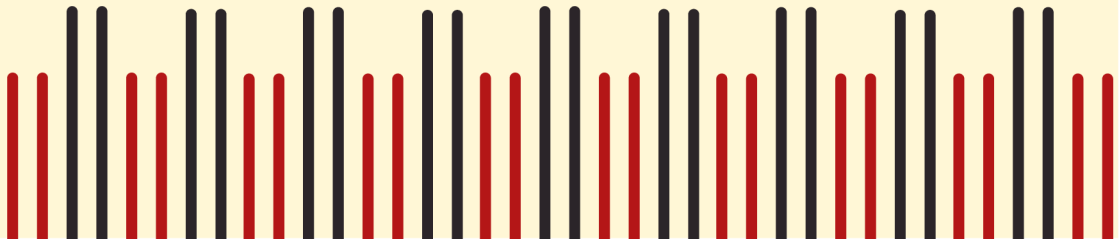


Immigration Detention Legal Self-Help Toolkit

a community guide on immigration detention

TOOLKIT 2: ADDRESSING YOUR 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.

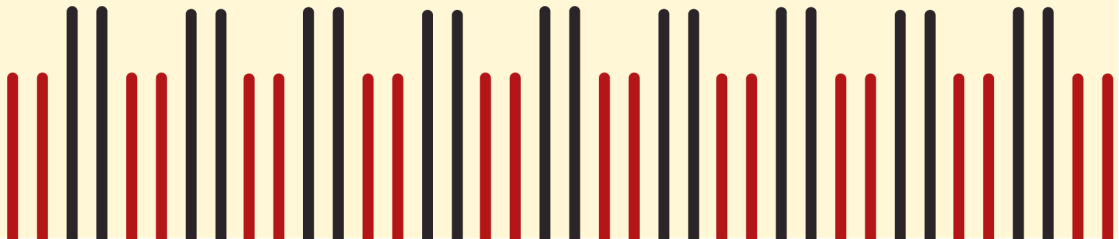


Table of Contents

Overview..... i

Introduction.....

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

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

Scenario 2: I am currently detained.....

2 Introduction..... 6

2.1 Is my detention lawful?..... 6

2.2 How can I get out of detention?..... 11

2.3 Option 1: Release 12

2.4 Option 2: Departure..... 18



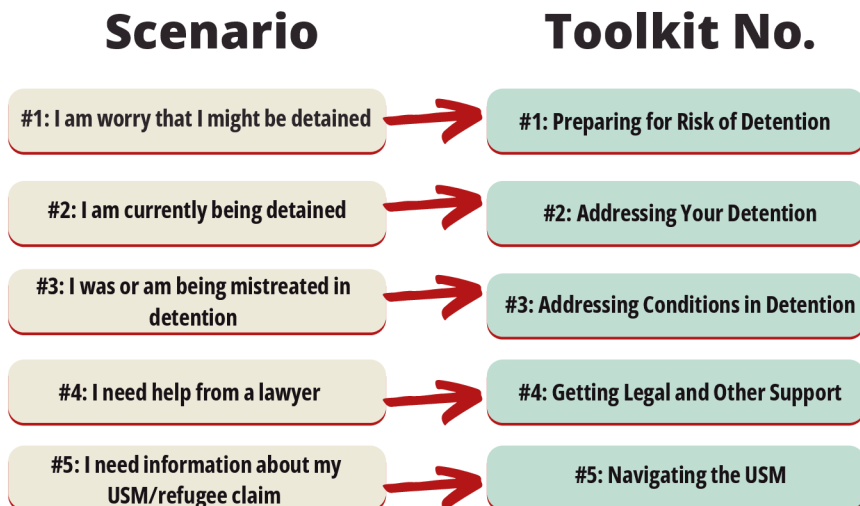
Overview

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:



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
WHAT is happening	A person is detained in an immigration detention facility	A person is detained in a correctional facility
WHO makes the decision?	Director of Immigration/ Immigration Department (the “ImmD”)	A judge
WHY does it happen?	To control immigration and the movement or activities of migrants in Hong Kong	To punish someone for committing an offence
WHEN 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 and have also been convicted of a criminal offence and sentenced to at least 2 years of imprisonment.
What does the order mean?	A Removal Order requires a person to leave Hong Kong, but does not ban them from returning to Hong Kong lawfully in the future.	A Deportation Order requires a person to leave Hong Kong and bans 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 24 hours after receiving the Notice of Removal Order.	File an objection to the Deportation Order with the Chief Secretary of Administration within 14 days .

