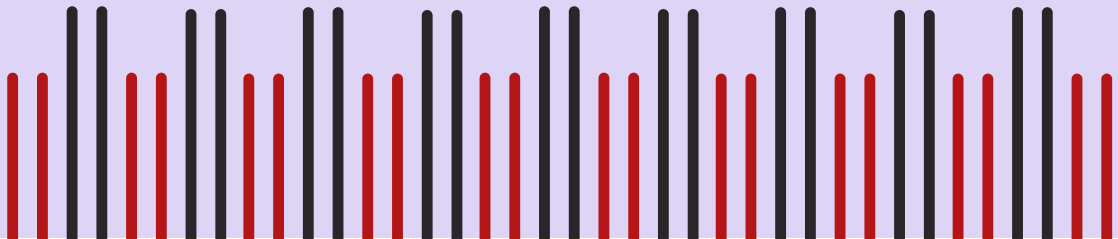


Immigration Detention Legal Self-Help Toolkit

a community guide on immigration detention

TOOLKIT 5: NAVIGATING THE USM AND MY REFUGEE CLAIM



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.

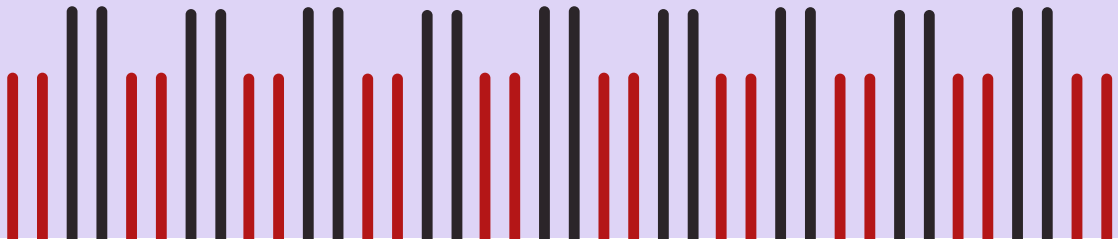
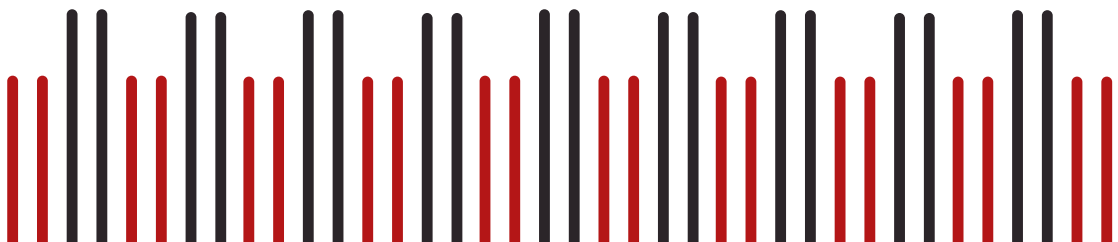




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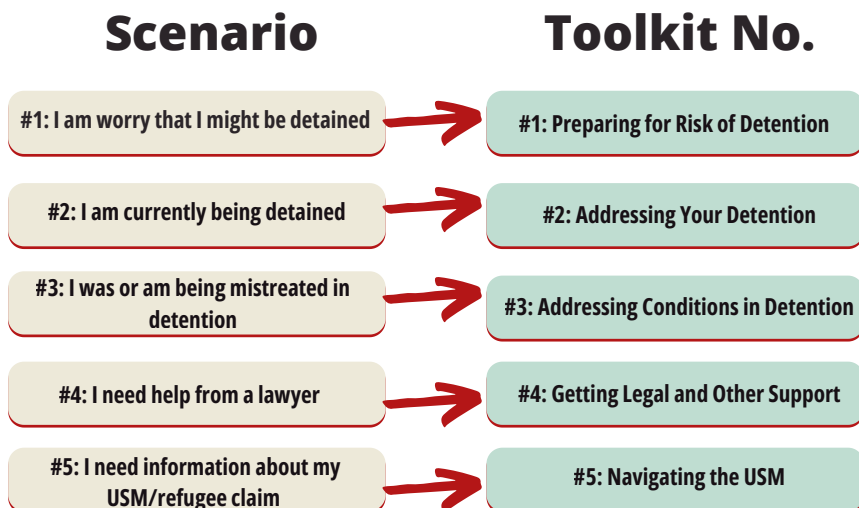
Overview

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 for 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 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 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 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.

