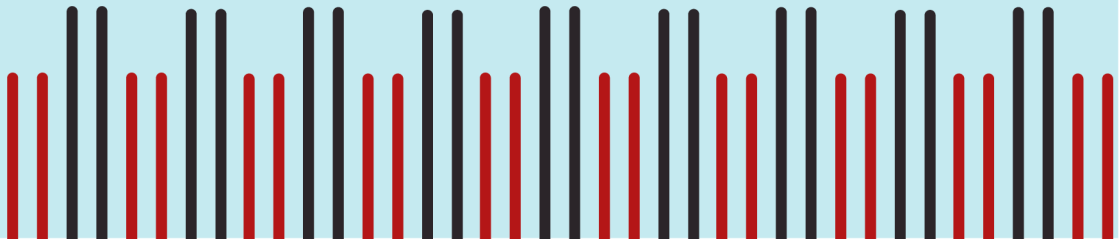


# Immigration Detention Legal Self-Help Toolkit

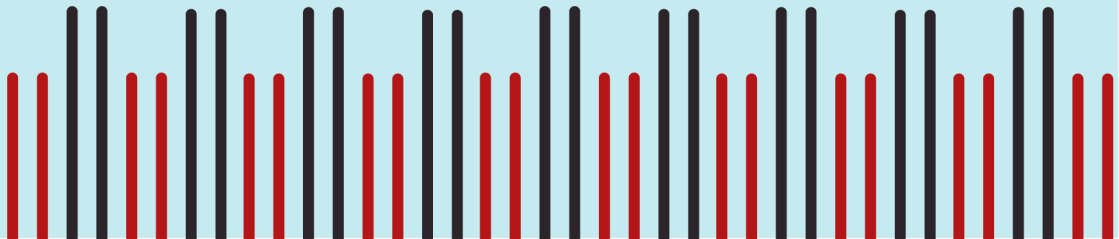
a community guide on immigration detention

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## TOOLKIT 4: GETTING LEGAL HELP



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.



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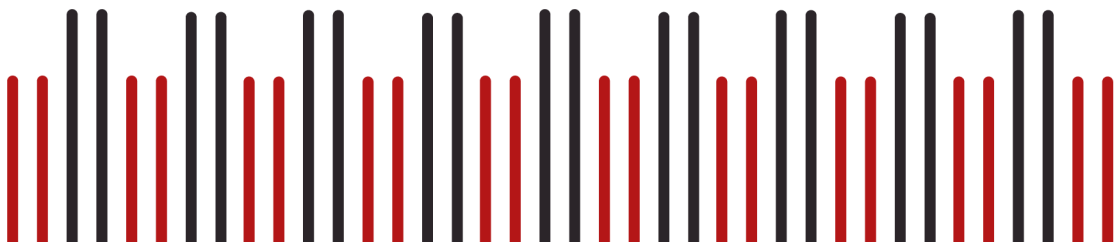
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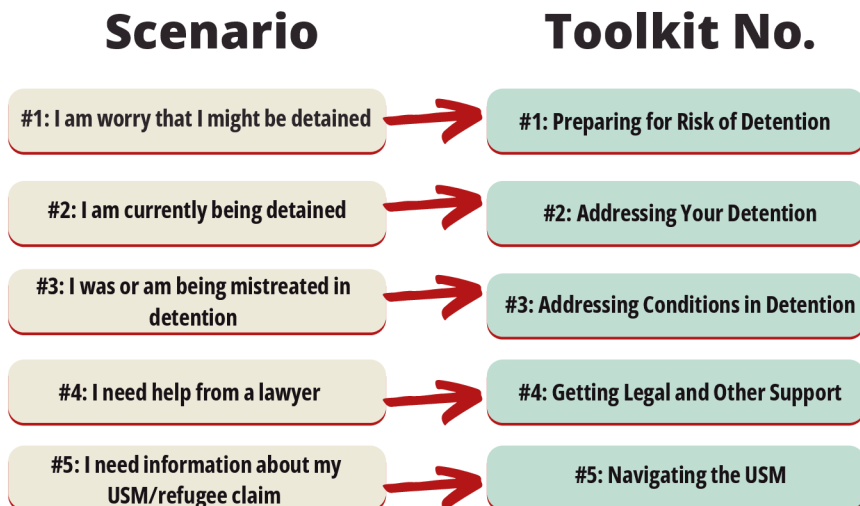
# Overview

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
<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 for 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 ImmD are deciding whether to issue a deportation order (section 29) or a removal order (sections 32(1A), 32(2) & 32(2A)) against you.



