

Chapter:	115	<b>IMMIGRATION ORDINANCE</b>	Gazette Number	Version Date
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		<b>Long title</b>		30/06/1997
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To consolidate and amend the law relating to immigration and deportation.

[1 April 1972] *L.N. 62 of 1972*

(Originally 55 of 1971)

Part:	I	<b>PRELIMINARY</b>		30/06/1997
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Section:	1	<b>Short title</b>		30/06/1997
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This Ordinance may be cited as the Immigration Ordinance.

Section:	2	<b>Interpretation</b>	L.N. 230 of 2009	14/11/2009
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Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

(1) In this Ordinance, unless the context otherwise requires-  
 "adjudicator" (審裁員) means the chief adjudicator, deputy chief adjudicator and any other adjudicator appointed under section 53F; (Added 62 of 1980 s. 2. Amended 24 of 1984 s. 2)

"APEC business travel card" (亞太經合組織商務旅遊證) means a document-

- (a) issued by-
  - (i) the Director of Immigration; or
  - (ii) the person-
    - (A) of a place outside Hong Kong which is-
      - (I) a member of the organization known as the Asia Pacific Economic Co-operation established in 1989; and
      - (II) recognized in writing by the Director of Immigration for the purposes of this definition; and
    - (B) who is, in relation to that place-
      - (I) equivalent to the Director of Immigration; or
      - (II) accepted in writing by the Director of Immigration as the person who may issue the document; and
- (b) which enables the holder of the document-
  - (i) if the document is issued by the Director of Immigration, to go to the place referred to in paragraph (a)(ii)(A) without a visa;
  - (ii) if the document is issued by the person referred to in paragraph (a)(ii), to enter Hong Kong as a visitor without a visa; (Added 6 of 1999 s. 2)

"approved immigration anchorage" (入境船隻認可碇泊處) means a place designated as an approved immigration anchorage by order under section 60;

"approved landing place" (認可着陸地點) means a place designated as an approved landing place by order under section 60;

"Board" (委員會) means a Refugee Status Review Board established under section 13G; (Added 23 of 1989 s. 2)

"captain" (船長、機長) means master (of a ship) and commander (of an aircraft);

"certificate of entitlement" (居留權證明書) means a Certificate of Entitlement to the Right of Abode in the Hong Kong Special Administrative Region issued under section 2AB(6)(a) and includes a certified duplicate issued under section 2AC(6)(a); (Added 124 of 1997 s. 2)

"certificate of identity" (身分證明書) means a document, other than a document of identity, which is issued by the Director of Immigration for the purpose of international travel to a person who is not the holder of, and is unable to obtain, a valid travel document; (Added 66 of 1981 s. 2)

"child" (子女), for the purposes of Part IIIA, means a legitimate or legitimated child, a stepchild and a child adopted in a manner recognized by law; (Amended 122 of 1997 s. 2)

"Commissioner of Registration" (人事登記處處長) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Replaced 31 of 1987 s. 2)

"crew" (全體船員、全體機員), in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain, and "member of the crew" (船員、機員) shall be construed accordingly;

"deportation order" (遞解離境令) means an order under section 20;

"detention centre" (羈留中心) means any place designated under section 13H as a detention centre; (Added 53 of 1989 s. 2)

"detention warrant" (羈留令) means a warrant issued under section 29(1) or (2);

"Director" (處長) means the Director of Immigration, the Deputy Director of Immigration, any assistant director of immigration and any member of the Immigration Service of the rank of senior principal immigration officer; (Replaced 82 of 1993 s. 2)

"document of identity" (簽證身分書) means a document issued by the Director of Immigration for the purpose of visa endorsement to a person who is not the holder of, and is unable to obtain, a valid travel document; (Added 66 of 1981 s. 2)

"empowered" (獲賦權) means empowered by or under this Ordinance;

"entry permit" (入境證) means an entry permit issued under this Ordinance;

"examination" (訊問) includes a further examination under section 4(1), and "examine" (訊問) shall be construed accordingly;

"HKSAR passport" (特區護照) means a Hong Kong Special Administrative Region Passport issued under section 3 of the Hong Kong Special Administrative Region Passports Ordinance (Cap 539); (Added 124 of 1997 s. 2. Amended 127 of 1997 s. 13)

"Hong Kong permanent resident" (香港永久性居民) means a person who belongs to a class or description of persons specified in Schedule 1; (Added 31 of 1987 s. 2)

"identity card" (身分證) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Replaced 31 of 1987 s. 2)

"immigrant" (入境者) means a person who is not a Hong Kong permanent resident; (Amended 31 of 1987 s. 2)

"immigration assistant" (入境事務助理員) means any member of the Immigration Service of the rank of chief immigration assistant, senior immigration assistant or immigration assistant; (Added 57 of 1972 s. 2. Amended 42 of 1979 s. 2; 65 of 1989 s. 2)

"immigration officer" (入境事務主任) means any member of the Immigration Service of or above the rank of assistant immigration officer;

"land" (入境) means-

- (a) enter by land or disembark from a ship or aircraft; and
- (b) in the case of a person who arrives in Hong Kong otherwise than by land or in a ship or aircraft, land in Hong Kong;

"limit of stay" (逗留期限) means a condition of stay limiting the period during which a person may remain in Hong Kong;

"owner" (擁有人) includes-

- (a) in relation to a ship or aircraft, any charterer to whom the ship or aircraft is demised;
- (b) in relation to a vehicle-
  - (i) any person in whose name the vehicle is registered under the Road Traffic Ordinance (Cap 374);
  - (ii) any person by whom the vehicle is kept and used; and
  - (iii) if it is the subject of a hiring agreement or hire purchase agreement, the person in possession of the vehicle under the agreement; (Replaced 61 of 1986 s. 2)

- "passenger" (乘客) means any person carried in a ship or aircraft other than a member of the crew;
- "permanent identity card" (永久性居民身分證) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Added 124 of 1997 s. 2)
- "prescribed Central People's Government travel document" (訂明的中央人民政府旅行證件) means a travel permit issued by the Central People's Government which on its cover is called "因公往來香港澳門特別行政區通行證" and which bears an endorsement "持證人系國家公職人員，受委派在香港、澳門特別行政區工作。"; (Added 31 of 2002 s. 2)
- "re-entry permit" (回港證) means a re-entry permit issued under this Ordinance;
- "refugee centre" (難民中心) means any place designated under section 13C as a refugee centre; (Added 35 of 1981 s. 2)
- "registration officer" (登記主任) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Added 31 of 1987 s. 2)
- "Registration of Persons Tribunal" (人事登記審裁處) means the Registration of Persons Tribunal established by section 3C of the Registration of Persons Ordinance (Cap 177); (Added 31 of 1987 s. 2)
- "removal order" (遣送離境令) means an order under section 19(1);
- "right of abode in Hong Kong" (香港居留權) means the right of abode in Hong Kong referred to in Part IA; (Added 31 of 1987 s. 2)
- "serviceman" (軍人) means a person, not being locally engaged, who is a serving member of the Chinese People's Liberation Army; (Amended 2 of 2012 s. 3)
- "ship" (船、船隻) includes a barge, a hovercraft and every other description of vessel; (Added 61 of 1979 s. 2. Amended 78 of 1982 s. 2)
- "specified country" (指明國家) means a country or territory-
- (a) of which a person who is to be removed from Hong Kong is a national or a citizen;
  - (b) in which that person has obtained a travel document;
  - (c) in which that person embarked for Hong Kong; or
  - (d) to which an immigration officer or immigration assistant has reason to believe that that person will be admitted; (Amended 15 of 1980 s. 10)
- "travel document" (旅行證件) means a passport furnished with a photograph of the holder, or some other document establishing to the satisfaction of an immigration officer or immigration assistant the identity and nationality, domicile or place of permanent residence of the holder; (Amended 15 of 1980 s. 10; 31 of 1984 s. 2)
- "travel pass" (旅遊通行證) means a document-
- (a) issued by the Director of Immigration to a person (other than a Hong Kong permanent resident) who-
    - (i) is not the holder of an identity card; or
    - (ii) is the holder of an identity card (other than a permanent identity card within the meaning of the Registration of Persons Ordinance (Cap 177)) which belongs to a class of identity cards, if any, specified in writing by the Director of Immigration for the purposes of this definition; and
  - (b) which enables the holder of the document to enter Hong Kong as a visitor without a visa; (Added 6 of 1999 s. 2)
- "Tribunal" (審裁處) means the Immigration Tribunal established by section 53F; (Added 62 of 1980 s. 2)
- "valid travel document" (有效旅行證件) means-
- (a) a passport furnished with a photograph, or any other document establishing to the satisfaction of an immigration officer or immigration assistant the identity and nationality of the holder of the document and the domicile or place of permanent residence of the holder of the document, which-
    - (i) indicates in specific or general terms that it is not invalid for Hong Kong;
    - (ii) indicates that it is still valid according to the laws of the country or territory by or on behalf of which it was issued;
    - (iii) allows its holder to return to the country or territory by or on behalf of which it was issued; and
    - (iv) complies with section 61; or
  - (b) a document issued by or on behalf of a competent authority of any country or territory to its holder for the purpose of identification or travel, which-
    - (i) establishes to the satisfaction of an immigration officer or immigration assistant the identity of its

- holder and the domicile or place of permanent residence of its holder;
- (ii) indicates that it is still valid according to the laws of that country or territory;
- (iii) allows its holder to return to that country or territory; and
- (iv) complies with section 61; (Replaced 13 of 2009 s. 3)

"Vietnamese refugee" (越南難民) means a person who-

- (a) was previously resident in Vietnam; or (Amended 79 of 1982 s. 2)
- (aa) was born after 31 December 1982 and whose father or mother was previously resident in Vietnam; and (Added 79 of 1982 s. 2)
- (b) is permitted to remain in Hong Kong as a refugee pending his resettlement elsewhere; (Added 35 of 1981 s. 2)

"Vietnamese refugee card" (越南難民證) means a card of identity issued by the Director to a Vietnamese refugee. (Replaced 35 of 1981 s. 2)

(Amended 88 of 1997 s. 2)

(2) References in this Ordinance to landing in Hong Kong unlawfully are references to landing in or entering Hong Kong in contravention of this Ordinance, the repealed Immigration (Control and Offences) Ordinance or the repealed Immigrants Control Ordinance, and for the avoidance of doubt it is hereby declared that no person shall be held not to have landed unlawfully-

- (a) by reason only of any presumption, conclusive or rebuttable, that he cannot be guilty of an offence or is incapable of committing a crime; or
- (b) on the ground only that he is not guilty of an offence under subsection (1) of section 38 in respect of paragraph (a) of that subsection. (Amended 75 of 1981 s. 2)

(3) References in this Ordinance to an offence under this Ordinance include references to an offence under section 90(1) of the Criminal Procedure Ordinance (Cap 221) where the arrestable offence which a person has committed is an offence under this Ordinance.

(4) For the purposes of this Ordinance, a person shall not be treated as ordinarily resident in Hong Kong-

- (a) during any period in which he remains in Hong Kong- (Amended 122 of 1997 s. 2)
  - (i) with or without the authority of the Director, after landing unlawfully; or (Amended 122 of 1997 s. 2)
  - (ii) in contravention of any condition of stay; or (Amended 122 of 1997 s. 2)
  - (iii) as a refugee under section 13A; or (Added 42 of 1982 s. 2)
  - (iv) while detained in Hong Kong under section 13D; or (Added 23 of 1989 s. 2)
  - (v) while employed as a contract worker, who is from outside Hong Kong, under a Government importation of labour scheme; or (Added 122 of 1997 s. 2)
  - (vi) while employed as a domestic helper who is from outside Hong Kong; or (Added 122 of 1997 s. 2)
  - (vii) as a member of a consular post within the meaning of the Consular Relations Ordinance (Cap 557); or (Added 122 of 1997 s. 2. Amended 16 of 2000 s. 12)
  - (viii) as a member of the Hong Kong Garrison; or (Added 122 of 1997 s. 2)
  - (ix) as a holder of a prescribed Central People's Government travel document; or (Added 31 of 2002 s. 2)
- (b) during any period, whether before or after the commencement of this Ordinance, of imprisonment or detention pursuant to the sentence or order of any court.