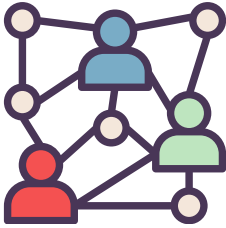


2

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.

5. I NEED INFORMATION ABOUT MY USM/REFUGEE CLAIM

5.1 What is Asylum or Non-Refoulement Protection?

If you are afraid to go back to your home country because you might be killed, tortured or seriously harmed, or your human rights will be seriously restricted, you may be able to apply for asylum. In Hong Kong, you do this by making a non-refoulement claim under the Unified Screening Mechanism (USM).



Before you make a USM claim, you should consider this option *very carefully* for the following reasons:

- The chance of success in Hong Kong is **very low** (about 1% at time of writing).
- While you are claiming asylum in Hong Kong, you are **not** allowed to work.
- If your claim is successful, you may be or may not be referred to UNHCR to be resettled to a third country. Even if you do, the resettlement process will take many years.
- You **will not** receive a Hong Kong permanent residency status or a Hong Kong ID Card even if your claim is successful. You will not be allowed to work without special permission from the Government and other rights such as travelling will be restricted too.
- If your claim is unsuccessful, you will be sent back to your home country. You may be prohibited from entering Hong Kong again and your asylum history in Hong Kong may negatively affect your visa applications to other countries in the future.

See **Section 6 (page __)** for some resources that can help with making a claim.

5.2 What is the Process of Claiming Asylum or Non-refoulement Protection?

This is a general summary of the process for claiming asylum in Hong Kong:

Stage 1: Make your Claim at First Instance - Immigration Department	1. Prepare Written Signification
	2. Submit Written Signification
	3. Attend Briefing Session
	4. Prepare Non-refoulement Claim form
	5. Attend Screening Interview
	6. Receive Decision
Stage 2: Appeal - Torture Claims Appeal Board/Non-Refoulement Claims Petition Office	1. Prepare Notice of Appeal/Petition
	2. Prepare Notice of Appeal/Petition
	3. Submit New Evidence
	4. Receive Notice of Hearing
	5. Attend Appeal Hearing
	6. Receive Appeal Decision
Stage 3: Judicial Review - High Court, Court of First Instance, and Beyond	1. File Application for Leave for Judicial Review (JR)
	2. Submit any Judicial Review (JR) Grounds
	3. Attend Judicial Review (JR) Leave Hearing
	4. Receive JR Leave Decision

You can find more information about each step in the following sections.

5.3 Making a non-refoulement claim

5.3.1 Prepare a Written Signification

The first step to making an asylum claim in Hong Kong is to prepare a Written Signification.

A **Written Signification** is a short letter to the Hong Kong Immigration Department that explains why you cannot safely go back to your home country and what has happened to put you at risk.

Your Written Signification should include the following information:

- Your full name.
- Your home country.
- Your passport number (if you have one) or Recognizance Document number (if you have one already).
- Address where you are staying in Hong Kong.
- Your mobile number, if you have one.
- Names and details of any family members you have in Hong Kong and how they are related to you.
- Brief explanation of what happened in your home country and why you are afraid to go back to your home country.



You must sign the letter and write the date. If you came to Hong Kong with your family, you can write one letter to ask for your whole family's USM claims to be considered together. Everyone aged 18 years and over must sign the letter. Make a copy of the letter for your records.

What does a Written Signification look like?

This is an example of a Written Signification. You must write your own letter based on your own facts. **You must include accurate information only.**

To: HK Immigration Department

[Write today's date]

Dear Sir/Madam,

My name is _____, my home country is _____, my recognizance paper/passport (**if any**) number is _____, my address is, _____, my phone number is _____.