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.

1

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.



3

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 2:

I AM CURRENTLY DETAINED

2 Introduction

“The right to personal freedom and the concomitant right to be protected from arbitrary arrest or detention form part of the bedrock of the common law.”

- *Mr Justice Ribeiro PJ, Ghulam Rbani v. Secretary for Justice [2014] HKCFA 21; para. 18).*

The Hong Kong Courts have repeatedly found that there is a right to liberty for all. For this reason, it is only lawful to detain you in limited circumstances. This section will help you to understand when detention is lawful and how you can get out of detention.

2.1 Is my detention lawful?

Detention is lawful only if:



- 1 There is **power in law** to detain being properly exercised; and
- 2 It is **reasonable** to do so in the circumstances of your particular case.

2.1.1 How long can I be detained?

The ImmD cannot detain you indefinitely, without good reason.

When you are kept in detention, there are rules about how long you can be held depending on why you are detained. It is important to understand why you have been detained and how long they can keep you to make sure your detention is fair and reasonable.

Most of the law in Hong Kong about the legal power to detain someone for immigration purposes is contained within the Immigration Ordinance (the “**IO**”). If you require a copy of the IO you can either access it online (<https://www.elegislation.gov.hk/hk/cap115>), or if you are detained, seek assistance from the Welfare Officer(s) in your facility.

The table below outlines the reasons you can be detained, the initial and maximum duration, and the relevant sections of the IO.

Reason	Duration		Relevant IO Section
If they want to question and investigate you	Initially: At most 48 hours	Maximum: 7 days	<i>Section 26</i>
If you arrived in Hong Kong unlawfully	Initially: At most 24 hours	Maximum: 48 hours	<i>Section 27</i>
If you have been refused permission to enter Hong Kong	Maximum: 48 hours		<i>Section 32(1)</i>
If the authorities are deciding whether to deport you for public good or if you have been found guilty of an offence punishable by imprisonment for more than or equal to 2 years	Initially: 14 days by warrant	Maximum: 28 days	<i>Section 29</i>
If you fail to follow a deportation order	Initially: 14 days by warrant	Maximum: 28 days	<i>Section 31</i>
If you are suspected of having breached conditions subject to which a deportation order is suspended	Initially: At most 48 hours	Maximum: 30 days	<i>Section 34</i>
If you are an immigrant that the authorities do not want to stay in Hong Kong because you have not been ordinarily resident in Hong Kong for more than or equal to 3 years and they are deciding whether to make a removal order against you	Initially: At most 14 days	Maximum: 28 days	<i>Sections 32(1A) & 32(2)</i>
If the authorities are otherwise deciding whether to make a removal order against you	Initially: At most 7 days	Maximum: 49 days	<i>Sections 32(1A) & 32(2A)</i>

Reason	Duration	Relevant IO Section
If you are subject to a removal order or a deportation order	A “reasonable” time (no specific time limit)	Section 32(3)
If you are pending removal from Hong Kong after being refused permission to enter, or pursuant to a removal order or deportation order	Initially: At most 28 days <i>plus</i> extension(s) of at most 21 days (for each extension)	Section 32(4)
If you are waiting for a final decision on your non-refoulement/torture claim	A “reasonable” time (no specific time limit)	Section 37ZK

Duration: “Initial” and “Maximum”



The **initial** period refers to the duration allowed at the beginning. The ImmD will review the detention and decide whether to extend it. They can extend it a few times, but they **cannot detain someone under one specific reason for more days than the “Maximum” allowed.**

If a decision is made to detain you then this decision should be kept under regular review to determine if your circumstances change. As your circumstances change – including how long you have been detained for – it will change whether it is still lawful to detain you.

The ImmD may **change their reasons for detention** when reviewing a case. If they do that, it may also change how long they can legally keep someone detained.

For example, if you were first detained by ImmD for investigation purposes (*under section 26 of IO*), you can only be detained for this reason for a maximum of 7 days. But on day 7, if the ImmD decide that they may issue a removal order against you and that they need further time to do so, this means they can now detain you for an additional 49 days (*under Sections 32(1A) & 32(2A) of IO*).

2.1.2 When is detention unreasonable?

For asylum claimants who have on-going claims, the ImmD has the power to detain them for a reasonable time (under Section 37ZK). The law does not specify what is a “reasonable” time, hence it can be very difficult to show that the length of time you have been detained is unreasonable.