(5) Subsection (4)(a) does not apply to a person-

- (a) who acquired the right of abode in Hong Kong before 1 July 1997; or
- (b) who remains in Hong Kong with the authority of the Director during the period from 1 July 1990 to 30 June 1997 inclusive after landing unlawfully and whom the Director may exclude from the application of subsection (4)(a). (Added 122 of 1997 s. 2)

(6) For the purposes of this Ordinance, a person does not cease to be ordinarily resident in Hong Kong if he is temporarily absent from Hong Kong. The circumstances of the person and the absence are relevant in determining whether a person has ceased to be ordinarily resident in Hong Kong. The circumstances may include-

- (a) the reason, duration and frequency of any absence from Hong Kong;
- (b) whether he has habitual residence in Hong Kong;
- (c) employment by a Hong Kong based company; and
- (d) the whereabouts of the principal members of his family (spouse and minor children). (Added 122 of

1997 s. 2)

(Amended 31 of 1987 s. 2)

Part:	IA	<b>RIGHT OF ABODE IN HONG KONG AND RIGHT TO LAND IN HONG KONG*</b>	124 of 1997; 28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

(Part IA added 31 of 1987 s. 3)

**Note:**

**\* (Amended 28 of 1998 s. 2(2))**

Section:	2A	<b>Hong Kong permanent residents enjoy right of abode in Hong Kong</b>	124 of 1997; 28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

(1) A Hong Kong permanent resident enjoys the right of abode in Hong Kong, that is to say he has, subject to section 2AA(2), the right- (Amended 124 of 1997 s. 3)

- (a) to land in Hong Kong;
- (b) not to have imposed upon him any condition of stay in Hong Kong, and any condition of stay that is imposed shall have no effect;
- (c) not to have a deportation order made against him; and
- (d) not to have a removal order made against him.

(2) Notwithstanding subsection (1)(c), no person against whom a deportation order was made prior to 1 July 1987 enjoys the right of abode in Hong Kong unless the deportation order has expired or been revoked.

Section:	2AAA	<b>Right to land in Hong Kong for former permanent residents</b>	28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

- (1) Subject to subsections (2) and (3), any person who-
  - (a) immediately before 1 July 1997 was a Hong Kong permanent resident under this Ordinance as then in force but did not become a permanent resident of the Hong Kong Special Administrative Region upon the commencement of the Immigration (Amendment) (No. 2) Ordinance 1997 (122 of 1997) shall, immediately upon such commencement;
  - (b) is a permanent resident of the Hong Kong Special Administrative Region but ceases to be such a permanent resident by virtue of the operation of this Ordinance shall, immediately upon such cessation,

have the right-

- (i) to land in Hong Kong;
- (ii) not to have imposed upon him any condition of stay in Hong Kong, and any condition of stay that is imposed on him shall have no effect; and
- (iii) not to have a removal order made against him.

(2) If a deportation order is made against a person who has the right to land in Hong Kong under subsection (1), the right shall cease while the deportation order is in force.

(3) For the avoidance of doubt, it is declared that a holder of a permanent identity card defined in section 1A of the Registration of Persons Ordinance (Cap 177) whose permanent identity card could have been declared invalid

under regulation 3D(1) of the Registration of Persons Regulations (Cap 177 sub. leg. A) on the ground that he has never had the right of abode in Hong Kong shall not have the right to land in Hong Kong under subsection (1).

(Added 28 of 1998 s. 2(2))

Part:	IB	<b>PROVISIONS RELATING TO PERMANENT RESIDENTS UNDER PARAGRAPH 2(c) OF SCHEDULE 1</b>	124 of 1997	01/07/1997
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(Part IB added 124 of 1997 s. 4)

Section:	2AA	<b>Establishing status of permanent resident under paragraph 2(c) of Schedule 1</b>	124 of 1997	01/07/1997
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(1) A person's status as a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1 can only be established by his holding of-

- (a) a valid travel document issued to him and of a valid certificate of entitlement also issued to him and affixed to such travel document;
- (b) a valid HKSAR passport issued to him; or
- (c) a valid permanent identity card issued to him.

(2) A person's right of abode in Hong Kong by virtue of his being a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1 can only be exercised upon the establishment of his status as such a permanent resident in accordance with subsection (1) and, accordingly, where his status as such a permanent resident is not so established, he shall, for the purposes of this Ordinance, be regarded as not enjoying the right of abode in Hong Kong.

Section:	2AB	<b>Certificate of entitlement</b>	L.N. 179 of 2001	26/07/2001
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(1) Any person who-

- (a) immediately before 1 July 1997 did not enjoy the right of abode in Hong Kong under this Ordinance as then in force;
- (b) is not the holder of a valid HKSAR passport or valid permanent identity card; and
- (c) claims to be a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1,

may apply to the Director for a certificate of entitlement.

(2) An application under subsection (1)-

- (a) shall be made in such manner as the Director may specify by notice in the Gazette;
- (b) may be made on behalf of an applicant by his parent, legal guardian or any other person acceptable to the Director and for the purposes of subsection (6)(b)(ii) and (iii) and section 2AD(1) such parent, legal guardian or other person shall be regarded as the applicant.

(3) An application under subsection (1) which is not made in accordance with subsection (2)(a) and accompanied by the prescribed fee, if any, shall not be accepted.

(4) (Repealed 17 of 2001 s. 2)

(5) For the removal of doubt, it is hereby declared that the making of an application under subsection (1) does not give the applicant the right of abode or right to land or remain in Hong Kong pending the decision of the Director on the application.

(6) Upon receipt of an application under subsection (1), the Director acting through an immigration officer authorized by him shall-

- (a) where he is satisfied upon such proof specified by the Director that the applicant is a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1, issue a certificate of entitlement to the applicant in the prescribed form and in such manner as the Director may determine;
- (b) where he is not satisfied that the applicant is a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1-

- (i) refuse the application;
- (ii) notify the applicant in writing the reason of the refusal; and
- (iii) inform the applicant the right of appeal to the Tribunal.

(7) Where the Director in processing an application made under subsection (1) is not otherwise satisfied that the applicant is born of a person of whom the applicant claims to be born, the Director-

- (a) may request the applicant and the person to undergo a genetic test conducted in such manner as the Director may specify by notice published in the Gazette to establish the claimed parentage; and
- (b) shall consider the result of the test and determine the application accordingly. (Added 17 of 2001 s. 2)

(8) The Director may draw any inference from the failure of-

- (a) an applicant; or
- (b) a person of whom an applicant claims to be born,

to undergo a genetic test referred to in subsection (7)(a) as he considers proper and determine the application accordingly. (Added 17 of 2001 s. 2)

(9) Where the Director requests a person to undergo a genetic test under subsection (7)(a), he shall inform the person of the provision of subsection (8). (Added 17 of 2001 s. 2)

(10) The Director may charge a fee for a genetic test referred to in subsection (7)(a). (Added 17 of 2001 s. 2)

(11) The Director may, with the approval of the Financial Secretary, specify the amount of the fee charged under subsection (10) by notice published in the Gazette. (Added 17 of 2001 s. 2)

(12) A notice under subsection (2)(a), (7)(a) or (11) is not subsidiary legislation. (Added 17 of 2001 s. 2)

Section:	2AC	<b>Issue of duplicate</b>	124 of 1997	01/07/1997
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(1) If a certificate of entitlement issued to a person is lost or destroyed, he may apply to the Director for a certified duplicate of the certificate.

(2) An application under subsection (1)-

- (a) shall be made in such manner as the Director may specify by notice in the Gazette;
- (b) may be made on behalf of an applicant by his parent, legal guardian or any other person acceptable to the Director and for the purposes of subsection (6)(b)(ii) and (iii) and section 2AD(2) such parent, legal guardian or other person shall be regarded as the applicant.

(3) An application under subsection (1) which is not made in accordance with subsection (2)(a) and accompanied by the prescribed fee, if any, shall not be accepted.

(4) A notice under subsection (2)(a) is not subsidiary legislation.

(5) For the removal of doubt, it is hereby declared that the making of an application under subsection (1) does not give the applicant the right of abode or right to land or remain in Hong Kong pending the decision of the Director on the application.

(6) Upon receipt of an application under subsection (1), the Director acting through an immigration officer authorized by him shall-

- (a) where he is satisfied upon such proof specified by the Director that-
  - (i) the applicant is a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1;
  - (ii) a certificate of entitlement has been issued to the applicant; and
  - (iii) the certificate of entitlement so issued is lost or destroyed, issue a certified duplicate of that certificate to the applicant in such form and such manner as the Director may determine;
- (b) where he is not satisfied in the manner specified in paragraph (a)-
  - (i) refuse the application;
  - (ii) notify the applicant in writing the reason of the refusal; and
  - (iii) inform the applicant the right of appeal to the Tribunal.

(7) Where a certified duplicate issued to a person is lost or destroyed-

- (a) the person may apply to the Director for a further certified duplicate; and
- (b) this section shall apply with all necessary modifications in relation to the application for and issue of the further certified duplicate.

Section:	2AD	<b>Appeal</b>	124 of 1997	01/07/1997
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(1) Any applicant for a certificate of entitlement who is aggrieved by a decision of the Director not to issue the certificate may appeal against the decision to the Tribunal in a form specified by the Director within 90 days from the receipt of the notice given under section 2AB(6)(b)(ii).

(2) Any applicant for a certified duplicate of a certificate of entitlement who is aggrieved by a decision of the Director not to issue the duplicate may appeal against the decision to the Tribunal in a form specified by the Director within 90 days from the receipt of the notice given under section 2AC(6)(b)(ii).

(3) No appeal shall be lodged under subsection (1) or (2) at any time at which the appellant is in Hong Kong.

(4) Notwithstanding subsection (1) or (2), the Tribunal may accept an appeal that is not lodged within the time limit prescribed in that subsection.

(5) On an appeal lodged under subsection (1)-

(a) where the Tribunal determines that on the facts of the case as it finds them the appellant is a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1, it shall allow the appeal;

(b) where the Tribunal determines that on the facts of the case as it finds them the appellant is not a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1, it shall dismiss the appeal.

(6) On an appeal lodged under subsection (2)-

(a) where the Tribunal determines that on the facts of the case as it finds them-

(i) the appellant is a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1;

(ii) a certificate of entitlement has been issued to the appellant; and

(iii) that certificate is lost or destroyed,

it shall allow the appeal;

(b) where the Tribunal determines that on the facts of the case as it finds them-

(i) the appellant is not a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1;

(ii) a certificate of entitlement has not been issued to him; or

(iii) the certificate of entitlement issued to him, if any, is not lost or destroyed,

it shall dismiss the appeal.

(7) The decision of the Tribunal under subsection (5) or (6) shall be final.

(8) Where the Tribunal allows an appeal under subsection (5)(a) or (6)(a), the Director shall issue a certificate of entitlement or certified duplicate of a certificate of entitlement, as the case may require, to the appellant in such form and such manner as the Director may determine.

(9) For the removal of doubt, it is hereby declared that the lodging of an appeal under subsection (1) or (2) does not give the appellant the right of abode or right to land or remain in Hong Kong pending the decision of the Tribunal on the appeal.

(10) For the purposes of subsections (3), (5), (6), (8) and (9), "appellant" (上訴人) does not include a person making an application on behalf of another person under section 2AB(2)(b) or 2AC(2)(b).

