* Frequently Asked  
Questions (Booklet 6)

# Introduction: What is Immigration Detention

## 0.1 What is Immigration Detention?

Immigration detention is the practice of the government exercising their power to detain people under the Immigration Ordinance (the “IO”), which is the immigration law in Hong Kong. They should only detain someone if they plan to deport or remove them from Hong Kong and if there are valid reasons to keep them in detention until that happens.

Immigration detention is not supposed to be a criminal punishment, but it can similarly take away your freedom.



### What is the difference between immigration detention and a criminal sentence?

	<u>Immigration Detention</u>	Criminal Sentence
<b>WHAT</b> is happening	A person is detained in an immigration detention facility	A person is detained in a correctional facility
<b>WHO</b> makes the decision?	Director of Immigration/ Immigration Department (the “ImmD”)	A judge
<b>WHY</b> does it happen?	To control immigration and the movement or activities of migrants in Hong Kong	To punish someone for committing an offence
<b>WHEN</b> does it happen?	When the ImmD decides that the factors to justify detention apply	After someone is convicted of a criminal offence and sentenced by a court



## 0.2 Why might I be detained?

You can be detained if the Director of Immigration (the “**Director**”) thinks that you do not have a legal right to enter or remain in Hong Kong. However, there are certain circumstances in which the Immigration Department (the “**ImmD**”) should not detain you.

The ImmD can only detain you for certain **valid reason(s)**. The ImmD needs to provide you with legal reasons when:

- 1 your detention **starts**; and
- 2 the ImmD wants to **continue** detaining you.

### 0.2.1 How can the ImmD justify detention?

The ImmD can detain you for the following reasons, under the Immigration Ordinance (the “**IO**”):



#### Reasons to detain under the Immigration Ordinance (IO)

- **Question or investigate:** If they want to question and investigate you (*section 26*).
- **Unlawful entry into Hong Kong:** If you arrived in Hong Kong unlawfully (*section 27*), are being suspected of illegal entry (*section 32*) or are refused permission to enter Hong Kong (*section 32(1)*).
- **Waiting to be removed:** If you are waiting to be removed after permission to enter is refused (*section 32(4)*).
- **Ongoing non-refoulement claim:** If you are waiting for a final decision on your non-refoulement/torture claim (*section 37ZK*).
- **Deciding to deport or not:** If the authorities are deciding whether to deport you (*section 29*) or to remove you (*sections 32(1A), 32(2) & 32(2)*).

- **Removal order or deportation order:** If you are under a removal order or a deportation order (*section 32(3)*) and waiting to be removed (*section 32(4)*).

	Removal Order	Deportation Order
Who may receive the order?	People who do not have permission to remain in Hong Kong (e.g. those who overstayed their visa, or entered illegally).	People who do not have the right to stay in Hong Kong <b>and</b> have also been convicted of a criminal offence <b>and</b> sentenced to at least 2 years of imprisonment.
What does the order mean?	A Removal Order requires a person to leave Hong Kong, but <b>does not ban</b> them from returning to Hong Kong lawfully in the future.	A Deportation Order requires a person to leave Hong Kong and <b>bans</b> them from returning at any time in the future (or for a specific period). Violating a deportation order is a crime.
How can I appeal the order?	Submit a Notice of Appeal against Removal Order within <b>24 hours</b> after receiving the Notice of Removal Order.	File an objection to the Deportation Order with the Chief Secretary of Administration within <b>14 days</b> .

### DID YOU KNOW?

Many asylum seekers are issued a **removal order** as they will have overstayed their visa or “breached a condition of their stay” to make a non-refoulement/torture claim (“**USM claim**”). In practice, the ImmD will not take steps to remove an asylum seeker until his or her claim is concluded by the Court of First Instance at the Leave for Judicial Review stage.

- **Breached deportation order:** If you fail to follow a deportation order (*section 31*) or breach the condition(s) of a deportation order (*section 34*).
- **Breached condition of stay:** If you breach the conditions of stay (*section 32*).
- **False statements or documents:** If you are not allowed to enter Hong Kong and have made false statements or used false documents (*section 32*).

## REMEMBER

Although you *can* be detained for these reasons, not everyone *will* automatically be detained.

For example, many asylum seekers are issued a removal order but are not detained. This is because there are other reasons the ImmD considers when making a decision to detain.

These are some of the reasons the ImmD can use to justify your continued detention:

- 1 if you will be deported or removed very soon;
- 2 if you have a record of serious offences, disobedience or identity issues; or
- 3 if you do not have close connections or support in the community.