Every case is different, and you will need to consider your own circumstances.

Here are some scenarios when detention might not be reasonable:

- **Length of your detention:** you have been kept in detention for longer than the duration permitted under the IO (see table in section 2.1.1 above). Being detained for unreasonably long is a valid reason to request release. However, if you have been detained under Section 37ZK of the IO, there is no specific number of days which will or will not be considered “reasonable”. One person detained for around 100 days might be released, while another detained for more than 300 days might not. It depends on your specific circumstances.
- **Obstacles to removal:** there are factors in your situation that will make removing you in a reasonable time difficult. For example:
 - **An on-going asylum claim that is not going to conclude soon:** ImmD cannot remove asylum claimants when they have an on-going claim, because the ImmD are assessing whether the applicants have asylum needs. This means ImmD cannot remove you in near future and therefore cannot detain you for that purpose, if your claim is not concluding soon. But note that once the Court of First Instance has refused your application, any further proceedings (e.g., your appeal to the Court of Appeal etc.) will no longer stop the ImmD from removing you.
 - **Lack of diligence, speed or effectiveness of the ImmD’s attempts to remove you.** Please note that your refusal to cooperate with removal efforts (e.g. refusing to sign relevant documents, refusing to attend appointments to secure travel documents, or refusing to board a flight) may be used to justify longer periods of detention, and may not help to secure your release.
 - **Delays or issues with obtaining a valid travel document.** Please note that your refusal to cooperate with removal efforts may be used to justify longer periods of detention, and may not help to secure your release.

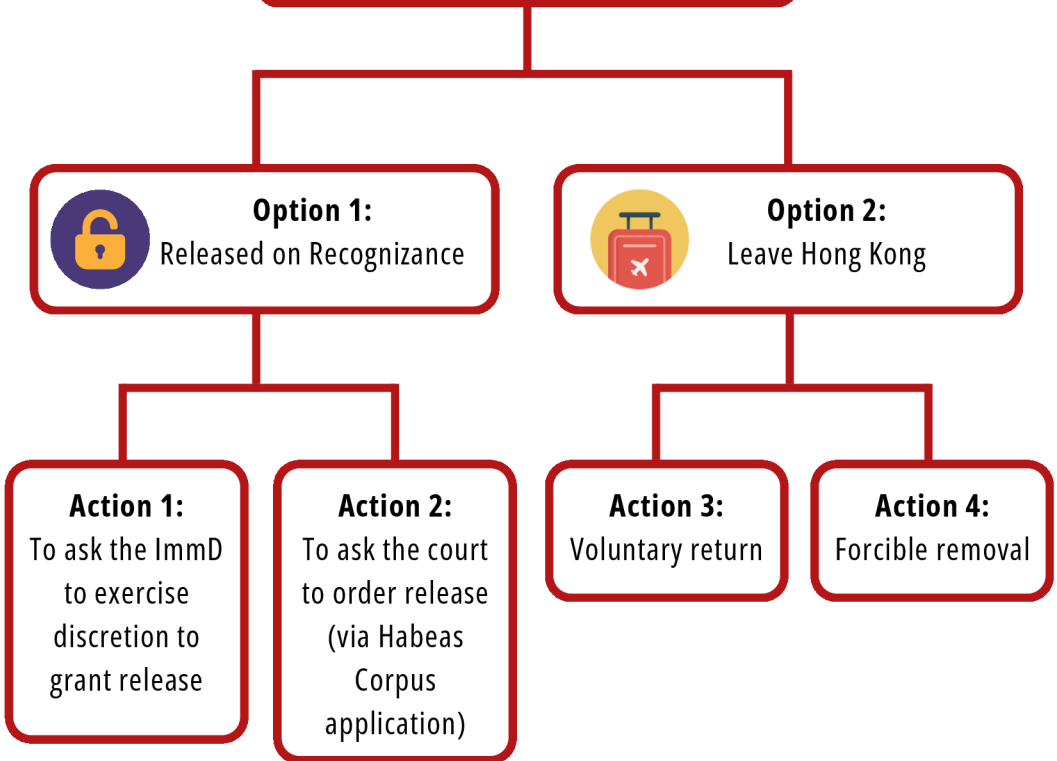
- **Procedural issues: for example:** **(1)** the decision to detain you has not been regularly reviewed or has not been reviewed after your circumstances have changed (e.g. you have just made an asylum claim); **(2)** the documents used against you were unfairly obtained; **(3)** you have not been properly informed of the reasons for your detention; **(4)** an interpreter was not arranged to explain key information to you, meaning you were unable to understand it; **(5)** a written copy of the detention policy was not provided to you; **(6)** the ImmD was inconsistent in determining whether you would pose a threat or security risk to the community if released.
- **Medical condition/ treatment:** your medical condition or treatment required means that you are not fit for detention. For example: **(1)** the ImmD did not consider your medical condition when deciding whether to detain you; **(2)** you have not been provided adequate medical care during detention; **(3)** you have suffered harm whilst in detention. Please note that having non-life-threatening conditions, such as diabetes or high blood pressure, may not be a strong reason to end detention, because adequate medical care is normally provided in detention.
- **Other personal circumstances and vulnerabilities:** for example, you are: **(1)** under 18; **(2)** elderly and require medical treatment; **(3)** pregnant; **(4)** physically disabled; **(5)** a survivor of torture.
- **Extremely poor treatment and conditions in detention:** for example **(1)** unlawful use of handcuffing or other restraints; **(2)** unlawful use of solitary confinement; **(3)** unlawful use of bodily searches; **(4)** frequent transfers between detention centres without notice; **(5)** being treated in any other extremely poor manner, amounting to cruel, inhuman or degrading treatment or punishment.
- **Local connections or guarantors:** you have a fixed place to live, living with family, and/or the ability to provide a guarantor.
- **Proof of your identity:** there are no doubts about your identity or nationality.
- **History of cooperation and law-abiding behaviours:** you have cooperated with the ImmD, have a law-abiding history in Hong Kong, and have not participated in criminal activity.