Section:	2AE	<b>No judicial review before Tribunal's decision</b>	124 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Where the Director refuses to issue-

(a) a certificate of entitlement under section 2AB(6)(b)(i);

(b) a certified duplicate of a certificate of entitlement under section 2AC(6)(b)(i),

no application referred to in section 21K(3) of the High Court Ordinance (Cap 4) for leave to apply for judicial review under section 21K(1) or (2) of that Ordinance may be made in respect of the refusal unless and until the Tribunal has made a decision under section 2AD(5) or (6), as the case may be, on an appeal lodged in respect of the refusal.

Section:	2AF	<b>Invalidation of certificate of entitlement issued to unqualified person</b>	124 of 1997	01/07/1997
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Where-

- (a) a certificate of entitlement has been issued to a person; and
- (b) the person is not a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1,

the certificate of entitlement shall be regarded for all purposes of this Ordinance (other than section 42) as never having been issued.

Section:	2AG	<b>Prohibition of making application, etc. for reward</b>	124 of 1997	10/07/1997
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(1) Any person who-

- (a) demands, seeks or receives or agrees to receive any payment, benefit, advantage or reward directly or indirectly in consideration of-
  - (i) making an application for a certificate of entitlement under section 2AB or a certified duplicate under section 2AC on behalf of another person under section 2AB(2)(b) or 2AC(2)(b), as the case may be;
  - (ii) giving advice in relation to individual application for a certificate of entitlement; or
- (b) offers to make or holds himself out as willing to make an application for a certificate of entitlement on behalf of another person in consideration of any payment, benefit, advantage or reward,

shall be guilty of an offence and shall be liable on conviction to a fine of \$500000 and to imprisonment for 2 years.

(2) The fact that the receipt of any payment, benefit, advantage or reward by a person is an offence under subsection (1) shall not prevent the recovery of any such payment, benefit, advantage or reward from any person.

(3) Subsection (1) shall not apply to any solicitor or barrister acting in the course of his practice.

Part:	II	<b>IMMIGRATION PROCEDURE</b>		30/06/1997
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Section:	3	<b>Arriving ships and aircraft</b>		30/06/1997
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(1) Subject to subsections (2) and (6), the captain of a ship shall, on the arrival of the ship in Hong Kong-

- (a) anchor or moor the ship at an approved immigration anchorage and keep the ship in such anchorage as long as may be necessary for the purposes of this Ordinance; and
- (b) hoist the prescribed immigration examination signal and keep the same hoisted until an immigration officer or a chief immigration assistant permits him to lower it. (Amended 65 of 1989 s. 3)

(2) An immigration officer or a chief immigration assistant may, on the arrival of a ship in Hong Kong, require the captain- (Amended 65 of 1989 s. 3)

- (a) to anchor or moor the ship at such place as he may specify, being a place at which the captain considers that the ship may safely be moored or anchored;
- (b) to keep the ship in such place so long as may be necessary for the purposes of this Ordinance,

but a requirement under this subsection shall cease to have effect if the captain is required by or under any other Ordinance to move the ship to another place.

(3) Except with the permission of the Director, no person other than a pilot or health officer in the course of his duty shall-

- (a) board or leave a ship which has arrived in Hong Kong; or
- (b) be within 30 m of any such ship, otherwise than on a wharf or pier, (Amended 15 of 1980 s. 2)

until the immigration examination signal is lowered.

(4) Except with the permission of the Director, nothing shall be removed from or taken or placed on board a ship which has arrived in Hong Kong until the immigration examination signal is lowered.

(5) The captain of an aircraft arriving in Hong Kong shall not land the aircraft except at an approved landing place.

(6) The Director of Immigration may exempt from subsection (1) the captains of such ships, or of ships of such class or description as he thinks fit.

Section:	4	<b>Examination of persons</b>		30/06/1997
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- (1) For the purposes of this Ordinance, an immigration officer or immigration assistant may—
- (a) subject to subsection (2), examine any person on his arrival or landing in or prior to his departure from Hong Kong, or if he has reasonable cause for believing that such person landed in Hong Kong unlawfully, at any time;
  - (b) examine a person at any time if he has reasonable cause for believing that such person is contravening or has contravened a condition of stay in respect of him, or remains in Hong Kong without the permission of an immigration officer or immigration assistant in contravention of section 7(2), (Amended 31 of 1987 s. 4)
  - (c) (Repealed 31 of 1987 s. 4)

and a person who is so examined may be required by an immigration officer or immigration assistant to submit to further examination. (Amended 75 of 1981 s. 3)

(2) A person who satisfies an immigration officer or immigration assistant that he is a serviceman shall not be examined further under subsection (1)(a) on his arrival in or prior to his departure from Hong Kong.

(Amended 15 of 1980 s. 10)

Section:	4A	<b>Verification of identity of certain persons by automated means</b>	L.N. 107 of 2005	17/11/2005
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- (1) For the purposes of this Ordinance, the Director may provide automated means—
- (a) to verify the identity of a person to whom this subsection applies;
  - (b) to give permission to land in Hong Kong to any person referred to in paragraph (a) who by virtue of section 7(1) may not land in Hong Kong without the permission of an immigration officer or immigration assistant; and
  - (c) to impose a limit of stay and such other conditions of stay, if permission is given to a person to land in Hong Kong under paragraph (b).
- (2) Subsection (1) applies to a person who—
- (a) is approved by the Director to use the automated means for the purposes set out in subsection (1); and
  - (b) voluntarily submits himself to have his identity verified by the automated means—
    - (i) on his arrival or landing in Hong Kong; or
    - (ii) prior to his departure from Hong Kong.

(Added 6 of 2005 s. 2)

Section:	4B	<b>Permission to land given by automated means</b>	L.N. 107 of 2005	17/11/2005
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(1) Any permission to land given by an automated means provided under section 4A shall be deemed to be permission to land given under section 11(1), and the other provisions of section 11 shall apply accordingly.

(2) Any limit of stay and other conditions of stay imposed on a person by such an automated means shall be deemed to be a limit of stay and other conditions of stay imposed under section 11(2), and the other provisions of section 11 shall apply accordingly.

(Added 6 of 2005 s. 2)

Section:	4C	<b>Examination of persons after the verification of identity by automated means</b>	L.N. 107 of 2005	17/11/2005
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Notwithstanding that a person has submitted himself voluntarily for verification of identity by an automated means provided under section 4A, any immigration officer or immigration assistant may examine the person under section 4(1)(a).

Section:	5	<b>Powers of Director and requirements in relation to examinations under section 4 and verifications of identity under section 4A</b>	L.N. 107 of 2005	17/11/2005
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- (1) The Director may require-
- (a) the owner of a ship or aircraft or his agent; or
  - (b) the captain of a ship or aircraft,
- to produce in such manner as the Director may specify for examination under section 4(1)(a) and verification of identity by an automated means provided under section 4A- (Amended 6 of 2005 s. 3)
- (i) the passengers arriving or departing in that ship or aircraft; and
  - (ii) the members of the crew of that ship or aircraft.
- (2) A requirement under subsection (1)-
- (a) may relate to all or any of the passengers or all or any of the members of the crew or to all or any of both;
  - (b) may be made generally for all occasions or, without prejudice to any general requirement which may be in force, for any particular occasion.
- (3) An immigration officer or immigration assistant may require a person to proceed to such place as he may specify for the purpose of examination under section 4(1). (Amended 15 of 1980 s. 10)
- (4) Any person of or over the age of 16 years, other than a serviceman, being examined under section 4(1)(a) shall- (Amended 79 of 1982 s. 4; 31 of 1987 s. 5)
- (a) produce a valid travel document, entry permit or re-entry permit; and
  - (b) subject to subsection (9), furnish an arrival or departure card in the prescribed form, duly completed.
- (5) Where a person being examined under section 4(1)(a) is of or over the age of 7 years and under the age of 16 years and- (Amended 79 of 1982 s. 4; 31 of 1987 s. 5)
- (a) is accompanied by an adult, the adult shall-
    - (i) produce a valid travel document, entry permit or re-entry permit relating to such person; and
    - (ii) subject to subsection (9), furnish in respect of such person an arrival or departure card in the prescribed form, duly completed;
  - (b) having arrived or being about to depart in a ship or aircraft, is not accompanied by an adult, the owner of the ship or aircraft shall-
    - (i) produce a valid travel document, entry permit or re-entry permit relating to such person; and
    - (ii) subject to subsection (9), furnish in respect of such person an arrival or departure card in the prescribed form, duly completed.
- (6) An immigration officer or immigration assistant may require any person, other than a serviceman, being examined under section 4(1) to-
- (a) declare whether or not he is in possession of any documents of any description specified by that officer or that assistant, being a description relevant for the purposes of the examination; and
  - (b) produce to the officer or the assistant any such documents which are in his possession. (Amended 57 of 1972 s. 3)
- (7) An immigration officer or immigration assistant may require a person being examined under section 4(1) to furnish to him such information as he may require for the purposes of this Ordinance. (Amended 15 of 1980 s. 10)
- (8) An immigration officer or immigration assistant may give such directions as he considers necessary for preventing any person from evading examination under section 4(1). (Amended 57 of 1972 s. 3)
- (9) The Director of Immigration may exempt from subsection (4)(a), (4)(b), (5)(a)(ii) or (5)(b)(ii) any person or any class or description of persons. (Amended 21 of 1987 s. 2)

Section:	6	<b>Returns to be furnished by captains of ships and aircraft, etc.</b>		30/06/1997
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- (1) Subject to subsection (5), the captain of a ship shall, on the arrival of the ship in Hong Kong-
- (a) furnish to an immigration officer or a chief immigration assistant-
    - (i) 3 copies of a notice containing the prescribed particulars of the crew; and
    - (ii) 2 copies of a notice containing the prescribed particulars of the passengers; and

- (b) if so required by an immigration officer or a chief immigration assistant, produce the ship's papers.
- (2) Subject to subsection (5), the captain of a ship shall, immediately before the departure of the ship from Hong Kong-
- (a) furnish to an immigration officer or a chief immigration assistant-
- (i) 2 copies of a notice containing the prescribed particulars of the crew; and
- (ii) 2 copies of a notice containing the prescribed particulars of the passengers; and
- (b) if so required by an immigration officer or a chief immigration assistant, produce the ship's papers.
- (3) An immigration officer or a chief immigration assistant may, on the arrival of an aircraft in Hong Kong and immediately prior to the departure of an aircraft therefrom, require the captain of the aircraft to furnish to him a notice containing the names and nationalities of the crew and a notice containing the prescribed particulars of the passengers.
- (4) A passenger on board a ship or aircraft arriving in or departing from Hong Kong shall furnish to the captain of the ship or aircraft any information required by him for the purpose of furnishing a notice under this section.
- (5) The Director of Immigration may exempt from this section the captains of such ships, or of ships of such class or description, as he thinks fit.