[If you have family members from the same country in Hong Kong, write:

I am here with my family:

[Name] [Relationship to you (i.e. husband/wife, son/daughter)] [Date of birth] [Recognizance paper number (if any)]

I want to make a Non-refoulement claim under the Unified Screening Mechanism (USM). I want to ask the Hong Kong government not to return me to my country. In my home country, I am afraid that I will be harmed, and the government of my home country will not protect me.

Specifically, I am afraid _____ **[who are you afraid of?]**. I am afraid that they will _____ **[what will they do to you?]**. I am afraid because _____ **[why are you afraid of those people and those things?]**

These are brief reasons only. It is not my full story.

[If you have a torture/CIDTP claim that has been closed, write:

I had a torture/cruel, inhuman or degrading treatment or punishment (CIDTP) claim no. _____]

[If you have a UNHCR claim, whether open or closed, write:

I had a UNHCR claim, number _____.]

[If you do not have a recognizance paper yet and there are reasons why you should not be detained, write:

I should not be detained because (**check all that apply and provide supporting documents if possible**):

- ☐ I cannot be removed because I am making a non-refoulement claim
- ☐ I have identity documents
- ☐ I am under 18
- ☐ I am old
- ☐ I am pregnant
- ☐ I have serious medical and/or psychological problems
- ☐ I am physically disabled
- ☐ I have been tortured

Please confirm in writing that I have made a non-refoulement claim.

[Sign the letter]

5.3.2 Submit your Written Signification

You can only make a USM Claim if you are subject to removal and you have surrendered to the Immigration Department. To surrender, you must go to the General Investigation Section of the Immigration Department by attending their office in person.

Surrender at this address:

13/F, Enforcement Tower, Immigration Headquarters
61 Po Yap Road, Tseung Kwan O
New Territories

When you go to surrender, you should bring with you:

- Your original passport for you and your family members;
- Your written signification (see below)

After you surrender, the Immigration Department will confiscate your passport and take your personal details. Further interviews will be scheduled to continue their investigation on your overstaying.

It is possible for the Immigration Department to detain you when you go to surrender. As explained in [Booklet 1], the government can detain any person who breaks the immigration laws or for investigation. You can learn more about the risk of detention and how you can prepare [Booklet 1]. For the purpose of surrendering you should make clear that you intend to seek asylum and request them to not detain you.

After you have surrendered yourself, you can submit your written signification at this address:

Submit your Written Signification here:

7-9/F, Enforcement Tower, Immigration Headquarters
61 Po Yap Road, Tseung Kwan O
New Territories

This is a **different** office to where you surrendered, and your claim will not be considered made if you submit the written signification to other Immigration Department offices.

5.3.3 Receive Recognizance Document

Once you have answered questions at the General Investigation Section, and if you are not detained, you will be issued a **Recognizance Document**. Having a recognizance document means you cannot be detained until your claim is decided. A recognizance document does not give you residence or other rights in Hong Kong.



The Immigration Department will also consider your Written Signification. Once your Written Signification is accepted, they will send you a letter confirming this. It normally takes around 3-6 weeks for them to complete this review and send you the letter. Sometimes they will ask you for more information before they can make a decision.

After you have your Recognizance Document, you will have to go to the Immigration Department to check in regularly. The immigration officer will tell you the date and time of your next check-in appointment. If you fail to check-in when required, it might increase the risk of being detained. It is very important to keep your Recognizance Document safe and to carry it with you at all times.

5.3.4 Attend Briefing Session

After you submit the Written Signification, the Removal Assessment Section (“**RAS**”) will arrange a briefing session at another time for you with the appropriate interpreter, if applicable. Details of the briefing session will be mailed to you by way of letter telling you where to go and when.

The purpose of the briefing session is to give you further instruction on how to proceed with your claim.

At the briefing session, the RAS will:

- Explain to you what the USM and non-refoulement claim process is to you;
- Tell you how to stay in contact with the Immd;
- Provide you with a **non-refoulement claim form**; and
- Provide you with an information leaflet about publicly-funded legal assistance
 - Refer you to the Duty Lawyer Service (DLS) or the Pilot Scheme Office (PSO)

If you need an interpreter, make sure the Immigration Department officer arranges one for you.