A lawyer might be able to help you to consider whether your detention is reasonable.

2.2 How can I get out of detention?

Detention can end in two ways: you can either be released on recognizance, or you can leave Hong Kong.

HOW TO END DETENTION?



2.3 Option 1: Release

If you are detained but want to be released and remain in Hong Kong, you can:

- 1 Make a request to the **ImmD** to release you; or
- 2 Make an application to the **High Court** for an order to release you.



Although you can take both actions at the same time, it will be better to make a request to the ImmD first (which is easier). This will strengthen any later application to the High Court, as it shows that you have explored other options before starting legal proceedings.

2.3.1. Action 1: Ask the ImmD to review your case

The ImmD is required to review your detention regularly, to make sure it remains lawful.

You can write to the ImmD to:

- 1 Ask them to review your detention, and
- 2 Inform them of new/strong reasons you should be released.

However, note that the ImmD is **not** under any obligation to review your detention upon your request.

Even if your detention is reviewed, the ImmD may decide to keep you in detention. At the end of each review, the ImmD will issue a Notice of Detention (see [Appendix 2.1](#)), stating their decision and reasons for your ongoing detention (together with other information, for example the name and details of the officers involved, and the time and the date of the review).

Your request to be released is only likely to be granted if you have strong information which shows that you should not be detained according to the rules in the IO (see table in [Section 2.1.1](#) above).

How can I write the request letter?

There is no set format that your request letter must follow. You can start by following the tips below:

Tip 1:

Read the **Notice of Detention!** Understand the reasons for your detention so that you can explain to the ImmD why these reasons are:

1. Not valid;
2. Do not reflect the most recent circumstances; or
3. Have violated the law.

Review the table in **Section 2.1.1** above for the reasons that the ImmD can lawfully detain you, and how your detention can become unlawful. If you find that the ImmD is detaining you unlawfully, add an explanation to the request letter. The most common scenarios of unlawful detention are:

- you are detained for invalid reasons;
- the ImmD did not consider relevant factors that favor you;
- the detention has continued for too long; or
- you are treated in an unlawful manner in detention.

Tip 2:

Review the list of reasons when detention might not be reasonable in **section 2.1.2** above, and consider if any apply to you. Explain any compelling reasons you think you should be released.

Gather documents to prove why you should not be detained any longer. For example, documents which show that:

- You have been detained for more than what is permitted under the relevant IO sections which you are being detained under [**Length of your detention**].
- Your asylum claim is still being processed by either the ImmD or TCAB, or that you have not yet had a decision from the Court of First Instance (“**CFI**”). At the same time, your Notice of Detention indicates that you are detained under the reasons of “You have no outstanding case impending removal,” “No outstanding proceedings,” or “No sufficient reasons to believe the outstanding proceedings cannot be concluded in reasonable time” [**Obstacles to removal**].