(Amended 65 of 1989 s. 3)

Part:	III	<b>CONTROL OF IMMIGRATION</b>		30/06/1997
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Section:	7	<b>General provision as to immigration control</b>	28 of 1998 s. 2(2)	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

- (1) A person may not land in Hong Kong without the permission of an immigration officer or immigration assistant unless- (Amended 15 of 1980 s. 10)
- (aa) he enjoys the right of abode in Hong Kong; or (Added 31 of 1987 s. 6)
- (ab) he has the right to land in Hong Kong by virtue of section 2AAA; or (Added 28 of 1998 s. 2(2))
- (a) (Repealed 88 of 1997 s. 3)
- (b) he may land in Hong Kong without such permission by virtue of section 9(1) or 10(1). (Amended 79 of 1982 s. 5)
- (2) A person who was born in Hong Kong but who does not enjoy the right of abode in Hong Kong , or does not have the right to land in Hong Kong by virtue of section 2AAA, may not remain in Hong Kong without the permission of an immigration officer or immigration assistant. (Added 79 of 1982 s. 5. Amended 31 of 1987 s. 6; 88 of 1997 s. 3; 28 of 1998 s. 2(2))

Section:	7A	<b>(Repealed 28 of 1998 s. 2)</b>	28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

Section:	8	<b>(Repealed 88 of 1997 s. 4)</b>		30/06/1997
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(Repealed 88 of 1997 s. 4)

Section:	9	<b>Special provisions as to members of crew of aircraft</b>	28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

- (1) Where a person who does not enjoy the right of abode in Hong Kong, or does not have the right to land in Hong Kong by virtue of section 2AAA, arrives in Hong Kong as a member of the crew of an aircraft under an engagement requiring him to leave within 7 days on that or another aircraft as a member of its crew, then unless- (Amended 31 of 1987 s. 8; 88 of 1997 s. 5; 28 of 1998 s. 2(2))
- (a) a deportation order is in force in respect of him;

- (b) he has at any time been refused permission to land in Hong Kong and has not since then been given permission to land in Hong Kong; or
- (c) he is examined under section 4(1)(a) otherwise than for the purpose of establishing that he is such a member of the crew of an aircraft,

he may land in Hong Kong without the permission of an immigration officer or immigration assistant and remain until the departure of the aircraft on which he is required by his engagement to leave.

(2) For the purposes of this Ordinance, any such person who, having lawfully landed in Hong Kong without the permission of an immigration officer or immigration assistant by virtue of subsection (1)-

- (a) seeks permission to remain in Hong Kong beyond the time allowed by subsection (1); or
- (b) remains in Hong Kong without the permission of an immigration officer or immigration assistant beyond the time so allowed or is reasonably suspected by an immigration officer or immigration assistant of intending to do so,

shall thereupon be deemed to be a person seeking to land in Hong Kong; and an immigration officer or immigration assistant may examine him under section 4(1)(a) within 28 days thereafter or, if at that time he is detained in pursuance of the sentence or order of any court, within 28 days after his discharge from detention.

(3) Any such person who, having lawfully landed in Hong Kong without the permission of an immigration officer or immigration assistant by virtue of subsection (1)-

- (a) remains in Hong Kong without the permission of an immigration officer or immigration assistant beyond the time allowed by subsection (1); and
- (b) does not submit himself to examination under section 4(1)(a) within the period during which in accordance with subsection (2) he may be examined by an immigration officer or immigration assistant under that section,

shall on the expiry of that period be deemed for the purposes of this Ordinance to have landed in Hong Kong without the permission of an immigration officer or immigration assistant.

(Amended 15 of 1980 s. 10)

Section:	10	<b>Special provisions as to servicemen</b>	28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

(1) A serviceman may land in Hong Kong without the permission of an immigration officer or immigration assistant.

(2) For the purposes of this Ordinance, any such serviceman who ceases to be a serviceman shall thereupon, unless he enjoys the right of abode in Hong Kong, or has the right to land in Hong Kong by virtue of section 2AAA, be deemed to be a person seeking to land in Hong Kong; and an immigration officer or immigration assistant may examine him under section 4(1)(a) within 28 days after- (Amended 88 of 1997 s. 6; 28 of 1998 s. 2(2))

- (a) he ceases to be a serviceman; or
- (b) if at the time he ceases to be a serviceman he is detained in pursuance of the sentence or order of any court, his discharge from detention. (Amended 31 of 1987 s. 9)

(3) Any such person who does not submit himself to examination under section 4(1)(a) within the period during which in accordance with subsection (2) he may be examined by an immigration officer or immigration assistant under that section shall on the expiry of that period be deemed for the purposes of this Ordinance to have landed in Hong Kong without the permission of an immigration officer or immigration assistant.

(Amended 15 of 1980 s. 10)

Section:	11	<b>Permission to land and conditions of stay</b>	28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

(1) An immigration officer or immigration assistant may on the examination under section 4(1)(a) of a person who by virtue of section 7(1) may not land in Hong Kong without the permission of an immigration officer or immigration assistant, give such person permission to land in Hong Kong but an immigration officer only may refuse him such permission. (Amended 15 of 1980 s. 10; 79 of 1982 s. 6)

(1A) An immigration officer or immigration assistant may, on the examination under section 4(1)(b) of a person who by virtue of section 7(2) may not remain in Hong Kong without the permission of an immigration officer or immigration assistant, give such person permission to remain in Hong Kong but an immigration officer only may refuse him such permission. (Added 79 of 1982 s. 6. Amended 31 of 1987 s. 10)

(2) Where permission is given to a person to land or remain in Hong Kong, an immigration officer or immigration assistant may impose- (Amended 79 of 1982 s. 6)

- (a) a limit of stay; and
- (b) such other conditions of stay as an immigration officer or immigration assistant thinks fit, being conditions of stay authorized by the Director, either generally or in a particular case. (Amended 15 of 1980 s. 10)

(3) Subject to subsection (9), the permission given to a person to land or remain in Hong Kong shall be deemed to be subject to the prescribed conditions of stay in addition to any conditions of stay imposed under subsection (2). (Amended 79 of 1982 s. 6)

(4) In the case of a person who is a member of a party in the charge of a responsible person, notice of any condition of stay shall be deemed to be given to such person if it is given in writing to the person in charge of the party.

(5) The Director may at any time by notice in writing to any person other than a person who enjoys the right of abode in Hong Kong, or has the right to land in Hong Kong by virtue of section 2AAA, impose any condition of stay (other than a limit of stay) in respect of such person. (Replaced 57 of 1972 s. 4. Amended 31 of 1987 s. 10; 88 of 1997 s. 7; 28 of 1998 s. 2(2))

(5A) An immigration officer or a chief immigration assistant may at any time by notice in writing to any person other than a person who enjoys the right of abode in Hong Kong, or has the right to land in Hong Kong by virtue of section 2AAA- (Amended 31 of 1987 s. 10; 65 of 1989 s. 3; 88 of 1997 s. 7; 28 of 1998 s. 2(2))

- (a) cancel any condition of stay in force in respect of such person;
- (b) vary any condition of stay (other than a limit of stay) in force in respect of such person if the condition as varied could properly be imposed by an immigration officer or a chief immigration assistant (other than the Director) under subsection (2)(b); (Amended 78 of 1982 s. 4; 65 of 1989 s. 3)
- (c) vary any limit of stay in force in respect of such person by enlarging the period during which such person may remain in Hong Kong. (Added 57 of 1972 s. 4)

(6) The Governor may at any time vary any limit of stay in force in respect of any person by curtailing the period during which such person may remain in Hong Kong, and the Director shall in writing notify such person of any such variation.

(7) The Governor may by order applying to all persons or to any class or description of persons, other than persons who enjoy the right of abode in Hong Kong, or have the right to land in Hong Kong by virtue of section 2AAA- (Amended 31 of 1987 s. 10; 88 of 1997 s. 7; 28 of 1998 s. 2(2))

- (a) cancel or vary any condition of stay in force in respect of such persons;
- (b) impose any condition of stay (other than a limit of stay) in respect of such persons.

(8) Whenever a condition of stay is in force in respect of a person, the Director may-

- (a) require such person; or
- (b) if such person is a member of the crew of a ship or aircraft, require the captain of the ship or aircraft or the owners or agents of the ship or aircraft,

to enter into a recognizance in the prescribed form in such amount and with such number of sureties as the Director may reasonably require.

(9) The Director of Immigration may exempt any person or any class or description of persons from compliance with all or any of the prescribed conditions of stay.

(10) Any permission given to a person to land or remain in Hong Kong shall, if in force on the day that person departs from Hong Kong, expire immediately after his departure. (Added 31 of 1984 s. 3)

Section:	12	<b>Special provisions as to giving of permission to land to members of ship's crew</b>	28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

An immigration officer or immigration assistant may permit a person who is a member of the crew of a ship and

does not enjoy the right of abode in Hong Kong, or does not have the right to land in Hong Kong by virtue of section 2AAA, to land in Hong Kong notwithstanding that he has not been examined under section 4(1)(a); and in any such case notice of any condition of stay imposed in respect of such person shall be deemed to have been given to that person if it is given to the captain of the ship or the owners or agents of the ship.

(Amended 15 of 1980 s. 10; 31 of 1987 s. 11; 88 of 1997 s. 8; 28 of 1998 s. 2(2))

Section:	13	<b>Authority for illegal immigrant to remain</b>		30/06/1997
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The Director may at any time authorize a person who landed in Hong Kong unlawfully to remain in Hong Kong, subject to such conditions of stay as he thinks fit, whether or not he has been convicted of that offence, and section 11(5), (5A) and (6) shall apply to him as it applies to a person who has been given permission to land in Hong Kong under section 11(1).

(Amended 57 of 1972 s. 5; 31 of 1987 s. 12)

Part:	IIIA	<b>VIETNAMESE REFUGEES</b>		30/06/1997
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(Part IIIA added 35 of 1981 s. 3)

Section:	13AA	<b>Application of Part IIIA</b>	8 of 1998	09/01/1998
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- (1) This Part does not apply to or in relation to a person in any case where-
  - (a) the person arrives or lands in Hong Kong on or after the commencement of this section; or
  - (b) the person arrives or lands in Hong Kong before the commencement of this section but is not detained under this Ordinance in connection with that arrival or landing until on or after that commencement.
- (2) Where, after arriving or landing in Hong Kong, a person is subsequently removed from Hong Kong under this Ordinance or departs Hong Kong voluntarily, this Part shall cease to have any application to or in relation to the person in respect of that arrival or landing or of the period between that arrival or landing and the subsequent removal or departure from Hong Kong and, accordingly, as from the date of that removal or departure-
  - (a) all rights conferred on the person under this Part in respect of that arrival or landing or that period shall be extinguished; and
  - (b) no proceedings shall lie under this Part in respect of that arrival or landing or that period.
- (3)
  - (a) Except as provided in paragraph (b), subsection (2) applies whether the removal or departure referred to in that subsection is effected before, on or after the commencement of this section.
  - (b) Subsection (2) does not apply in relation to a removal or departure from Hong Kong effected before the commencement of this section in any case where the person so removed or so departing-
    - (i) before that commencement, again arrived or landed in Hong Kong and had been detained under this Ordinance in connection with that arrival or landing; and
    - (ii) since the arrival or landing referred to in subparagraph (i), has not been removed from Hong Kong under this Ordinance and has not departed Hong Kong voluntarily.

(Added 8 of 1998 s. 2)

**Note:**

This section was added by s. 2 of 8 of 1998. As to the operation of that s. 2, please see s. 1(2) and (4) of 8 of 1998, which reads as follows-

"(2) Section 2 of this Ordinance shall be deemed to have come into operation on 9 January 1998.

(4) Subsection (2) shall not give retrospective effect to any provision of this Ordinance creating any criminal offence or providing for any increase in the penalty for a criminal offence and, accordingly-

- (a) no person shall, by virtue of that subsection, be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed; and
- (b) no heavier penalty shall, by virtue of that subsection, be imposed for the commission of a criminal offence than the one that was applicable at the time when the criminal offence was committed."