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### If you will be deported or removed very soon

This may apply to you...

- If you do not have a USM claim;
- If your USM claim was unsuccessful, and you do not have a pending application in the Court of First Instance (the “CFI”) in the High Court;
- If you have an open USM claim, but it is going to finish very soon;
- If you are willing to leave Hong Kong and a repatriation arrangement is underway.



2

### If you have a record of serious offences, disobedience or identity issues

This may apply to you...

- If you have prevented or delayed your removal by not cooperating with the ImmD in the repatriation process;
- If you did not comply with the recognizance conditions during your release (e.g., by missing signing) or are re-arrested during recognizance;
- If you have a history of violent behavior, criminal offences, or previous convictions;
- If you have previously escaped from custody or jumped bail;
- If you are likely to pose a threat or security risk to the community;
- If you are likely to engage in unlawful employment or business if released;
- If you have not provided satisfactory proof of your identity (e.g., used a fake passport or do not have ID documents);
- If you have lied to the ImmD.



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### If you do not have close connections or support in the community

This may apply to you...

- If you are unable to take care of yourself;
- If you have no fixed address or close family or friends in Hong Kong.

## 0.2.2 What are valid reasons to continue detention?

If you are detained, the ImmD cannot detain you indefinitely, without good reason.

Your detention will be reviewed periodically. This is a continuous and ongoing obligation. The ImmD will need further reasons to show that it is lawful to keep you in detention. They may rely on the same reasons in **Section 0.2.1** above.

If your situation in detention changes and any of the reasons used to start your detention no longer apply, you can try to request a review of your detention and explain to ImmD how your situation has changed.

If the ImmD cannot justify your continued detention, you should be released.

# SCENARIO 1:

# I AM WORRIED ABOUT

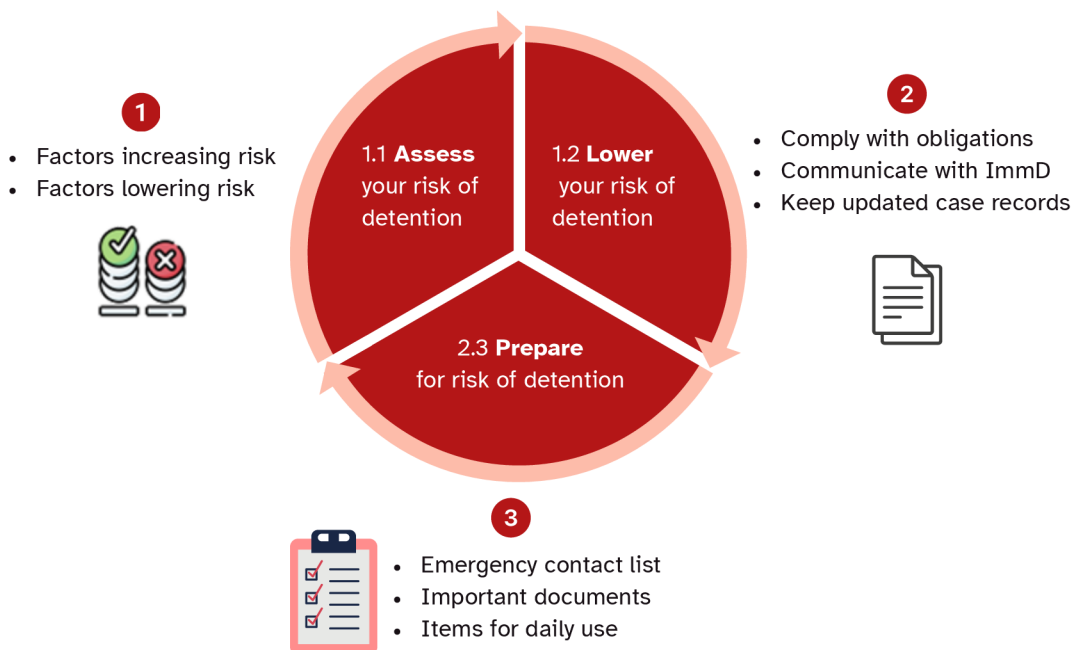
# BEING DETAINED

## 1 Introduction

The ImmD can detain people who entered or remain in Hong Kong without a valid visa or the government's permission, including people who are suspected of having violated immigration rules. See the Introduction for common reasons to detain. It is therefore important that you are aware of factors which increase and decrease the risk of detention, and how to reduce such risk.