- Your life-threatening medical condition is not being properly treated in detention, and as a result your health is significantly deteriorating (e.g. a formal diagnosis, prescription or result of medical examination from doctors, hospitals or clinics in relation to both physical and mental issues) [**Medical condition/treatment**].
- You are a survivor of torture, especially if these circumstances have never been mentioned to the ImmD (e.g. visible scarring, medical reports) [**Other personal circumstances and vulnerabilities**].
- You have been isolated from other detainees and/or confined in isolation when you do not pose a risk of safety to others or yourself (e.g. a written record you have maintained, noting mistreatment you experienced in detention) [**Unlawful treatment**].
- You have a fixed place to live, with family (e.g. a letter from your spouse) [**Local connections or guarantors**].
- You can prove your identity (e.g. your passport) [**Proof of your identity**].
- You have no criminal record, other than overstaying to make a claim for asylum (e.g. your visa showing you entered Hong Kong on your own passport with valid paperwork) [**Cooperation and law-abiding behaviours**].

2.3.2 Action 2: Ask the court to order a release

The High Court can look at the way decisions have been made by other courts and authorities (including the ImmD) and correct any mistakes or failures. The High Court is made up of the Court of First Instance (“**CFI**”) and the Court of Appeal (“**CoA**”). You can ask the **CFI** to decide whether it is unlawful for the ImmD to continue to detain you. This is known as an application for a writ of habeas corpus (a “**habeas corpus application**”).

How do I make a habeas corpus application?

To make a habeas corpus application, you need to complete and submit a **Form 87** and **an affidavit** setting out the relevant facts to the CFI. If the court decides that the detention is not lawful, it can order the ImmD to release you immediately.



A habeas corpus application is a complicated legal process, and it is not easy to take legal action as a detainee. It is important to try to find a lawyer who can help you.

If you do not have a lawyer, please see [Toolkit 4](#) on how you can get legal aid or support.

What will my lawyer need?

Provide all information that you used when you wrote to the ImmD to ask them to review your case (see **Section 2.3.1** above), as well as any new letters or documents from the ImmD about your detention.

You can ask your lawyer to help you to get documents which you do not have, and they can also request **Arrest/Detention Sheets** kept by detention facilities, which would detail everything that took place during your detention.

Welfare Officers in detention facilities can help you to get the following forms:

- Application for legal aid (see **Appendix 2.2**)
- Form 87 of the High Court (see **Appendix 2.3**)
- An affidavit, in which will need to set out the relevant facts (see **Appendix 2.4**)



What will happen after submitting a habeas corpus application?

Once you submit your habeas corpus application, you will need to attend a hearing in the CFI.

If your application is granted, the CFI may make an order for your immediate release. Once released, you should not be detained again for the same or similar reasons unless there have been important changes in the relevant circumstances.



If your application is refused, you can appeal to the Court of Appeal (“**CoA**”). This is a complicated legal process. It is important to try to find a lawyer who can help you.

If you do not have a lawyer, please see [Toolkit 4](#) for information about getting legal aid or support.

2.3.3 Released on Recognizance

If you are released from detention, either because of a decision by the ImmD or a court order, you may be required to enter into a recognizance arrangement with the ImmD.

These arrangements are decided by Immigration Officer on a case-specific basis, but normally include:

- Paying the ImmD a sum of a few thousand Hong Kong dollars (this may be suspended in certain cases).
- Reporting to the ImmD regularly (every 1 - 4 weeks).
- Living at a specific address and informing the ImmD if it is changed.
- Having a guarantor/surety who pays the government a specified amount of money to facilitate the release of the detainee as set out in the recognizance form.
- Not committing any crimes or any immigration offences in Hong Kong.
- Not leaving Hong Kong without approval of and assistance from the ImmD.
- Not working.

If you are released on recognizance, you will receive a **recognizance paper** (see an example at **Appendix 2.5**).

The recognizance paper is an important document. It is proof that the ImmD has agreed not to detain you. But it is not a visa, proof of permission to remain or an identity document. It does not confirm any legal status or rights in Hong Kong.



REMEMBER

If you break any law or immigration rules, commit any crime, fail to report or breach any other recognizance conditions, the ImmD can detain you again. Any sum of money you paid will not be returned to you, and you can be charged with additional offences for your actions.

2.4 Option 2: Departure

Immigration detention can be ended by departing from Hong Kong and returning to your home country.

Two ways you can leave Hong Kong are:

- 1 **Voluntary return:** you make a voluntary choice to leave Hong Kong.
- 2 **Forcible removal/deportation:** you are unwilling to leave, therefore the ImmD enforces the removal/deportation order against you.