Section:	13A	<b>Special conditions of stay regarding Vietnamese refugees</b>		30/06/1997
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- (1) An immigration officer or a chief immigration assistant may permit any person-
- (a) who was previously resident in Vietnam and who has been examined under section 4(1)(a); or
  - (b) who was born after 31 December 1982 and whose father or mother was previously resident in Vietnam and who has been examined under section 4(1)(b), (Amended 31 of 1987 s. 13; 65 of 1989 s. 3)
- to remain in Hong Kong as a refugee pending his resettlement elsewhere. (Replaced 79 of 1982 s. 7. Amended 65 of 1989 s. 3; 48 of 1992 s. 2)
- (2) An immigration officer or a chief immigration assistant may at any time by notice in writing to a Vietnamese refugee impose any condition of stay or any further condition of stay which may include-
- (a) a limit of stay;
  - (b) a condition that such person shall reside in a refugee centre specified by an immigration officer or a chief immigration assistant and shall comply with any rules made under section 13C; (Amended 65 of 1989 s. 3)
  - (c) a condition that such person shall not-
    - (i) take any employment, whether paid or unpaid;
    - (ii) establish or join in any business; or
    - (iii) become a student at a school, university or other educational institution.
- (3) Every Vietnamese refugee who has been permitted to remain in Hong Kong whether before or after the commencement of the Immigration (Amendment) Ordinance 1981 (35 of 1981) shall be subject to a condition of stay that-
- (a) if he is made an offer of resettlement elsewhere he shall not without reasonable excuse fail or refuse-
    - (i) to accept the offer; nor
    - (ii) to comply with any requirement necessary for the completion of the resettlement procedure; and
  - (b) if he is required by an immigration officer or a chief immigration assistant to surrender the Vietnamese refugee card held by him, he shall not without reasonable excuse fail or refuse to surrender forthwith the Vietnamese refugee card. (Amended 65 of 1989 s. 3)
- (4) An immigration officer or a chief immigration assistant may at any time by notice in writing to a Vietnamese refugee- (Amended 65 of 1989 s. 3)
- (a) cancel any condition of stay in force in respect of such person;
  - (b) vary any condition of stay (other than a limit of stay) in force in respect of such person;
  - (c) vary any limit of stay in force in respect of such person by curtailing or enlarging the period during which such person may remain in Hong Kong.
- (4A) Any Vietnamese refugee who remains in Hong Kong without the permission of an immigration officer or a chief immigration assistant beyond the period allowed by any limit of stay specified in any condition of stay in force in respect of him shall be deemed for the purposes of this Ordinance to have landed in Hong Kong unlawfully upon the expiration of such period. (Added 42 of 1982 s. 3. Amended 65 of 1989 s. 3)
- (5) A notice under subsection (2) or (4) shall be given to a Vietnamese refugee in such manner as may be prescribed.
- (6)-(11) (Repealed 48 of 1992 s. 2)

Section:	13B	<b>(Repealed 48 of 1992 s. 3)</b>		30/06/1997
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(Repealed 48 of 1992 s. 3)

Section:	13BA	<b>(Repealed 48 of 1992 s. 4)</b>		30/06/1997
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(Repealed 48 of 1992 s. 4)

Section:	13C	<b>Designation of refugee centres</b>		30/06/1997
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- (1) The Secretary for Security may by order designate any place as a refugee centre for the residence of Vietnamese refugees. (Amended 42 of 1982 s. 6; 48 of 1992 s. 5)
- (2) The Secretary for Security may make rules providing for the treatment, and control of conduct, of

Vietnamese refugees in refugee centres and for the management and security of, and the maintenance of order, discipline, cleanliness and hygiene in, refugee centres, and different rules may be made in respect of different centres. (Replaced 42 of 1982 s. 6)

- (3) Without prejudice to the generality of subsection (2), rules made under that subsection may provide for-
  - (a) contravention of any provision thereof to be punished by the imposition of a penalty not exceeding \$500 and by separate confinement for a period not exceeding 28 days; (Amended 42 of 1982 s. 6)
  - (b) the confinement of persons punished by separate confinement;
  - (c) the imposition, by a specified public officer, of such punishment for such contravention;
  - (d) appeals against the imposition of punishment and the practice and procedure relating to such appeals;
  - (e) the payment and the disposal of monetary penalties in any manner whatsoever.
- (4)-(5) (Repealed 48 of 1992 s. 5)

Section:	13D	<b>Detention pending decision as to permission to remain in Hong Kong, or pending removal from Hong Kong</b>	30/06/1997
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(1) As from 2 July 1982 any resident or former resident of Vietnam who-
 

- (a) arrives in Hong Kong not holding a travel document which bears an unexpired visa issued by or on behalf of the Director; and
- (b) has not been granted an exemption under section 61(2),

 may, whether or not he has requested permission to remain in Hong Kong, be detained under the authority of the Director in such detention centre as an immigration officer may specify pending a decision to grant or refuse him permission to remain in Hong Kong or, after a decision to refuse him such permission, pending his removal from Hong Kong, and any child of such a person, whether or not he was born in Hong Kong and whether or not he has requested permission to remain in Hong Kong, may also be so detained, unless that child holds a travel document with such a visa or has been granted an exemption under section 61(2). (Replaced 52 of 1991 s. 2)

(1AA) Subject to subsections (1AB) and (1AC), where-

- (a) a person is being detained pending his removal from Hong Kong; and
- (b) a request has been made to the Government of Vietnam by
  - (i) the Government of Hong Kong; or
  - (ii) the United Nations High Commissioner for Refugees acting through his representative in Hong Kong,
 for approval to remove the person to Vietnam,

for the purposes of detention under subsection (1), "pending removal" (等候遣離) includes awaiting a response to the request from the Government of Vietnam. (Added 33 of 1996 s. 2)

(1AB) For the avoidance of doubt, nothing in subsection (1AA) shall be interpreted as giving authority to the Director under subsection (1) to detain a person for a purpose other than pending his removal from Hong Kong. (Added 33 of 1996 s. 2)

(1AC) For the further avoidance of doubt, nothing in subsection (1AA) shall prevent a court, in applying subsection (1A), from determining that a person has been detained for an unreasonable period. (Added 33 of 1996 s. 2)

(1A) The detention of a person under this section shall not be unlawful by reason of the period of the detention if that period is reasonable having regard to all the circumstances affecting that person's detention, including-

- (a) in the case of a person being detained pending a decisions under section 13A(1) to grant or refuse him permission to remain in Hong Kong as a refugee-
  - (i) the number of persons being detained pending decisions under section 13A(1) whether to grant or refuse them such permission; and
  - (ii) the manpower and financial resources allocated to carry out the work involved in making all such decisions;
- (b) in the case of a person being detained pending his removal from Hong Kong-
  - (i) the extent to which it is possible to make arrangements to effect his removal; and
  - (ii) whether or not the person has declined arrangements made or proposed for his removal. (Added 52 of 1991 s. 2)

(1B) The detention of a person under this section pending a decision under section 13A(1) to grant or refuse him permission to remain in Hong Kong as a refugee shall not be unlawful by reason that other persons (who may or may not have arrived in Hong Kong after the detainee) who were detained pending decisions under section 13A(1) to grant

or refuse them such permission were granted or refused such permission within periods shorter than the period of the person's detention. (Added 52 of 1991 s. 2)

(1C) Where a judge has ordered the release of a person detained under this section in proceedings for habeas corpus, the Director may, with the consent of the person so released, require him to enter into a recognizance under section 36(1) as though he were being detained under section 32. (Added 33 of 1996 s. 2)

(2) Every person detained under this section shall be permitted all reasonable facilities to enable him to obtain any authorization required for entry to another state or territory or, whether or not he has obtained such authorization, to leave Hong Kong.

(3) Where a person is detained under subsection (1) after a decision under section 13A(1) to refuse him permission to remain in Hong Kong as a refugee, such person as the Director may authorize for the purpose shall serve on the detained person a notice in such form as the Director may specify notifying him of his right to apply for a review under section 13F(1). (Added 23 of 1989 s. 3. Amended 52 of 1991 s. 2)

(4) Notice under subsection (3) may be served-

(a) personally; or

(b) by displaying it in some prominent place within the area where the person concerned is detained in such a manner that it may be conveniently read by him. (Added 23 of 1989 s. 3)

\*(5) For the avoidance of doubt, it is hereby declared that any person detained under subsection (1) in any place may, under the authority of the Director of Immigration, be transferred from that place and detained in any other place or places specified by the Director of Immigration. (Added 52 of 1991 s. 2)

(6) Notwithstanding subsection (5), a person detained under subsection (1) in a detention centre shall not be transferred from that detention centre to another detention centre on the ground that his transfer is necessary in the interests of order or good management in the first mentioned detention centre unless the Director of Immigration has-

(a) certified that his transfer is so necessary; and

(b) caused written notice to be served on the person informing him of the ground on which he is to be so transferred. (Added 52 of 1991 s. 2)

(7) A certificate purporting to be signed by the Director of Immigration stating that the transfer, from one detention centre to another, of a person detained under subsection (1) is necessary in the interests of order or good management in the detention centre in which the person is detained shall be admitted in evidence in any proceedings on its production without further proof and, until the contrary is proved, shall be presumed to have been signed by the Director of Immigration. (Added 52 of 1991 s. 2)

(8) If, before 31 May 1991, any person detained under subsection (1) in any place was, under the authority of any public officer other than the Director of Immigration, transferred from that place and detained in any other place specified by that public officer, the Director of Immigration shall be deemed to have delegated that public officer to exercise on his behalf the powers conferred on him in that respect. (Added 52 of 1991 s. 2)

(Added 42 of 1982 s. 7)

**Note:**

\* **As to operation of section 13D(5), see 52 of 1991 section 1(2) and (3).**

Section:	13DA	<b>Appeals against transfer on ground of order or good management</b>		30/06/1997
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(1) If-

(a) any person detained under section 13D(1) is transferred from one detention centre to another; and

(b) the Director of Immigration has certified that the transfer is necessary in the interests of order or good management in the detention centre from which he was transferred,

the person may appeal against the transfer to the officer appointed by the Secretary for Security under section 13H(2) to have control and management of the detention centre from which he is transferred (the "relevant officer").

(2) A person who wishes to appeal under subsection (1) shall serve written notice of appeal, stating his grounds of appeal and the facts upon which he relies, upon the superintendent of the detention centre to which he is transferred, within 48 hours after his transfer to that detention centre; but such notice shall not preclude the person from raising other facts prior to the determination of his appeal by the relevant officer and relying upon those facts.

(3) An appeal under subsection (1) shall be considered by the relevant officer, who may confirm, vary or cancel the transfer.

(4) A decision of the relevant officer under subsection (3) shall be final.

(5) In this section, "superintendent of the detention centre" (羈留中心的監督) means the person appointed to be in charge of the detention centre by the officer appointed by the Secretary for Security under section 13H(2) to have control and management of the detention centre.

(Added 52 of 1991 s. 3)

Section:	13E	<b>Removal from Hong Kong of Vietnamese refugees and persons detained under section 13D</b>		30/06/1997
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(1) The Director may at any time order any Vietnamese refugee or person detained in Hong Kong under section 13D to be removed from Hong Kong.

(2) An immigration officer or a chief immigration assistant may remove from Hong Kong in accordance with section 24 any person ordered to be removed from Hong Kong under subsection (1). (Amended 65 of 1989 s. 3)

(Added 42 of 1982 s. 7)

Section:	13F	<b>Review by a Refugee Status Review Board</b>		30/06/1997
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(1) Any person on whom a notice is served under section 13D(3) may, within 28 days of such service, apply to the Board to have the decision that he may not remain in Hong Kong as a refugee reviewed.

(2) An application for a review under this section may be made on behalf of a child by his parent or any person having care of the child.

(3) In preparing his case for review under this section an applicant shall be permitted all reasonable facilities to enable him to obtain the assistance of-

- (a) his legal representative, if he has one; or
- (b) in any other case, a prescribed person,

and such representative or person shall be afforded all reasonable facilities to enable him to render such assistance.

(4) Neither the applicant nor his representative shall be entitled to be present when his case is reviewed by a Board.

(5) Upon the hearing of the review a Board shall make such decision as to the status of the appellant and so to his continued detention under section 13D(1) as it may think fit, being a decision which the Director might lawfully have made under this Ordinance, and the Director shall give effect to such decision.