By the end of this section, you should know how to:

- 1 Assess your risk of detention
- 2 Lower your risk of detention
- 3 Prepare for potential detention



## 1.1 Am I at risk of being detained?



**Your risk of detention may be higher if:**

**You have a history of absconding or failing to report on recognizance (missing your signing):** you have previously jumped bail, failed to report on recognizance, or absconded.



**Recognizance** is an agreement between you and the government that as long as you comply with a set of conditions, the Hong Kong government will not detain you. Usually, a condition of recognizance is regularly reporting to the ImmD. Failure to report (or attend signing) may be treated as “**absconding**.” The conditions of your recognizance are stated on your Recognizance Paper (Form 8).

**Absconding** means failing to report to the ImmD at the agreed time. It is a criminal offence to breach bail conditions or the conditions of your recognizance.



**You have a history of criminal offences:** if you have a criminal history in Hong Kong, especially serious offences with a sexual or violent nature (such as burglary, assault, possession or trafficking of dangerous drugs), you may be considered a threat to public security.

**You have a history of other immigration offences:** if you have been convicted of immigration-related offences, such as taking illegal employment, making false statements to an immigration officer, entering Hong Kong using false documents, overstaying for a long time, or otherwise entering Hong Kong illegally.



**You do not have fixed abode or family in Hong Kong:** if you do not have a regular address or family members in Hong Kong, the lack of local ties can suggest a higher risk of committing offences or absconding.

**You are not cooperating:** if you previously refused to cooperate with the ImmD or other law enforcement officers in relation to your repatriation, for example by refusing to provide documents, delaying in following instructions, or not giving information upon the officers' request.



**Duration of overstaying:** if you have overstayed for a long time before being arrested or surrendered to the ImmD or police.

**Removal from Hong Kong is soon:** if your removal from Hong Kong may happen soon, the ImmD may be more likely to detain you while they make arrangements to remove you.





**Returned after being removed:** if you have previously been deported or removed from Hong Kong and you have returned without the government's permission or a valid visa.

**You do not have an open USM claim:** if you have not made a USM claim, or your USM claim was unsuccessful and you do not have a pending application in the Court of First Instance (the “CFI”) in the High Court. Even if you have an open USM claim, you could still be at a higher risk of detention if the ImmD believes your case will be decided soon.



### REMEMBER

Meeting some of these factors does not mean that you will be automatically detained. Conversely, even if you do not fulfil all of these factors, it does not mean that you have no risk of being detained.

## DID YOU KNOW:

### UPDATED REMOVAL POLICY

Since December 2022, the ImmD have adopted an Updated Removal Policy which allows the ImmD to remove asylum seekers from Hong Kong after their application for judicial review has been refused by the Court of First Instance (the “CFI”) of the High Court. Asylum seekers who fall within this policy may be at a higher risk of being detained, as their removal from Hong Kong may happen soon.



## Your risk of detention may be **lower** if:

**You have no record of absconding or jumping bail:** if you have always followed your bail and reporting requirements, which suggests a lower risk of absconding.



**You have no record of failing to attend an appointment with the authorities:** if you have never missed an appointment with the ImmD or other authorities, such as scheduled interviews and meetings regarding removal or departure from Hong Kong.

**You have strong family connections and dependents:** if you have family or friends in Hong Kong, including people who have a valid Hong Kong ID, or you are the primary carer of children or elderly family members.



**You have an open USM Claim:** if you have a pending USM claim which has not yet been finally determined.

### **Age and/or medical conditions:**

- you are young (under the age of 18);
- you are old;
- you have a disability;
- you have a serious medical or mental condition and require close supervision or medical care.



**You are pregnant:** if you are pregnant.

**You have a guarantor:** if you have a guarantor who is a Hong Kong Permanent Resident.



**You are a torture survivor:** if you have been tortured, or suffered physical or mental harm in the past.

### **HOW TO PROVE PAST TORTURE**

- Write down your story of past torture;
- Psychological, medical or scarring reports describing any mental or physical injuries from torture.



### **REMEMBER**

Even if you meet some of these factors, **ImmD may still detain you.** These factors lowering your risk of detention will be considered together with the factors that increase your risk of detention.



## 1.2 How can I lower my risk of detention?

### Report on time



**If you know in advance** that you cannot report on time, inform the ImmD before your signing date and ask to reschedule your signing.