5.3.5 Filling the Non-Refoulement Claim Form and Legal Representation

A blank non-refoulement claim form will be provided and you will fill this form with help from the Duty Lawyer assigned to you by the Duty Lawyer Services.

This is the opportunity for you to lay out your experience and reasons why you cannot return in details. When filling the form with assistance from your lawyer, you should keep in mind that the Immigration Department assesses your claim base on the following:

Ground 1: Torture under Part VIIC of Immigration Ordinance

It is likely that your government will deliberately (or allow someone to) cause you a very high level of (physical or mental) pain or suffering purposefully. These purposes may include to punish you, make you confess to something, or to discriminate against you.

Ground 2: Violation of absolute & non-derogable right(s) under HK Bill of Rights (HKBOR)

It is likely that someone will seriously harm or kill you, or severely restrict your human rights, including the right to life, to be free from torture or cruel inhuman degrading treatment or punishment and to be free from slavery and servitude.

Ground 3: Persecution under Refugee Convention

It is likely that someone will cause you serious harm, or severely restrict your human rights, because of your identity. These identities can be your race, religion, nationality, political opinion; or because of a particular social group you belong to.

Besides demonstrating your fears and object risks to your safety, you will also need to explain why

- 1** The government of your country cannot/will not protect you; and
- 2** It is not safe for you to move to another part of your country.

If protection from your own government is available, such as those from police and the judicial system, or that you can safely live in another region, the Hong Kong government will consider that you can still find security in your home country even though the threats against you are real.

What grounds might I be assessed on?

Unified Screening Mechanism (USM)

The ImmD processes all non-refoulement claims under the USM. Non-refoulement claims can be based on different grounds, including:

1. torture
2. right to life
3. cruel, inhuman or degrading treatment or punishment, and
4. persecution.

Hong Kong Bill of Rights (HKBOR)

The HKBOR is contained in the Hong Kong Bill of Rights Ordinance (Cap 383) and protects persons from violation of certain “absolute and non-derogable” rights, which include:

- right to life;
- freedom from torture or cruel, inhuman, degrading treatment or punishment; and
- freedom from slavery and servitude.

To be accepted for protection under the USM you only need to be substantiated on at least one ground. However, it is common for claimants to be substantiated on more than one ground due to the overlapping nature of these grounds.

What is the Non-refoulement Claim process?

1 Submit your Non-refoulement Claim Form and supporting documents

The non-refoulement claim form and supporting documents should be filled and returned **within 28 days**. Your claim will be treated as withdrawn if you do not return the claim form within the time limit.

You can apply for an **extension** of the 28-day period before the expiry of the period. The ImmD may only allow if you have used all efforts to return the form but are unable to do so because of circumstances beyond your control. Your lawyer should assist you in returning the form and to submit all relevant evidence.



TIP

You must provide all available supporting documents or indicate your intention to submit further supporting documents at a later stage.

2 The ImmD will assess your claim.

The ImmD will consider your claim using the information you have submitted. They will conduct their own analysis and information gathering, including possible medication examination (if applicable).



A **screening interview** will be scheduled for the Immigration Officer to ask you questions they have about your claim.

Interpreters should be provided for all the above procedures, including meeting with your lawyers, if you do not speak English or Chinese fluently.

3 The ImmD will make a decision on your claim.

After the investigation and analysis of your claim, the Immigration Department will reach a decision and issue a written notice of decision. The decision paper will be mailed to you or your lawyer, and it will inform you whether the claim is successfully or not and why it is so.

If your claim is refused, you will be provided with further information on appeal. If your claim is successful, you will no longer be liable to be removed from Hong Kong.



IF YOUR CLAIM IS REJECTED

You can **appeal** against this decision **within 14 days** of your claim being rejected.

5.4 Appealing your Immigration Department decision

If the Immigration Department (“ImmD”) has refused your non-refoulement claim (claim for protection), you can appeal to the Torture Claims Appeal Board (“TCAB”).