- **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 finished.

- **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 have not yet made 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, or it does not have a very good chance of success;
- 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.

# LEGAL ADVICE AND ASSISTANCE

## 4 Introduction

If you are thinking about taking legal action, you should seek legal advice. This section explains where you can go for legal support.

- If you are in detention, speak to your Welfare Officer in your detention centre as soon as possible, who can assist you with different services (including applying for legal aid).
- If you already have a lawyer, inform him/her of your situation as soon as possible.
- If you have limited resources, you should consider the following options:

### 4.1 Legal Support

#### 4.1.1 Free Legal Support

	Duty Lawyer Service Legal Assistance Scheme for Non- refoulement Claimants/Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants	Legal Aid Scheme	Free Legal Advice Scheme	The Resource Centre for Unrepresented Litigants
Habeas Corpus		✓	✓	✓
Civil Claims		✓	✓	✓
Non-refoulement claim  (ImmD and TCAB stage)	✓			
Non-refoulement claim  (Judicial Review)		✓	✓	✓

# Legal Aid Scheme

Funded by the government, the Legal Aid Department provides legal assistance and representation to people who cannot afford a lawyer.



**Legal Aid Department**

The Government of the Hong Kong Special Administrative Region

## Type of Case

Legal aid is available for:

- Unlawful detention cases,
- Judicial review applications regarding non-refoulement claims, and
- Other criminal, civil, or family cases.

## Eligibility

To qualify for legal aid:

- Your case must have a **reasonable chance of success** (the merits test).



- For detention cases: Make sure to keep records of documents and your treatment during detention, so that you can explain why your detention is unlawful or how you have been mistreated.

- For judicial review proceedings: Legal aid will generally be granted if the court has given or is likely to give permission (leave).

- Your financial resources **must be less than HK\$440,800** (the means test).



- If you have more than HK\$55,100, you may be required to pay a contribution; if you have less than HK\$55,100, you might not need to cover any cost.
- The contribution ranges from HK\$1,102 to HK\$110,200 depending on your financial resources.

You do not need to be a Hong Kong resident.


## How to apply

To apply for legal aid:

- If you are in detention: ask your Welfare Officer for an application form (see Appendix 4.1).
- If you are **not in detention**:
  - If it is a non-urgent case **and** you are over 18 years old, you can apply **online** at (<https://www.lad.gov.hk/eng/public/home.html>)
  - Otherwise, you can apply **in person** at one of the Legal Aid Department offices:


### Headquarters

9/F and 24/F to 27/F  
Queensway Government Offices  
66 Queensway  
Hong Kong

 Phone no.: **2867 3309**

### Kowloon Branch Office

G/F and 3/F  
Mongkok Government Offices  
30 Luen Wan Street  
Mong Kok  
Kowloon

 Phone no.: **2399 2328**

You will usually receive a decision within three months of your application.

## After your application

If you are granted Legal Aid:



- Read through the terms of the offer.
- If you agree, sign the terms **within 14 days**.


If your application for Legal Aid is refused:



- You can appeal to the Registrar of the High Court **within 14 days**.

### **FOR MORE INFORMATION**

 Website: <https://www.lad.gov.hk/>

 Phone: **2537 7677**

 Email: [ladinfo@lad.gov.hk](mailto:ladinfo@lad.gov.hk)

# Free Legal Advice Scheme (FLAS)

Operated by the Duty Lawyer Service, the Free Legal Advice Scheme gives one-off, preliminary legal advice to people about their legal position.

## Type of case

Volunteer lawyers under the FLAS can provide advice on various legal issues, including civil claims for compensation following unlawful detention.

However, it does not cover:

- Cases with complex legal issues, or
- Hypothetical questions or repetitive inquiries



There is very limited follow-up available beyond the 20-30 minute appointment.