**Explain why** you need to reschedule your signing, like a hearing or urgent medical appointment, with proof like a Notice of Hearing or an appointment slip.

**If you miss a signing,** contact the ImmD officers as soon as possible to explain why you were unable to attend.

Always provide paperwork to prove why you missed your signing like a doctor note.

This will help show that you are doing everything you can to cooperate.

### Obey recognizance, and follow the law



**Do not** get involved in criminal activities, including working without lawful permission.

By breaking the law, you may be considered a threat to social security, which greatly increases your risk of detention.

If you are unclear whether you are allowed to do certain things, consult a lawyer and get legal advice.

## Be on time with legal proceedings including for USM



If you are an asylum seeker, it is important to file documents and **pursue your USM claim or legal proceedings on time.**

If you miss a deadline to file any appeals or forms, this could negatively affect your USM case and put you at risk of detention.

See **Toolkit 5** for information about navigating the USM and common deadlines for filing documents.

## Keep up-to-date records of your USM case or other legal proceedings

Keep your case documents **organised and up-to-date.** This will help you know where you are in the legal process and whether you face a risk of detention. You can also use your documents to show the ImmD Officers proof of your legal situation.



### HOW TO KEEP YOUR DOCUMENTS UP TO DATE

When you move address to a new home, you need to update every government office or department that you have an open case with.

**Telling the ImmD about your new address is not always enough.**

You may need to write to the Torture Claims Appeal Board, the Legal Aid Department and/or the Courts separately, to tell them of your new address. If you do not update your address with all relevant departments, you could miss important mail and updates about your case.



## Communicate with ImmD Officers



Keep yourself informed with your case progress by communicating with your ImmD officer regularly and maintain a positive relationship. Tell your ImmD officer if any factors reducing the risk of detention apply to you.

## 1.3 How can I prepare for detention, if I am at risk?

The ImmD has broad powers or discretion to detain. Even if you take steps to lower the risk of detention, there is still a chance that the ImmD may decide to detain you. It is therefore a good idea to always be prepared for detention.



Detention can have a big impact on your and your family's lives, especially if you are taken by surprise.

Being prepared helps manage the mental stress, increases the chance of getting released from detention, and reduces the negative impacts detention can have on your family.



There are **three types** of things you should prepare if you are worried you might be detained:

- 1 Emergency Contact List
- 2 Important Documents
- 3 Items for Daily Use

## Prepare and Share an Emergency Contact List

If you are detained, you will not have access to your belongings, including your phone, until you are released. You will only be able to make limited phone calls, using phones at the detention centre.

### Your list of emergency contacts can include:

**Family members and trusted friends:** Make sure you have the full names, phone numbers and ID numbers of your friends and family, so they can be prepared to visit you and help you. Share a copy of your contact list with your family members and trusted friends.

**Lawyers:** Lawyers can provide legal support to you, including making applications to get you released from detention and making complaints against unlawful treatment in detention. Lawyers can visit you at the detention centre, contact the ImmD, and represent you in legal proceedings.

**Non-profit organisations (or NGOs):** If you do not have a lawyer, consider contacting an NGO like Justice Centre Hong Kong or Equal Justice, who can provide basic legal information or assistance. Make sure your caseworker has your written consent to speak to any friends, family, lawyers or government departments on your behalf.

You can fill in the details of your contacts in **Appendix 1.1** and keep a copy of this contact list with you. Make sure you note addresses of your contacts, as you are allowed to write and receive letters in detention.



## Prepare Important Documents

If you are detained, it may be difficult for your friends and family to gather important documents to help you. You should therefore prepare a set of important documents in advance and keep them somewhere safe and accessible.

### These documents may include:

- **Identity documents:** a copy of your passport, recognizance paper, or other identity documents.
- **Legal and case documents:** all legal documents relating to your case, organised and up to date.
- **ISS contract:** showing your ISS reference number.
- **Medical documents:** Doctor's notes or prescription sheets to prove your medical conditions and ensure you get proper care.
- **Family documents:** official documents which prove your family connections in Hong Kong, including birth certificate(s) of your child(ren) and marriage certificate of your spouse.

Keep physical or electronic copies of these documents safe and organised.

If you have electronic copies, you can email copies of these documents to yourself, family members and/or close friends you trust, so they can get help for you more easily.