(6) For the removal of doubt, it is hereby declared that the making of an application under this section does not give the person by whom or on whose behalf it is made the right to land or remain in Hong Kong pending the decision of a Board on the application.

(7) A Board when considering any review under this section shall act in an administrative or executive capacity.

(8) A Board shall not be required to assign any reason for its decision and a decision of a Board shall not be subject to review or appeal in any court.

(9) Any resident or former resident of Vietnam or any child of such resident or former resident who prior to the commencement of the Immigration (Amendment) Ordinance 1989 (23 of 1989) objected under section 53 to a refusal to grant him permission to remain in Hong Kong as a refugee or to his detention or removal under section 13D shall, if his objection is pending at the commencement of that Ordinance, be deemed to have applied to a Refugee Status Review Board for a review of that decision under subsection (1). (23 of 1989 s. 6(1) incorporated)

(10) The chairman of the Refugee Status Review Boards may authorize or direct that the rules of practice and procedure on review prescribed under section 59 as read with section 13G(5) shall be modified in such manner as he may direct for the purpose of hearing an application to which subsection (9) applies. (23 of 1989 s. 6(2) incorporated)

(11) Where a decision has been made to refuse any resident or former resident of Vietnam permission to remain in Hong Kong as a refugee not more than 14 days prior to the commencement of the Immigration (Amendment) Ordinance 1989 (23 of 1989), the period of 28 days referred to in subsection (1) shall, in his case, be reckoned as commencing on the commencement of that Ordinance, as if a notice under section 13D, notifying him of that decision has been served at the time of such commencement. (23 of 1989 s. 6(3) incorporated)

(Added 23 of 1989 s. 4)

Section:	13G	<b>Refugee Status Review Boards</b>		30/06/1997
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(1) There shall be Refugee Status Review Boards and there shall be a Chairman, and such number of Deputy Chairmen and members of those Boards as may be appointed by the Governor.

(2) Persons appointed by the Governor under subsection (1) may be public officers and shall be appointed for such periods and on such terms as the Governor may determine.

(3) The remuneration, if any, of the Chairman, a Deputy Chairman and members of the Boards shall be determined by the Financial Secretary and paid out of moneys appropriated by the Legislative Council for the purpose.

(4) A Board shall be constituted from persons appointed under subsection (1) in such manner as may be prescribed.

(5) The practice and procedure on a review under section 13F, and of a Board, shall be such as shall be prescribed and, without prejudice to the generality of the foregoing and of section 59, regulations under that section may prescribe-

- (a) the manner in which an application under section 13F is to be made, including the furnishing of grounds therefor;
- (b) the constitution of a Board and the manner in which decisions are to be taken;
- (c) the exclusion of persons from the proceedings of a Board;
- (d) prescribing a person for the purposes of section 13F(3)(b) and deeming that person to be the representative of the applicant, in such circumstances and to such extent as may be specified;
- (e) the matters which a Board is entitled to consider; or
- (f) the manner in which decision are to be notified.

(Added 23 of 1989 s. 4)

Section:	13H	<b>Designation of detention centres</b>	E.R. 1 of 2013	25/04/2013
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(1) The Secretary for Security may by order designate any place as a detention centre for the detention of persons authorized to be detained there under section 13D.

(2) A detention centre shall be under the control and management of an officer appointed by the Secretary for Security and the officer appointed shall be-

- (a) the Commissioner of Correctional Services;
- (b) the Commissioner of Police; or
- (c) the Chief Staff Officer, Civil Aid Service. (Amended 58 of 1997 s. 34)

(3) The officer who has been appointed by the Secretary for Security to have control and management of a detention centre may issue such general order and instructions not inconsistent with this Ordinance or any rules made under this section as are necessary or expedient for the administration of the detention centre under his control.

(4) Every officer and other person employed in a detention centre shall in the exercise of any powers, functions or duties under this Ordinance or rules made under this section comply with any general orders and instructions issued under subsection (3).

(5) The Secretary for Security may make rules providing for the treatment, and control of conduct, of such detainees in detention centres and for the management and security of, and the maintenance of order, discipline, cleanliness and hygiene in, detention centres, and for the punishment of offenders.

(6) Without prejudice to the generality of subsection (5), rules made under that subsection may provide for-

- (a) contravention of any provision thereof by a detained person to be punished by the imposition of a penalty not exceeding \$500 and by separate confinement for a period not exceeding 28 days;
- (b) the separate confinement of persons and the circumstances under which a person may be so confined;
- (c) the imposition, by a specified public officer, of such punishment for such contravention;
- (d) searching of detainees and visitors and detention for the purpose of search;
- (e) appeals against the imposition of punishment and the practice and procedure relating to such appeals;
- (f) the confiscation of unauthorized articles and the disposal thereof;
- (g) the payment and the disposal of monetary penalties in any manner whatsoever;
- (h) the powers, duties, conduct and discipline of officers of the person having control and management of the detention centres and other persons employed in the detention centres;
- (i) the duties and powers of visiting justices;
- (j) the appointment of detention centre visitors and the duties of such detention centre visitors;
- (k) the conditions under which visitors may be allowed to visit a detention centre and their conduct;

- (1) permitting detainees to be absent from detention centres whilst continuing to be in legal custody,  
(Added 52 of 1991 s. 4)

and different rules may be made in respect of different detention centres.

(7) Rules made under subsection (5) may provide that a contravention of any provision thereof shall be an offence and may provide penalties therefor not exceeding a fine at level 2 and imprisonment for 6 months.

(Added 53 of 1989 s. 3. Amended E.R. 1 of 2013)

Part:	IV	<b>SUPPLY OF PARTICULARS BY ALIENS AND BY PERSONS STAYING IN HOTELS OR OTHER LODGING PLACES*</b>		30/06/1997
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**Note:**

\* (Amended L.N. 294 of 1988)

Section:	14	<b>Aliens to furnish particulars</b>		30/06/1997
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(1) Subject to subsection (2), an alien within Hong Kong who-

- (a) attains the age of 16 years; or
- (b) having previously been exempted from this subsection or section 5(4)(b), (5)(a)(ii) or (5)(b)(ii) (otherwise than by reason of his age), ceases to be so exempted,

shall within 1 month thereafter furnish to the Director in the prescribed form the particulars required thereby.

(2) The Director of Immigration may exempt from subsection (1) any person or any class or description of persons.

Section:	15	<b>Powers to require alien to produce photographs</b>		30/06/1997
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(1) Subject to subsection (2), an immigration officer or immigration assistant may require an alien within Hong Kong who is over the age of 15 years to furnish the prescribed photographs of himself. (Amended 15 of 1980 s. 10)

(2) A requirement shall not be made under subsection (1)-

- (a) unless the alien has been in Hong Kong for at least 14 days; or
- (b) if the alien has furnished such photographs to the Director within the preceding 3 years.

Section:	16	<b>Changes in furnished particulars</b>		30/06/1997
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(1) Subject to subsection (2), an alien who is over the age of 15 years shall within 7 days notify the Director of any change in-

- (a) any of the particulars furnished in an arrival card;
- (b) any of the particulars furnished in the prescribed form pursuant to section 14(1);
- (c) any particulars notified pursuant to this subsection; or
- (d) the address at which he resides.

(2) The Director of Immigration may exempt from subsection (1) any person or any class or description of persons.

Section:	17	<b>Record of visitors to hotels, etc.</b>		30/06/1997
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(1) A person over the age of 15 years who intends to stay at any premises to which this section applies shall on arriving at the premises inform the keeper of the premises of his full name and nationality.

(2) Any such person who is an alien shall also-

- (a) on arriving at the premises, inform the keeper of the premises of the date of his arrival in Hong Kong, the name of the ship or airline (if any) by which he arrived and his occupation; and
- (b) on or before his departure from the premises, inform the keeper of the premises of the place to which he is going and, if he is departing from Hong Kong, of the ship or airline (if any) by which he will depart.

(3) The keeper of any premises to which this section applies shall-

- (a) require all persons who stay at the premises to comply with their obligations under this section; and
- (b) keep for at least 12 months a record in writing of the information given to him by any such person pursuant to this section.

(4) An immigration officer, immigration assistant or police officer may inspect at any time the record kept by the keeper of any premises pursuant to subsection (3). (Amended 15 of 1980 s. 10)

(5) Any information required by this section to be given by or to any person may be given by or to any other person acting on his behalf.

(6) This section applies to any premises, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for reward.

(7) In this section-

"keeper" (管理人) includes any person who receives another person to stay in premises, whether on his own behalf or on behalf of any other person;

"stay" (暫住) means lodge or sleep, for one night or more, in accommodation provided for reward.

Part:	IVA	<b>REQUIREMENT TO CARRY PROOF OF IDENTITY</b>		30/06/1997
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(Part IVA added 62 of 1980 s. 3)

Section:	17A	<b>Commencement and discontinuance*</b>		30/06/1997
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(1) The Governor in Council may from time to time, by order published in the Gazette, declare that this Part, or any provision of this Part specified in the order-

- (a) shall come into operation;
- (b) shall be discontinued in its operation.

(2) Where an order is made under subsection (1)(a), this Part or, as the case may be, any provision specified in the order, shall continue in operation until an order is made in relation to it under subsection (1)(b); and where an order is made under subsection (1)(b) in relation to this Part or any provision of it, the operation of this Part or, as the case may be, of that provision shall be discontinued until such time as a further order is made under subsection (1)(a) in relation to it.

(3) Section 23 of the Interpretation and General Clauses Ordinance (Cap 1) shall have the same effect in relation to the discontinuance of the operation of any provision by virtue of an order under subsection (1)(b) as it would have if such provision had been repealed.

**Note:**

\* Part IVA came into operation on 30 October 1980 (L.N. 302 of 1980).

Section:	17B	<b>Interpretation</b>	2 of 2012	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

(1) Subject to subsection (2), in this Part-

"proof of identity" (身分證明文件) in relation to any person means-

- (a) his valid identity card; (Amended 31 of 1987 s. 14)
- (b) a document issued by the Commissioner of Registration acknowledging that that person has applied-
  - (i) to be registered under the Registration of Persons Ordinance (Cap 177); or
  - (ii) for a new identity card under regulation 13 or 14 of the Registration of Persons Regulations (Cap 177 sub. leg. A);
- (c) a valid travel document held by him;
- (d) (Repealed L.N. 87 of 1983)
- (e) documentary proof of identity officially issued to him for the purpose of his service in the Chinese

People's Liberation Army; or (Amended 2 of 2012 s. 3)

(f) a Vietnamese refugee card issued to him. (Amended 35 of 1981 s. 4)

(2) The Legislative Council may by resolution amend subsection (1) by deleting from or adding to the list of documents which may be used as proof of identity under this Part. (Added 35 of 1981 s. 4)

Section:	17C	<b>Carrying and production of proof of identity</b>	30/06/1997
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(1) Every person who-

(a) has attained the age of 15 years; and

(b) (i) is the holder of an identity card or is required to apply to be registered under the Registration of Persons Ordinance (Cap 177); or

(ii) is the holder of a Vietnamese refugee card,

shall have with him at all times proof of his identity.

(2) A person who is required by subsection (1) to have with him proof of his identity shall on demand produce it for inspection by-

(a) any police officer;

(b) any immigration officer or immigration assistant; or

(c) any person or member of a class of persons authorized for the purpose by the Governor by order published in the Gazette,

who is in uniform or who produces, if required to do so, documentary identification officially issued to him as proof of his appointment as a police officer, immigration officer, immigration assistant or, as the case may be, person authorized under paragraph (c).

(3) Any person who fails to produce proof of his identity for inspection as required by subsection (2) commits an offence and is liable on conviction to a fine at level 2: (Amended L.N. 25 of 1996)

Provided that it shall be a defence in proceedings for an offence under this subsection for the person charged to prove that he had reasonable excuse for failing to produce proof of identity.