You have **14 days to submit your Notice of Appeal/Petition** to the Appeal Board.

If you miss the deadline, you can still file the Notice of Appeal/Petition to the Appeal Board but you must include an explanation for why you were late. The Appeal Board may decide to refuse your appeal because it is late without a hearing.

If your claim is refused by the Immigration Department and you do not file a Notice of Appeal/Petition, you may be detained and removed from Hong Kong.

The TCAB will look at:

- 1 The facts of your claim; and
- 2 The law that applies to your claim.

This means that TCAB will assess whether the ImmD has made the correct conclusion on what has happened to you (issues of facts) and whether the ImmD has applied the laws in assessing your case correctly (issues of laws). You can submit new evidence that has not been submitted to the ImmD before.

The TCAB may decide your claim with or without an oral hearing, and after the hearing they will decide whether you should be granted protection in Hong Kong.

5.4.1 Legal Representation

There are primarily three sources of legal representation for non-refoulement claimants:

- 1 Duty Lawyers assigned by the Duty Lawyer Service (“DLS”)
- 2 Private lawyers; or
- 3 Self-representation

Unlike the first instance where the Duty Lawyer Service (“DLS”) is mandated to provide all claimants with lawyers, **they will only provide lawyers to claimants with stronger claims at appeal**. This means that the Duty Lawyer or Pilot Scheme Lawyer who helped you make your claim for protection to the Immigration Department may or may not continue to represent you at the Appeal stage.

This is their decision, and it will depend on their opinion of the chances of your appeal being successful.

Your Duty Lawyer or Pilot Scheme Lawyer will tell you whether or not they will continue to represent you, when they give you the decision from the Immigration Department and should explain the reason for their decision.

If your Duty Lawyer or Pilot Scheme Lawyer will no longer represent you at the appeal stage, there are two ways you can find a new lawyer:

1. Request a second opinion from another Duty Lawyer or Pilot Scheme Lawyer

You can write a letter to the DLS to request for a second opinion. In this letter, you will need to explain to the DLS why your appeal is likely to be successful, and these reasons can look very similar to your grounds of appeal (see XXX below). After receiving your request, the DLS will assign a second lawyer to review your case and decide whether they will represent you.

If you have a child or children, it will be important for the Appeal Board to consider the risk/s to each of them as individuals, as well as on the basis of being part of the family unit. If you do not think you will be able to fully explain these risks without help from a lawyer, you should explain this in your letter. Send your letter to the service/office which helped you with your claim to the Immigration Department.

After submitting the letter, you must then wait for a phone call from the Duty Lawyer Service or Pilot Scheme Office. They will arrange a time for you to meet a second lawyer, who will review your case and tell you whether they will represent you.

2. Engage a private lawyer

You can pay a lawyer to represent you. Choose a good lawyer with experience in Non-refoulement protection claims. Make sure they are registered with the Law Society.

Consider how you will pay the lawyer fees. Make sure you know what the lawyer will charge you and what work you are paying for.

Self-Representation

If you cannot find a lawyer to help you, you will need to represent yourself. This means you will likely need to prepare by getting evidence to support your appeal, and go to the hearing by yourself.



5.4.2 Filing Your Appeal

To appeal your Immigration Department decision, you need to prepare and submit a Notice of Appeal/Petition to the Appeal Board, along with a copy of your Immigration Decision and any supporting documents. If you made a claim with your partner and/or children, you will need to submit a separate Notice of Appeal/Petition for each family member.

1 Prepare your Notice of Appeal/Petition

(see Appendix [∗]).

There are six sections that must be completed in the Notice of Appeal/Petition:

- **Section 1**

- Fill in your personal details in this section. Provide your current address where you can securely receive mail. **If you move or change address after filing your Notice of Appeal/Petition, you should inform the Appeal Board in writing as soon as possible.** This is very important.

- **Section 2**

- Write your grounds of appeal in this section and list any new evidence or information.
 - I. Grounds of Appeal/Petition
 - State why you disagree with the Immigration Decision. This should include the details of any mistakes the Immigration Department has made in understanding, considering and refusing your claim. Add as much detail as possible, and be specific.