### **KEY DOCUMENTS FOR ASYLUM SEEKERS**

- Copy of Recognizance Paper (Form 8).
- Any decision papers, including from:
  - Immigration Department (Removal Assessment Section);
  - Torture Claims Appeal Board (TCAB);
  - High Court;
  - Legal Aid Department.
- TCAB Hearing Bundle.
- Removal Order.

## Prepare Items for Daily Use

While the ImmD provides detainees with basic items for daily use, you may want your family or friends to bring you additional supplies, which may include:

- medication;
- clothes;
- underwear;
- towels;
- pens and notebooks;
- hygiene products (for example shampoo, shower gel, toothpaste, toothbrush).

The ImmD has specific requirements on what the items you can receive while in detention are, and all items must be approved by the ImmD officers before they can be provided to a detainee. See **Appendix 1.2** or the ImmD hand-in articles page for details.



### IN DETENTION

There are steps you can take to **stay connected** with your family and friends.

You can add them to your **visitors list**, so that they can visit you in detention. Ask your welfare officer for a request form, and provide your friend/family member's full name and ID number.

Contact your family/friends and inform them of your **place of detention**, **detainee number**, and the **reasons you were detained**, so they can stay informed and involved.

**Use this **Detention Preparation Checklist** to check that you are fully prepared:**

Preparation	Check
<b><u>Before you are detained:</u></b>	
Check you have the latest information about the status of your USM claim, if you are an asylum seeker	<input type="checkbox"/>
<b>Give your family members and/or a trusted friend a copy of:</b>	
<ul style="list-style-type: none"> <li><b>a)</b> an emergency contact list (contact details of family members, friends, lawyers and non-profit organisations)</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li><b>b)</b> your important documents (identity, legal, medical and family documents, ISS contract), organised and up to date</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li><b>c)</b> your home keys (make sure this is allowed under your accommodation rules)</li> </ul>	<input type="checkbox"/>
Prepare an emergency bag with clothes, hygiene products, other essentials you may need in detention	<input type="checkbox"/>
Check you have medication and/or any prescription letter from your doctor	<input type="checkbox"/>
Check your lawyer or NGO caseworker has your written consent to speak with friends/family, other lawyers, and government departments about your case	<input type="checkbox"/>
Share this toolkit with your family members and close friends	<input type="checkbox"/>

## 1.4 Where can I get help, if I am at risk of being detained?

If you need help to figure out your risk of detention, or to prepare for detention, you may wish to contact a lawyer to get legal advice, or non-governmental organisations (“**NGO**”) who can provide legal information and support.



### NON-GOVERNMENTAL ORGANISATIONS (NGOs)

NGOs are non-governmental organisations. Some NGOs can provide free legal or welfare support for different groups at risk of being detained, including asylum seekers or other migrants in Hong Kong.

NGOs **cannot** give legal advice or directly represent people in legal proceedings.

NGOs also **cannot** conduct legal visits. They may only be allowed to conduct 15-minute social visits in detention.

If you need legal advice or are seeking legal representation, you should contact a lawyer.

NGOs can sometimes help you find a lawyer.

JUSTICE | HONG  
CENTRE | KONG

平義社

EQUAL JUSTICE

Government schemes do not pay for general legal advice if you are in immigration detention. You can contact NGOs to ask for help to access legal advice and support.

### To help prepare for detention, you should:

- Make sure your caseworker has all your latest documents;
- Note down the full name, phone number and/or address of your NGO caseworker or lawyer;
- Inform your caseworker or lawyer when your reporting/signing date is.



## Justice Centre Hong Kong (JCHK)



If you need legal support or information, you can contact Justice Centre by calling or writing a letter which contains the following information:

- Your name, country of nationality and detainee number;
- What stage you are at in the USM process, if applicable;
- If you fear returning to your home country and why;
- What help you need;
- Any problems with your detention condition;
- Contact details of any friends or family in Hong Kong that you want us to contact;
- Any documents relevant to your legal issue.

### Contact Details:

If you are in detention and you have a Justice Centre caseworker, you can add their name to your visitor list, in case they need to conduct a social visit.

Justice Centre **cannot** conduct legal visits.

- **Call:** 3109 7359
- **WhatsApp:** 6575 8245
- **Email:** [info@justicecentre.org.hk](mailto:info@justicecentre.org.hk)
- **Address:** Unit 5, 10/F, Hermes Commercial Centre, 4 Hillwood Road, Tsim Sha Tsui (Jordan MTR, Exit D)
- **Website:** [www.justicecentre.org.hk](http://www.justicecentre.org.hk)

**You can make an appointment before visiting our office.**