(4) In respect of any failure to produce proof of identity for inspection as required by subsection (2), it shall be reasonable excuse for the purposes of subsection (3) if at the date of the alleged offence the defendant had no proof of identity with him because all proof of identity of which he was the holder, including any document specified in section 17B(b)(ii), had been lost or destroyed and-

(a) he had reported the loss or destruction to a police officer at a police station or, in the case of an identity card, to a registration officer; or (Amended 31 of 1987 s. 15)

(b) he had had no opportunity so to report the loss or destruction.

(5) Where the Governor authorizes any person or class of persons for the purposes of subsection (2)(c) he may limit the authority of such persons to such area, place or occasion or in such other manner as is specified in the order by which the authority is given.

(6) Nothing in this section shall affect the operation of any order made under regulation 11(1) of the Registration of Persons Regulations (Cap 177 sub. leg. A) (relating to the compulsory carrying of identity cards).

Section:	17D	<b>Arrest</b>	30/06/1997
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(1) A person referred to in section 17C(2)(a), (b) or (c) may arrest without warrant any person who fails to produce for inspection on demand proof of his identity, and in the case of such an arrest by a person referred to in section 17C(2)(a) or (c), the person arrested shall if not released be delivered as soon as reasonably practicable into the custody of the officer in charge of a police station.

(2) An arrest carried out under subsection (1) shall not be unlawful by reason only of the fact that the arrested person is a person not required by section 17C(1) to have proof of his identity with him.

(3) Where a person is arrested under subsection (1) otherwise than by an immigration officer or immigration assistant and it appears to the officer in charge of a police station that he may have landed in Hong Kong unlawfully, or have intended or attempted so to do, or is contravening or has contravened a condition of stay in respect of him, he shall be taken as soon as is reasonably practicable to an immigration officer or immigration assistant for examination under section 17E. (Amended 75 of 1981 s. 4)

(4) Where a person who is arrested under subsection (1) otherwise than by an immigration officer or immigration assistant and is not-

(a) taken before an immigration officer or immigration assistant under subsection (3); or

(b) proceeded against for an offence under section 17C(3),  
he shall be released forthwith unless he may be held in lawful custody for some other reason.

Section:	17E	<b>Examination of persons not carrying proof of identity</b>		30/06/1997
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Without prejudice to any other provision of this Ordinance, an immigration officer or immigration assistant may examine any person who is found not to have with him proof of his identity in order to determine whether that person has landed in Hong Kong unlawfully or intended or attempted so to do or is contravening or has contravened a condition of stay in respect of him.

(Amended 75 of 1981 s. 5)

Part:	IVB	<b>Prohibition of Employment of Illegal Immigrants and Others*</b>	E.R. 1 of 2013	25/04/2013
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(Part IVB added 62 of 1980 s. 3)  
(#Format changes—E.R. 1 of 2013)

**Note:**

\* (Amended 35 of 1981 s. 5)

# The format of Part IVB has been updated to the current legislative styles.

Section:	17F	<b>Commencement and discontinuance*</b>	E.R. 1 of 2013	25/04/2013
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- (1) The Governor in Council may from time to time, by order published in the Gazette, declare that this Part, or any provision of this Part specified in the order-
  - (a) shall come into operation;
  - (b) shall be discontinued in its operation.
- (2) Where an order is made under subsection (1)(a), this Part or, as the case may be, any provision specified in the order, shall continue in operation until an order is made in relation to it under subsection (1)(b); and where an order is made under subsection (1)(b) in relation to this Part or any provision of it, the operation of this Part or, as the case may be, of that provision shall be discontinued until such time as a further order is made under subsection (1)(a) in relation to it.
- (3) Section 23 of the Interpretation and General Clauses Ordinance (Cap 1) shall have the same effect in relation to the discontinuance of the operation of any provision by virtue of an order under subsection (1)(b) as it would have if such provision had been repealed.

**Note:**

\* Sections 17G, 17H and 17J came into operation on 28 October 1980.

Sections 17I, 17K, 17L, 17M and 17N came into operation on 3 November 1980. (L.N. 303 of 1980)

Section:	17G	<b>Interpretation</b>	E.R. 1 of 2013	25/04/2013
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- (1) In this Part-
 

**appointed day** (指定日期) means the day last declared under section 17F(1)(a) for section 17I to come into operation;

**approved document** (認可文件) means a document approved by the Governor under subsection (2)(c)(v);

**certificate of exemption** (豁免證明書) means a certificate issued by the Commissioner of Registration to a person who by virtue of regulation 25(e) of the Registration of Persons Regulations (Cap 177 sub. leg. A) (relating to the aged, the blind and the infirm) is not required to be registered under the Registration of Persons Ordinance (Cap 177);

**contract of employment** (僱傭合約) means any agreement, whether in writing or oral, express or implied, whereby one person agrees to employ another and that other agrees to serve his employer as an employee and includes a contract of apprenticeship;

**employee** (僱員) means any person who has entered into a contract of employment to be employed by any other person as an employee or apprentice;

**employer** (僱主) means any person who has entered into a contract of employment to employ any other person as an employee or apprentice, and the duly authorized agent, manager or factor of such first mentioned person;

**identity card** (身分證) includes a document issued by the Commissioner of Registration acknowledging that the holder has applied-

- (a) to be registered under the Registration of Persons Ordinance (Cap 177); or
- (b) for a new identity card under regulation 13 or 14 of the Registration of Persons Regulations (Cap 177 sub. leg. A);

**official passport** (公務護照) means a passport issued by a government of any place outside China, to an employee of that government for the purpose of carrying out official duties; (Amended 23 of 1998 s. 2)

**record of employees** (僱員紀錄) means a record required to be kept under section 17K.

(2) Without prejudice to any provision of this Ordinance relating to conditions of stay which may be imposed on any person, a person is lawfully employable for the purposes of this Part only if-

- (a) he is the holder of an identity card and he has not breached any condition of stay (if any) imposed on him under this Ordinance; (Amended 59 of 1996 s. 2)
- (b) he is the holder of an official passport; (Amended 23 of 2012 s. 3)
- (ba) the person is a claimant who has a substantiated claim under Part VIIC and is the holder of a permission given by the Director under section 37ZX; or (Added 23 of 2012 s. 3)
- (c) he is not required to be registered under the Registration of Persons Ordinance (Cap 177) and- (Amended 13 of 2009 s. 4)
  - (i) is the holder of a valid travel document and, having landed in Hong Kong lawfully, is not prohibited from taking employment, whether paid or unpaid, under any condition of stay, and in respect of whom no removal order or deportation order is in force; (Replaced 13 of 2009 s. 4)
  - (ii) (Repealed 31 of 1984 s. 4)
  - (iii) is the holder of a Vietnamese refugee card which does not prohibit him from taking employment; (Amended 35 of 1981 s. 6)
  - (iv) is the holder of a certificate of exemption; or
  - (v) is the holder of any other document of a type approved by the Governor by order published in the Gazette. (Amended 13 of 2009 s. 4)

(Amended 31 of 1984 s. 4)

Section:	17H	<b>Transitional powers of employers</b>	E.R. 1 of 2013	25/04/2013
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(1) An employee may be required by his employer to produce for inspection within the time limited by subsection (3)-

- (a) the employee's identity card;
- (b) the employee's official passport; or
- (c) where the employee is not the holder of an identity card and is not required to be registered under the Registration of Persons Ordinance (Cap 177)-
  - (i) a valid travel document;
  - (ii) (Repealed 31 of 1984 s. 5)
  - (iii) a Vietnamese refugee card or a document issued by the Director acknowledging that the employee is the holder of a Vietnamese refugee card which is reported lost or destroyed;
  - (iv) a certificate of exemption; or
  - (v) any other approved document, held by the employee.

(2) A requirement may be made under subsection (1)-

- (a) at any time prior to the appointed day in the case of an employee who-
  - (i) is in Hong Kong; and
  - (ii) is not absent from work; or
- (b) upon the first return to work of an employee who between the day on which an order under section 17F(1)(a) was last made and the appointed day-
  - (i) was outside Hong Kong; or

(ii) was absent from work.

- (3) Where an employee fails-
- (a) by the appointed day to comply with a requirement made in accordance with subsection (2)(a); or
  - (b) within 72 hours of his return to work, to comply with a requirement made in accordance with subsection (2)(b),

his employer shall be entitled to terminate the employment of such employee without notice or payment in lieu and no liability, either at common law or under any Ordinance, shall attach to the employer by reason of such termination or for any loss thereby suffered by the employee:

Provided that if at any time after the time limited by this subsection the employee produces to his employer for inspection any document which should have been produced within the time so limited, the employee's employment shall, if it has not already been terminated, cease upon such production to be liable to be terminated under this subsection.

Section:	17I	<b>Offence to be employer of a person who is not lawfully employable</b>	E.R. 1 of 2013	25/04/2013
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- (1) Any person who is the employer of an employee who is not lawfully employable commits an offence and is liable to a fine of \$350000 and to imprisonment for 3 year. (Amended 75 of 1990 s. 2; L.N. 25 of 1996)
- (1A) It is a defence in proceedings for an offence under this section for the person charged to prove that all practicable steps were taken to determine whether the employee in respect of whom the offence is alleged to have been committed was lawfully employable and that it was reasonable to conclude that the employee was lawfully employable. (Added 75 of 1990 s. 2)
- (2) It shall be a defence in proceedings for an offence under this section for the person charged to prove that the employee in respect of whom the offence is alleged to have been committed-
- (a) had been absent from work continuously from the date when section 17H last came into operation until 72 hours before the date of the alleged offence; (Amended 23 of 2012 s. 4)
  - (b) is the holder of a Vietnamese refugee card, that at the time the contract of employment was entered into with the employee the Vietnamese refugee card held by the employee did not prohibit the employee from taking employment and that the person charged had no knowledge that the Vietnamese refugee card held by the employee was, after the contract of employment was entered into, replaced by a new Vietnamese refugee card prohibiting the employee from taking employment; or (Replaced 35 of 1981 s. 7. Amended 23 of 2012 s. 4)
  - (c) was the holder of a permission given by the Director under section 37ZX that permitted the employee to take employment at the time the contract of employment was entered into and the person charged had no knowledge that the permission had expired after that time. (Added 23 of 2012 s. 4)
- (3) It shall not be a defence in proceedings for an offence under this section that the employee entered the employment of the employer before the appointed day. (Added L.N. 346 of 1982)
- (4) Where a person is charged with an offence under this section a certificate purporting to be signed by the Director and certifying that the employee in respect of whom the offence is alleged to have been committed was, at the date of the alleged offence, not lawfully employable, shall be admitted in evidence on its production without further proof and, until evidence to the contrary is adduced, it shall be presumed-
- (a) that the certificate was signed by the Director; and
  - (b) that the employee in respect of whom the offence is alleged to have been committed was, at the date of the alleged offence, not lawfully employable. (Added 30 of 1989 s. 3)

Section:	17J	<b>Employers to inspect documents of new employee</b>	E.R. 1 of 2013	25/04/2013
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- (1) No person shall in Hong Kong enter into a contract of employment to employ any other person unless he first inspects-
- (a) the identity card held by such other person and where the identity card held by such other person is not a permanent identity card as defined in the Registration of Persons Ordinance (Cap 177), a valid travel document held by him; (Replaced 59 of 1996 s. 3)
  - (b) the official passport held by such other person; (Amended 23 of 2012 s. 5)
- (ba) if such other person is a claimant who has a substantiated claim under Part VIIC, the Director' s permission given under section 37ZX; or (Added 23 of 2012 s. 5)