- II. New Evidence
 - Give details of any new evidence or information in this section.
 - Explain:
 - What the evidence is.
 - How the evidence supports your case.
 - How you obtained the evidence and why you did not submit the evidence to the Immigration Department before now.
 - You should explain any steps you had taken to try to obtain and provide the evidence to an immigration officer.
 - Submit a copy of the new evidence with the Notice of Appeal/Petition. It might be difficult to gather new evidence within the 14-day deadline to appeal, but you must not delay filing your appeal.
 - If you are trying to obtain new evidence or information, you can state, "I reserve the right to submit additional evidence, information or submissions." **If you do not submit new evidence with your Notice of Appeal/Petition, it is very important to submit new evidence within 7 days after you file your Notice of Appeal/Petition.**
- **Section 3**
 - If you have a lawyer, you must select "Yes" and provide their contact details.
- **Section 4**
 - If you have any Witnesses who are willing to give written and oral evidence to support your claim, you should state their details in this section.
 - You should also indicate whether your Witnesses need an interpreter, and if so, specify the language/dialect.
 - If you do not currently have any Witnesses, you should select "No".
 - If you find a Witness to support your claim after you have filed your Notice of Appeal/Petition, you can write to the Appeal Board to seek permission to call the Witness at a later date.
- **Section 5**
 - You will only need to complete this section if you have missed the 14-day deadline after receiving the decision from the Immigration Department to file the Notice of Appeal/Petition.
 - If you are filing your Notice of Appeal/Petition within the 14-day deadline, you do not need to complete this section.

- **Section 6**

- You must sign and state your name and date. By doing so, you declare that:
 - The information you have given in the Notice of Appeal/Petition is correct;
 - You understand that your appeal might be decided without a hearing; and
 - You will notify the Appeal Board about any change in your contact details.



If you file the Notice of Appeal/Petition more than 14 days after the date of the Immigration Decision, you must explain why you are appealing late in section 5 of the Notice of Appeal/Petition.

It is very important that you try to provide supporting documents to help explain why you missed the deadline. For example, if you were very sick, you should explain what illness you were suffering from, how long you were affected for, and the medical treatment you received. You should try to provide evidence of your sickness, such as a medical certificate.

Your appeal may be **refused without a hearing** if you do not provide a very good reason for submitting your Notice of Appeal/Petition late.

2 Submit Notice of Appeal/Petition

Submit the notice of appeal/petition ([see Appendix \[*\]](#)), together with a copy of the notice of the decision rejecting your claim and other supporting documents to:

Torture Claims Appeal Board/Non-refoulement Claims Petition
Office
Rooms 3007-10
30/F, Immigration Tower
7 Gloucester Road, Wan Chai, Hong Kong

Keep a copy of all documents that you submit. You should also ask for something in writing that confirms that you have submitted your appeal.



Keep in contact with the Appeal Board:

You must make sure that the Appeal Board has your current address and contact number at all times. If you change address or phone numbers, you must tell the Appeal Board and provide your new address and phone number. You should do this by writing a letter with your new address and/or phone number, and submitting this letter to the Appeal Board in person.

You must do this as soon as possible. This is because the Appeal Board will communicate with you by mail and phone. If you do not inform the Appeal Board of changes to your contact details, **you might not receive important letters** including your Notice of Hearing, Hearing Bundle and/or Appeal Decision, and you might miss the opportunity to participate in an oral hearing.

3 Submit new evidence

After you have filed your Notice of Appeal/Petition, you can submit new evidence by submitting a **Notice of New Evidence** to the Appeal Board. You should also send a copy of the new evidence along with the Notice of New Evidence to the Immigration Department. **You should do this within 7 days after filing of your Notice of Appeal/Petition.**

Evidence is reliable information to help prove that you are telling the truth. It can be any information or document that shows why it is not safe for you to return to your home country because you might be killed, tortured or seriously harmed, or your human rights will be seriously restricted. What evidence you should give depends on your individual situation.