## Eligibility

There is no financial test to qualify for advice under the FLAS, however, you do need to have a referral from one of the designated referral agencies (see details here: <http://www.dutylawyer.org.hk/en/free/referral.htm>)

You cannot apply if you have already secured alternative legal representation.

## How to apply

To apply for an appointment under the FLAS, you need to attend to one of the designated agencies to secure a referral. An appointment with a volunteer lawyer then can be made.

The average wait time to meet a volunteer lawyer is within eight weeks. If your case is urgent, the FLAS will try to arrange for an appointment in two weeks.

### FOR MORE INFORMATION

🌐 Website: <http://www.dutylawyer.org.hk/en/free/free.asp>

📞 Phone: 2526 5969

✉ Email: [go@dutylawyer.org.hk](mailto:go@dutylawyer.org.hk)

# The Resource Centre for Unrepresented Litigants (the “Resource Centre”)

The Resource Centre helps people who are in or about to start civil proceedings in the High Court or the District Court.

## **Type of cases**

Support is available for various legal issues, including civil claims for compensation following unlawful detention.

The Resource Centre can only provide procedural guidance and support, for example:

- Oaths and declaration services for unrepresented litigants who need affidavits to prepare their cases,
- Guidance on completing forms and submission of court bundles,
- Computer terminals to access information from the Judiciary or other legal service providers,
- Databases of questions frequently asked by unrepresented litigants
- Brochures broadly outlining civil proceedings in the High Court and the District Court,
- Sample court forms,
- Videos on court procedures,
- A writing area and self-service photo-copying machine.

**They cannot provide legal advice or make any comments about the merits of your case.**


## **How to apply**

To seek support from the Resource Centre, you need to attend in person.

**Address:** Room LG105, Lower Ground Floor 1, High Court Building  
38 Queensway, Hong Kong

### **FOR MORE INFORMATION**

 Website: <https://rcul.judiciary.hk/>

 Phone: 2825 0586

 Email: [inquiryrc@judiciary.hk](mailto:inquiryrc@judiciary.hk)



# Duty Lawyer Service Legal Assistance Scheme for Non-refoulement Claimants (the “DLS”) / Pilot Scheme for Provision of Publicly-Funded Legal Assistance for Non-refoulement Claimants (the “Pilot Scheme”)

The DLS and Pilot Scheme provide legal representation for people making claims for non-refoulement protection in Hong Kong.

## Type of cases

Suitable for **non-refoulement claimants**.

- Helps with:
  - Completing and submitting your non-refoulement claim form.
  - Advising on your legal rights and non-refoulement claim procedures.
  - Representing you in interviews and oral hearings.
  - Assisting with appeals to the TCAB.
  - Assisting with subsequent claims.
  - Making a request to re-open your non-refoulement claim.
  - Preparing an objection notice against ImmD’s revocation of your refugee status.



## Eligibility

To qualify for representation under the DLS or Pilot Scheme, you must:

- Have made a **claim for non-refoulement protection**, and
- Make a statutory declaration that **you do not have sufficient financial resources** to engage your own lawyer.

## How to apply

Once you make your non-refoulement claim with the ImmD, you will be referred to either the Duty Lawyer Service or the Pilot Scheme. A lawyer will be assigned to your case.

### **FOR MORE INFORMATION: DUTY LAWYER SERVICE**

Website: <http://www.dutylawyer.org.hk/en/torture/torture.asp>

Phone: 2646 8211

Email: [go@dutylawyer.org.hk](mailto:go@dutylawyer.org.hk)

### **FOR MORE INFORMATION: PILOT SCHEME**

Website: [https://www.legco.gov.hk/yr16-17/english/hc/sub\\_com/hs54/papers/hs5420190115cb2-581-1-e.pdf](https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420190115cb2-581-1-e.pdf)

Phone: 2646 8211

Email: [sbeng@sb.gov.hk](mailto:sbeng@sb.gov.hk)

## 4.1.2 Private Legal Representation

If you are not able to secure free legal representation, you may wish to consider instructing a lawyer privately. Finding good quality legal representation can be a real challenge.