2.4.1 Action 3: Voluntary Return

Should I return voluntarily?

Voluntary return means you decide to go back to your home country *with enough information and without being coerced or pressured* to leave.

You should not make such a decision to leave Hong Kong if you feel unsure or pressured. Take the time to think about your options carefully, ask for advice and opinions from people who have information (e.g., NGOs, lawyers) before making the decision.

You should only think about voluntary return if:

- 1 There are strong reasons for you to return.
- 2 The benefit of returning is greater than remaining in Hong Kong.
- 3 It is safe for you to return.

Reasons you **may** consider returning voluntarily:

- **Asylum considerations:** It is now safe for you to return. You were seeking asylum, but:
 - your home country's conditions have fundamentally and/or permanently changed so that the fears that caused you to flee no longer endanger you now or in the future;
 - your home country government can protect you from the danger, or you are willing to seek protection from that government; or
 - you can find a safe location to live in your home country (even if that is not in your home city).
- **Personal reasons:** You have a strong personal reason to return (family unity, health considerations, emotional benefits, etc.). Returning to your home country may offer you a sense of familiarity and a more supportive network.
- **No prospect to remain in Hong Kong lawfully:** You are not likely to be allowed to remain in Hong Kong lawfully, particularly if you have been detained for a long time and/or your applications to remain in Hong Kong have been unsuccessful.
- **No pathway to relocate to another country:** There are no other possible immigration or asylum options.
- **Dignity:** Voluntary return can offer dignity and ownership over your decision to return. You can discuss with the ImmD what you want to accomplish, the timeline, your vulnerabilities (e.g., as an unaccompanied child, elderly or woman, or any disability or chronic illness), the specific arrangements of your return, and not being arbitrarily separated from your family members. You might be able to request certain accommodations from the ImmD.
- **Plan for your future:** By leaving voluntarily, you will have a say in the timeline of your return, and may have the time and opportunity to obtain enough information and assistance to plan and prepare yourself for your future life.
- **Emotionally prepared:** Returning is an emotional as well as a physical journey. By having more control over the process, you can better prepare yourself and be able to adapt to your new life.



Reasons you **may not** consider returning voluntarily:

- **Physical safety concerns:** People in your home country who can hurt you still intend and will be able to hurt you, and you have not been able to identify a plan where you can live safely. You should only return if you know the threats towards you are gone permanently, not temporarily.
- **Legal Safety Concerns:**
 - The law in your country does not adequately protect your fundamental human rights.
 - Your country refused to accept you, or you or your family do not have a secure legal status in your home country, or you are unable to enjoy all rights of being a national.
 - For example, if you have no proper personal and family paperwork or if you do not have a valid nationality, you may be separated from your family due to unresolved visa or custody issues.
- **Material Safety Concerns:**
 - There is no possible way for you to sustain yourself in your home country. You would not be able to find adequate support, and you are likely to be destitute and homeless if returned.
 - You would not be able to access essential medical care.
 - If you have been trafficked in the past, you are worried you would be trafficked again.
- **Hard to come back:** Once you leave Hong Kong, it will be very difficult for you to be allowed to come to Hong Kong again (unless you have very strong reasons to do so).
- **Your asylum claim will be withdrawn:** Your asylum claims in Hong Kong will be considered withdrawn once you leave. The fact that you have returned to your home country would also lower your chances of being recognised as a refugee anywhere in the future.

Other considerations

Family and children:

Members of your family may not be in the same situation as you are. It is important to **consider each family member separately** (including children) and evaluate whether or not it will be safe for each person to return. Do not ask for family members to leave Hong Kong without first assessing their individual circumstances.



If you and your family members have different nationalities and/or immigration status, returning to home country may present a risk that the family will be separated. It is important to think through and make plans accordingly, and seek assistance when you are considering return.

If there is any contention to child custody or right to access to the children between you and your former spouse/other parent of your children, please seek appropriate legal assistance and make sure the matter is settled before leaving.

Returning is a personal decision. While parents can make the decision for their minor children, the choice of adult children aged 18 or over should be respected.

Choosing to return to your home country voluntarily may allow you to start a new life, provided you feel empowered and free to make a meaningful, safe choice.

Once you leave Hong Kong after breaching immigration rules (including by overstaying to make an asylum claim), it is very difficult to be granted any Hong Kong visa in the future. This means that it is highly unlikely that you will be allowed to enter Hong Kong again. It may also impact your visa applications, or asylum claims in other countries in the future.