- New evidence could include:
 - Supplemental statement: a statement from you, stating any new facts or information that directly relate to your case or is otherwise able to confirm the facts of your case.
 - Witness statement(s): statements from anyone who has witnessed incidents related to your case or is otherwise able to confirm the facts of your case.
 - Documentary evidence: any records that support or are relevant to your claim (e.g. police reports, medical records, legal documents etc.)
 - Country of origin information: general news articles and reports about your country, that may not be written about you in particular, but are relevant to why you are afraid to return.

NOTICE OF NEW EVIDENCE

- A Notice of New Evidence is a letter which you should submit with any new evidence you would like the Appeal Board to consider.
- In the Notice of New Evidence, you will need to state:
 - What the evidence is.
 - How the evidence supports your appeal.
 - How you obtained the evidence and why you did not submit the evidence to the Immigration Department before, including any steps you had previously taken to try to obtain and provide the evidence to an immigration officer.

The Notice of New Evidence and the new evidence should be submitted in person or by registered post to the Appeal Board:

Torture Claims Appeal Board/Non-refoulement Claims Petition
Office
Rooms 3007-10
30/F, Immigration Tower
7 Gloucester Road, Wan Chai, Hong Kong

You should also provide a copy of the Notice of New Evidence and new evidence in person or by registered post to the Immigration Department.

Removal Assessment Section
Immigration Enforcement Tower
Immigration Headquarters
61 Po Yap Road
Tseung Kwan O, New Territories

If you submit new evidence more than 7 days after you filed a Notice of Appeal/Petition, you will also need to explain in the Notice of New Evidence why you were not able to submit the evidence in time.

Give details about:

- All the steps you took to obtain and file the new evidence as soon as possible.
- Any circumstances beyond your control which prevented you from filing the new evidence earlier.

4 **Receive Notice of Hearing**

After you have filed your Notice of Appeal/Petition, the Appeal Board will decide **whether or not to arrange an oral hearing.**

If the Appeal Board decides to arrange a hearing, this means you will need to go to the Appeal Board (like a court) and speak to the Adjudicator (like a judge).

Within a hearing, you will give evidence to support your case by speaking and answering questions from the Adjudicator and a legal representative for the Immigration Department.

You will receive a Notice of Hearing by mail. The Notice of Hearing should be sent to you 28 days (and no later than 7 days) before the date of your hearing. The Immigration Department should call you before the date of your hearing, to ask you to collect your Hearing Bundle.

If the Appeal Board decides not to arrange an oral hearing, a decision will be made on your appeal on the information you have already provided and you will receive your appeal decision by mail.



The location of your appeal hearing will be stated in the Notice of Hearing. The two locations where appeal hearings are held are:

1.

Rooms 3007-10
30/F
Immigration Tower
7 Gloucester Road
Wan Chai, Hong Kong

2.

22/F
Two Chinachem Exchange Square
338 King's Road
North Point, Hong Kong

5 Attend Appeal Hearing



Who will be there?

The hearing is private and only the following people will be there:

- Adjudicator(s) (there may be up to three Adjudicators hearing and deciding your appeal)
- Interpreter (if you have requested one)
- A clerk/staff member of the Appeal Board
- A representative from the Immigration Department and their legal representative (if their attendance is required by the Appeal Board)
- Your lawyer (if you are represented)
- Your immediate family members and Witnesses (if any)

If you want someone else to be there, you must ask the Appeal Board in writing before the hearing. Unless the Appeal Board grants permission, no one else can attend your hearing.



How long will the hearing take?

The length of the hearing will depend on your case and the Adjudicator. The hearing can be as short as one hour (or less) or continue for one day (or more).



What happens at the hearing?

The format of the hearing will depend on your case and the Adjudicator.

If you do not have a lawyer, the Adjudicator (and the Immigration Department representative, if present) will ask you questions about your case.

If you have a lawyer, the following will normally happen:

- You give evidence and/or are questioned by your lawyer.
- You are questioned by the legal representative for the Immigration Department and the Adjudicator
- You are questioned by your lawyer again
- The lawyers make closing speeches



What happens if you do not go or are sick?