It is important to make sure that you are clear about what you need a lawyer for, what they can do for you, and how you will pay them.

### Finding a Legal Representative

It is crucial to find a private lawyer with expertise in immigration and detention matters. Look for lawyers who understand the special rules and procedures that apply to detainees and have experience working with individuals in immigration detention.



To find a lawyer, you can search the law society's website:

<https://www.hklawsoc.org.hk/en/Serve-the-Public/The-Law-List/Members-with-Practising-Certificate>.

You may also wish to ask for recommendations from NGOs or friends.

### 4.1.3 What Makes a Good Lawyer?

Lawyers must maintain high standards. If they do not, then they could be in breach of their professional duties.

#### Legal Expertise

- Your lawyer should have a very good understanding of relevant immigration, asylum, and detention laws.
- They should be able to give you comprehensive legal advice in a way which you understand.
- They should explain the strengths and weaknesses of your case.
- They should help you to prepare necessary documentation and represent you during legal proceedings with all relevant departments.



#### Communication and Support



- Your lawyer should clearly explain what is happening on your case and keep you informed.
- Your lawyer should treat you with fairness, openness, and loyalty.
- They should communicate effectively throughout the legal process.
- They should keep information about your case private and confidential.
- They should provide you with copies of your documents if you ask for it

#### Clear Terms and Conditions

- Your lawyer should explain their fees and any other payments you will be expected to make before they start working on your case.
- They should also be transparent about alternative sources of support, and the availability of legal aid, if applicable.
- You should be aware of and understand all other terms and conditions of the arrangement with your lawyer.



## 4.1.4 How to Complain About Your Lawyer



If you are not happy with the service being provided by your lawyer, you may want to make a complaint. Each law firm has its own complaints process which you can follow. You should have been informed of the complaints process following your first appointment.

If your complaint to the firm is not satisfactory, then you can contact the Law Society (for solicitors) or the Bar Association (for barristers).

- You can make a complaint against a solicitor by completing a form and sending it to the Law Society (see Appendix [\*]).
- This form can also be downloaded at <https://www.hklawsoc.org.hk/en/Maintain-Standards/Complaints-of-Professional-Misconduct/Guidance-Notes-to-the-Complaint-Form> and completed for you by a family member or friend who has access to a computer if that is easier for you.

## Equal Justice

You can also contact Equal Justice, an NGO which provides legal education, information and support, including:

- Caseworkers who help navigate the justice system.
- Collaborating with law firms, barrister chambers, and corporate partners to provide pro bono support and assistance on legally aided cases.
- Organise public legal education programs and training sessions to enhance legal knowledge and skills of community partners.

平義社

EQUAL JUSTICE

### EQUAL JUSTICE'S CONTACT DETAILS:

Website: <https://www.equaljustice.org>

WhatsApp: 9321 8483

Phone: 9321 8483

Email: [hello@equaljustice.org](mailto:hello@equaljustice.org)

## 4.2 NGOs and Other Support Organizations

**NGOs** are non-governmental organisations. These groups operate on a non-profit basis to provide help and support to asylum seekers in Hong Kong.



Note that the Law Society and the ImmD impose certain limitations so that NGOs cannot conduct legal visits to visit detainees or provide direct legal representation. However, NGOs can provide legal information, other support, and help you get a lawyer.

### 4.2.1 Justice Centre Hong Kong



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


- Your name, country of nationality and detainee number.
- What stage you are in the USM process.
- What specific assistance you need (legal or welfare support).
- Any problems with your detention conditions.
- Contact details of any friends or family in Hong Kong that you want us to contact.
- Any documents you have that can support your claim.


If you have a Justice Centre caseworker, you can add their name to your visitor list in case they need to conduct a social visit. Note that Justice Centre cannot conduct legal visits, but may help you to meet with a pro bono lawyer.


#### CONTACT US AT

 Website: [www.justicecentre.org.hk](http://www.justicecentre.org.hk)

 Email: [info@justicecentre.org.hk](mailto:info@justicecentre.org.hk)

 WhatsApp: 6575 8245

 Phone: 3109 7359

 Address: Unit 5, 10/F, Hermes Commercial Centre, 4 Hillwood Road, Tsim Sha Tsui