Checklist 1: Should I Voluntarily Return?

This checklist is designed to help with your decision about whether to return voluntarily. If relevant, remember to consider all members of your family who would be returning separately.

Please put a check in the box if the statement applies to you, and do the same for any family members who may leave with you. The more boxes you check, the option of voluntary return would be more appropriate for you.

A. Safety	
<input type="checkbox"/>	<p>It is legally safe for me to return home and this is unlikely to change</p> <p><i>Consider whether you will be protected by laws and that you will be able to access your rights. Will you have access to identity documents and nationality? Are there any legal barriers to you entering the country? Make sure that any relevant changes are definitive and permanent, and they mean that you are no longer at risk of harm.</i></p> <p>Important Note: If this item does not apply to you, voluntary return is NOT suitable for you and you are best advised to seek legal information and assistance.</p>
<input type="checkbox"/>	<p>It is physically and materially safe for me to return home and this is unlikely to change</p> <p><i>This can be because the previous threat against you is no longer present, or the situation has improved. Consider whether you will be physically safe from violence, conflict or attacks. Will you be mistreated on arrest or in detention? Will you be able to access essential healthcare and treatment? Will you have a safe place to live? Will you be destitute or will you have access to basic necessities? Will you be able to lawfully access land, property, jobs, and education? Make sure that any relevant changes are definitive and permanent, and they mean that you are no longer at risk of harm.</i></p> <p>Important Note: If this item does not apply to you, voluntary return is NOT suitable for you and you are best advised to seek legal information and assistance.</p>
B. Personal Reasons	
<input type="checkbox"/>	I will be able to live a more dignified life in my home country
<input type="checkbox"/>	I will be able to have a better future in my home country

C. Asylum Procedures

☐

My asylum claim is not likely to succeed.

☐

My asylum claim in Hong Kong was refused and my application for judicial review has been refused by the Court of First Instance

☐

There has not been a significant change of circumstances since my asylum claim was refused, and so any subsequent claim is not likely to succeed.

☐

I do not have plans to continue my asylum claim in Hong Kong or to make a new asylum application in another country

Withdrawing your asylum claim and returning to your home country lowers your chances of being recognised as a refugee anywhere in the future.

D. Immigration Detention and Removal

☐

I am being detained with no reasonable chance of being released

☐

I am likely to be detained and/or forcibly removed/deported and I would like to avoid that

E. Other Immigration Considerations

☐

I am unlikely to be granted immigration status (a visa) in Hong Kong

☐

I understand that once I leave, I may not be able to re-enter Hong Kong in the future

F. Family

☐

I have discussed my return with my family

☐

I do not have any on-going family related legal matters and I have no concerns about my legal parental rights

☐

I have a good plan on how to take care of my minor children/other dependents once I leave Hong Kong



IMPORTANT NOTE

If your home country is not safe, you should **NOT** consider voluntary return even if other items of the check list apply to you. You should seek legal information and assistance about your situation.



If you are detained, the Immigration Officers may ask you whether you would like to return. You may then be given a written agreement that includes statements about your willingness to return to your home country and/or interpretation/translation.

Only sign documents that you understand.

Even without being asked, you can also **notify/request** the immigration officers that you would like to return, either by a letter or verbally, and you may then be asked to fill in a formal request form and sign the relevant statements.

If you signed the relevant documents, your return will then be arranged by the ImmD. You will later be approached by Immigration Officers to discuss the arrangements.

Voluntary Return: How does it work?



1

Step 1: Make a Voluntary Return Request

If you are not allowed to remain in Hong Kong, you can ask to return to your home country, whether you are detained or not. As an asylum seeker, you can do so at *any stage* of your claim. You can do so in writing or by speaking to an Immigration Officer.

When making a written or oral request for voluntary return, you can consider including the following information in your request:

- Who will be departing (you or the whole family)?
- How and why do you wish to leave?
- What is your planned timescale for departure?
- What support and assistance do you require from the ImmD?
- Are you acting on behalf of family members?
- Can you purchase the flight ticket by yourself?
- Is your passport or travel document valid?

2

Step 2: Return Procedures

Once you have confirmed you would like to return, the ImmD will take the following steps:

- Liaise with your home country's consulate to verify your identity (and your family members' identities, if applicable) and arrange for travel documents, including applying for new passport(s) if expired.
- Close on-going immigration and asylum matters.
- Seek legal advice on other on-going legal matters (e.g., criminal or family matters) with other authorities (e.g., police, or courts).
- Arrange flights.