It is very important that you go to your hearing. **If you do not go to your hearing, the Appeal Board may make a decision without arranging another hearing.**

If you cannot go to the hearing, tell the Appeal Board as soon as possible and ask for the hearing to be adjourned (moved) to a later date. Write a letter to the Appeal Board and include evidence to prove why you cannot attend. For example, if you are sick, get a medical certificate from a doctor or hospital. The letter should confirm that you are sick or that sick leave is recommended for a period covering the day of your hearing. Without a medical certificate, the Appeal Board may decide not to reschedule your hearing.

If you miss the hearing, you can ask for another one by written request **within 3 working days** and explain why you missed the hearing. If your hearing has passed and you did not go, you should write to the Appeal Board as soon as possible to explain why you did not attend the hearing and provide evidence. For example, if you were sick on the day of your hearing, you should explain that you were sick and provide a medical certificate.

6 Receive Appeal Decision

The Appeal Board will decide whether to grant you protection in Hong Kong and send you a written decision.

If you had an oral hearing, the decision will be made after the hearing. It can take a long time (usually between 3-6 months from the date of your hearing) to receive the decision, but often it can take much longer.

If your appeal is successful, you will be granted Non-Refoulement Protection.

This means that you will not be returned to your home country. The Immigration Department will write to you to confirm your claim has been substantiated. They will refer you to the UNHCR for resettlement or alternative durable solutions, so that you may be able to move to another country.

If your appeal is dismissed, the Immigration Department can detain and remove you from Hong Kong.



IF YOUR APPEAL IS REJECTED...

You can **apply for judicial review** against the decision **within 3 months** of your appeal being rejected.

If your appeal is unsuccessful and you do not agree with the decision, you can make an application to the High Court for leave to apply for Judicial Review. **You should do this as soon as possible, but not later than 3 months of the date of the appeal decision.** Once you have made a Judicial Review application, the Immigration Department will not remove you until that application has been decided by the High Court.

5.5 Judicial review at the courts

You can apply for permission for judicial review at the Court of First Instance to challenge the TCAB's decision of rejecting your appeal. To apply:

- file an affidavit/affirmation (*see Appendix [*]*)
- pay a HK\$1,045 filing fee; and
- submit **Form 86** (*see Appendix [*]*)

You must apply within 3 months of the TCAB's decision of rejecting your non-refoulement claim. If you apply out of 3 months, the court will only consider your application if there is good reason.

This is a complicated application, so you should obtain legal assistance. You can also apply for legal aid for yourself and your children at the Legal Aid Department. See **Section 6 (page 44)** for details.

There are some key differences between the USM and a judicial review application:

- Under the USM, the ImmD reviews your non-refoulement claim, and the TCAB considers your appeal. The USM process ends when the TCAB rejects your appeal.
- In a judicial review application, the court reviews whether the ImmD/TCAB's decision-making process was problematic. You should only apply for judicial review if:
 - the ImmD/TCAB followed an unfair or irrational procedure; or
 - there was illegality, irrationality and/or procedural impropriety in the decision-making process.
- If your judicial review application is successful, the court returns your claim to the ImmD for re-consideration. It does not mean that your non-refoulement claim automatically succeeds.

IF YOUR JUDICIAL REVIEW APPLICATION IS UNSUCCESSFUL...



You can **appeal against the CFI's decision** *within 28 days* of the CFI's decision. Your appeal will be heard by the Court of Appeal (the "**CA**").

If the CA also rejects your appeal, you can further appeal to the Court of Final Appeal (the "**CFA**").

Removal Policy

Note, however, that under the **removal policy**, the ImmD can **remove you from Hong Kong** after the CFI rejects your application for judicial review.

- This means that while you still have the right to appeal to the CA and the CFA, you may be removed from Hong Kong as soon as the CFI rejects your application.
- The removal policy also makes it easier for the ImmD to detain you, because it is more likely that you can be removed from Hong Kong quickly and will only be detained for a shorter period of time.