The return process can take approximately three to six months, depending on individual circumstances. Delays may be caused by, for example, verifying your identity or on-going legal matters.

You will be informed of the time and date of the return flight. If you are not in detention, you would be instructed to go to the airport at a certain time with your travel documents and be escorted to the flight. If you are detained, you would be directly escorted to your flight.

Checklist 2: Am I Ready to Return?

For those who have decided to return voluntarily, this checklist is designed to help you think through whether you are ready to return, or what further steps you should take to prepare.

Please put a check in the box if the statement applies to you, and do the same for any family members who may leave with you. The more boxes you check, the more ready you are to return. For the boxes you did not check, you should think them through and action on any preparation you need to make.

A. The Return Process	
<input type="checkbox"/>	Information about my return has been provided in a way I understand, and I have been provided with interpretation where necessary
<input type="checkbox"/>	I am aware of the steps I need to take to arrange my return, including how to withdraw my asylum claim (if relevant), and engage with the Immigration Department and other government officials
<input type="checkbox"/>	Have I provided consent to my personal data being used or shared with authorities in my home country?
<input type="checkbox"/>	Have I specifically informed the ImmD if I have concerns about sharing my personal data with any specific organisation or group of people?
<input type="checkbox"/>	I understand the consequences of withdrawing my asylum claim
<input type="checkbox"/>	I have the appropriate documents relevant to my legal status and/or nationality in my home country, and if not, I am aware of how to obtain them <i>This may include passport, identity documents and birth certificates</i>
<input type="checkbox"/>	If I have other ongoing legal issues (e.g. criminal, civil, family), I understand how I can pursue them from outside Hong Kong
<input type="checkbox"/>	If my flight is not a direct flight to my home country, I am aware of any visa or other requirements in relation to the transit country
B: Safety	
<input type="checkbox"/>	It is legally safe for me to return to my home country and this is unlikely to change (see Checklist 1)

<input type="checkbox"/>	It is physically safe for me to return to my home country and this is unlikely to change (see Checklist 1)
<input type="checkbox"/>	It is materially safe for me to return to my home country and this is unlikely to change (see Checklist 1)
C. Health	
<input type="checkbox"/>	<p>I understand about any necessary health screenings, to make sure that I am fit to travel.</p> <p><i>Please note that they cannot do mandatory testing for HIV/AIDS.</i></p>
<input type="checkbox"/>	I will be able to access sufficient healthcare and treatment in my home country
<input type="checkbox"/>	I am up to date with relevant vaccinations
D. Family Unity	
<input type="checkbox"/>	I have discussed my return with my family
<input type="checkbox"/>	Each family member has access to nationality or rights of residence in the country of return
<input type="checkbox"/>	I do not have any on-going family related legal matters and I have no concerns about my legal parental rights
<input type="checkbox"/>	I have a good plan on how to take care of my minor children/ other dependents once I leave Hong Kong
E. Education	
<input type="checkbox"/>	I have all necessary education records to ensure organisations in my home country can recognise any education/training received in Hong Kong, and my family and I can pursue further studies upon returning to my home country
<input type="checkbox"/>	My children can and will enrol in school upon return to my home country, and I know how to help them access schooling

F. Reintegration

☐

I am aware of international organisations, local charities, or other organisations in my home country which could help me once I return, which I can/have reached out to

☐

I am not aware of any major obstacles to my reintegration

G. Personal Belongings

☐

I have sufficient personal belongings to take with me

☐

I know how I am going to pack and label my personal belongings

☐

I understand the restrictions on the weight or volume of personal belongings that can be brought with me

☐

I have made plans for any personal belongings I cannot take with me, including any pets

2.4.2 Action 4: Forcible Removal/Deportation

What is Forcible Removal/Deportation?

Forced return is when you are required to leave Hong Kong without your consent, usually with a removal or deportation order.



Even when you are forced to leave, you can choose to cooperate with the authorities. The more cooperative you are, the more dignified you might feel in the return process, and the more likely you will be able to explain to the ImmD about how and when you want to return.

What can I do if I don't want to leave?



If you are being forced to leave Hong Kong but have valid reasons as to why you cannot return to your home country (e.g., significant safety concerns which have not yet been properly considered by the ImmD), you should reach out for legal assistance from lawyers or NGOs (see [Toolkit 4](#) for more details).