- (c) where such other person is not the holder of an identity card and is not required to be registered under the Registration of Persons Ordinance (Cap 177)-
- (i) a valid travel document;
  - (ii) (Repealed 31 of 1984 s. 6)
  - (iii) a Vietnamese refugee card;
  - (iv) a certificate of exemption; or
  - (v) any other approved document, held by him.
- (2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of \$150000 and to imprisonment for 1 year. (Amended L.N. 25 of 1996)

Section:	17JA	<b>Employers to inspect regularly Vietnamese refugee cards of employees and termination of employment</b>	E.R. 1 of 2013	25/04/2013
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- (1) Every employer shall, where he has in his employment any employee who is the holder of a Vietnamese refugee card, require such employee to produce for inspection the Vietnamese refugee card held by the employee on every occasion wages are paid by the employer to the employee to ensure that the employee is lawfully employable.
- (2) Where an employee to whom subsection (1) applies-
- (a) is the holder of a Vietnamese refugee card which prohibits him from taking employment; or
  - (b) fails or refuses to produce for inspection, within 72 hours of his being required to do so under subsection (1), the Vietnamese refugee card held by him,
- his employer shall be entitled to terminate the employment of such employee without notice or payment in lieu and no liability, either at common law or under any Ordinance, shall attach to the employer by reason of such termination or for any loss thereby suffered by the employee:
- Provided that if at any time after the time limited by paragraph (b) the employee produces to his employer for inspection the Vietnamese refugee card which should have been produced within the time so limited, the employee's employment shall, if it has not already been terminated and if the employee is not prohibited from taking employment, cease upon such production to be liable to be terminated under this subsection.
- (Added 35 of 1981 s. 8)

Section:	17K	<b>Records to be kept by employers</b>	E.R. 1 of 2013	25/04/2013
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- (1) Every employer shall keep at the place of employment of each of his employees a record of-
- (a) the full name of the employee as shown in his identity card or other document by virtue of which he is lawfully employable; and
  - (b) the type of document held by the employee by virtue of which he is lawfully employable, and the number of that document.
- (2) Every employer shall, where he employs more than 10 employees at any one place of employment, keep at that place the records of those employees in the form of a list of the names and particulars of those employees required under subsection (1).
- (3) Every employer shall keep the record of each employee and every list required to be kept under subsection (2)-
- (a) up to date;
  - (b) in a form which is capable of being produced on demand to a person authorized to inspect it; and
  - (c) in a form which is legible and capable of being readily understood by any person authorized to inspect it.
- (4) In this section **place of employment** (工作地方) in relation to an employee who has no single place of employment, means his principal place of employment.

Section:	17L	<b>Powers of enforcement</b>	E.R. 1 of 2013	25/04/2013
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- (1) A person employed as a senior labour inspector or labour inspector in the Labour Department shall, if in uniform or upon production of his authority if required, have authority to enter any premises or place where he has reasonable cause to believe that persons are in employment, other than such premises or place as are principally used for dwelling purposes, and- (Amended 39 of 1997 s. 50)

- (a) to require an employer there to produce on demand for inspection any record or list which an employer is required to keep under section 17K; (Replaced 30 of 1989 s. 4)
  - (b) to require an employee there to produce on demand for inspection any document which the employee is required by section 17C to have with him; (Replaced 30 of 1989 s. 4)
  - (c) to seize and remove any thing which may appear to him to be evidence of an offence under section 17M. (Added 30 of 1989 s. 4)
- (1A) Any employer from whom any records or lists which an employer is required to keep under section 17K or other documents have been seized and removed under subsection (1)(c) shall, pending any proceedings for an offence under section 17M, be entitled to make copies of and take extracts from such records, lists or other documents and it shall be the duty of the Director at all reasonable times, and subject to such reasonable conditions as to security or otherwise as he may impose, to give the employer access to them for that purpose. (Added 30 of 1989 s. 4)
- (2) Any immigration officer or immigration assistant and any police officer may, if in uniform or upon production of his authority if required, without prejudice to any other provision of this Ordinance or to any other law call for, inspect and copy any record of employees.

Section:	17LA	<b>Production of record or list</b>	E.R. 1 of 2013	25/04/2013
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- (1) A person employed as a senior labour inspector or labour inspector in the Labour Department may, by notice in writing served on an employer, require the employer to produce to him for inspection any record or list which an employer is required to keep under section 17K before the expiry of such time being not less than 72 hours as shall be specified in the notice. (Amended 39 of 1997 s. 50)
- (2) A notice under subsection (1) may be served by serving a copy-
- (a) personally;
  - (b) by registered post addressed to the last known place of business or residence of the person to be served; or
  - (c) on any person who appears to the person serving the notice to be an employee of the person to be served.
- (Added 30 of 1989 s. 5)

Section:	17M	<b>Offences</b>	E.R. 1 of 2013	25/04/2013
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- (1) Any person who-
- (a) contravenes section 17K(1), (2) or (3); or
  - (b) fails to produce for inspection a record or list of employees when lawfully required to do so, (Amended 30 of 1989 s. 6)
- commits an offence and is liable to a fine at level 5.
- (2) Any person who fails or refuses to produce for inspection a document the production of which is required under section 17L(1)(b) commits an offence and is liable to a fine at level 2.
- (3) Any person who obstructs any public officer in the execution of his duty under this Part commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months:  
 Provided that it shall be a defence in proceedings for an offence under this subsection for the person charged to prove that he did not act unreasonably having regard to all the circumstances of the offence charged.  
 (Amended L.N. 25 of 1996)

Section:	17N	<b>Presumption</b>	E.R. 1 of 2013	25/04/2013
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- Any person who is found at a place where employees are in the employment of an employer shall, unless evidence is adduced that he is lawfully employable, be presumed in the absence of evidence to the contrary- (Amended 48 of 1992 s. 7)
- (a) to have entered into a contract of employment to be employed by that employer; and
  - (b) to be an employee of that employer.

Part:	V	<b>Power to Remove or Deport</b>	E.R. 1 of 2013	25/04/2013
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(\*Format changes—E.R. 1 of 2013)

**Note:**

\* The format of Part V has been updated to the current legislative styles.

Section:	18	<b>Removal of persons refused permission to land and of members of ship's crew who contravene certain conditions of stay</b>	E.R. 1 of 2013	25/04/2013
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- (1) Subject to subsection (2), an immigration officer or a chief immigration assistant may remove from Hong Kong in accordance with section 24- (Amended 65 of 1989 s. 3)
  - (a) a person who, pursuant to any examination whatsoever under section 4(1)(a), is under section 11(1) refused permission to land in Hong Kong; and (Amended 75 of 1981 s. 6)
  - (b) a person who, having arrived in Hong Kong on board a ship in which he was a member of the crew and been given permission to land in Hong Kong subject to a condition of stay requiring him to leave Hong Kong-
    - (i) in a specified ship; or
    - (ii) within a specified period in accordance with arrangements for his repatriation, contravenes or is reasonably suspected by an immigration officer of intending to contravene that condition.
- (2) A person who is refused permission to land in Hong Kong may not be removed from Hong Kong under subsection (1)(a) after the expiry of 2 months beginning with the date on which he landed. (Amended 75 of 1981 s. 6)
- (3) (Omitted as expired—E.R. 1 of 2013)
- (4) (Omitted as spent—E.R. 1 of 2013)

Section:	19	<b>Power to order removal</b>	E.R. 1 of 2013	25/04/2013
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- (1) A removal order may be made against a person requiring him to leave Hong Kong-
  - (a) by the Governor if it appears to him that that person is an undesirable immigrant who has not been ordinarily resident in Hong Kong for 3 years or more; or (Amended 82 of 1993 s. 3; 88 of 1997 s. 9)
  - (b) by the Director if it appears to him that that person- (Amended 31 of 1987 s. 16)
    - (i) might have been removed from Hong Kong under section 18(1) if the time limited by section 18(2) had not passed; or
    - (ii) has (whether before or after commencement of the Immigration (Amendment) (No. 4) Ordinance 1981 (75 of 1981)) landed in Hong Kong unlawfully or is contravening or has contravened a condition of stay in respect of him; or (Replaced 75 of 1981 s. 7. Amended 79 of 1982 s. 8)
    - (iia) not being a person who enjoys the right of abode in Hong Kong, or has the right to land in Hong Kong by virtue of section 2AAA, has contravened section 42; or (Added 31 of 1984 s. 7. Amended 31 of 1987 s. 16; 88 of 1997 s. 9; 28 of 1998 s. 2(2))
    - (iii) being a person who by virtue of section 7(2) may not remain in Hong Kong without the permission of an immigration officer or immigration assistant, has remained in Hong Kong without such permission. (Added 79 of 1982 s. 8)
- (2) (Repealed 31 of 1987 s. 16)
- (3) (Repealed 88 of 1997 s. 9)
- (4) A removal order made against a person shall invalidate any permission or authority to land or remain in Hong Kong given to that person before the order is made or while it is in force.
- (5) Where the Director makes a removal order he shall cause written notice to be served as soon as is practicable on the person against whom it is made informing him-
  - (a) of the ground on which the order is made; and
  - (b) that if he wishes to appeal he must do so by giving to an immigration officer or immigration assistant written notice of his grounds of appeal and the facts upon which he relies within 24 hours of receiving the notice of the order.
- (6) In this section **Director** (處長) means the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration. (Amended 8 of 1998 s. 4)

(Replaced 62 of 1980 s. 4)

Section:	20	<b>Power to deport</b>	E.R. 1 of 2013	25/04/2013
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- (1) The Governor may make a deportation order against an immigrant if- (Amended 78 of 1982 s. 6; 31 of 1987 s. 17; 88 of 1997 s. 10)
- (a) the immigrant has been found guilty in Hong Kong of an offence punishable with imprisonment for not less than 2 years; or
  - (b) the Governor deems it to be conducive to the public good.
- (2)-(4) (Repealed 88 of 1997 s. 10)
- (5) A deportation order shall require the person against whom it is made to leave Hong Kong and shall prohibit him from being in Hong Kong at any time thereafter or during such period as may be specified in the order.
- (6) (Repealed 31 of 1987 s. 17)
- (7) A deportation order made against a person shall invalidate any permission or authority to land or remain in Hong Kong given to that person before the order is made or while it is in force.
- (8) For the purposes of this section, the question whether an offence is one for which a person is punishable with imprisonment shall be determined without regard to any Ordinance restricting the imprisonment of young offenders. (Amended 88 of 1997 s. 10)
- (Amended 82 of 1993 s. 4)

Section:	21	<b>(Repealed 88 of 1997 s. 11)</b>		30/06/1997
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Section:	22	<b>(Repealed 88 of 1997 s. 12)</b>		30/06/1997
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Section:	23	<b>(Repealed 88 of 1997 s. 13)</b>		30/06/1997
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Part:	VI	<b>Supplementary Provisions as to Removal and Deportation</b>	E.R. 1 of 2013	25/04/2013
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(\*Format changes—E.R. 1 of 2013)

**Note:**

**\* The format of Part VI has been updated to the current legislative styles.**

Section:	24	<b>Removal by immigration officer under section 18</b>	E.R. 1 of 2013	25/04/2013
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- (1) Where a person is to be removed from Hong Kong under section 18 or 13E in a ship or aircraft, an immigration officer may give directions- (Amended 42 of 1982 s. 8)
- (a) to the captain of the ship or aircraft in which that person arrived in Hong Kong requiring him to remove that person from Hong Kong in that ship or aircraft;
  - (b) to the owners or agents of the ship or aircraft in which that person arrived in Hong Kong requiring them to remove that person from Hong Kong in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents;
  - (c) to the said owners or agents requiring them to make arrangements for the removal of that person from Hong Kong in any ship or aircraft specified or indicated in the directions to a specified country;
  - (d) to the owners or agents of any ship or aircraft requiring them to make arrangements for the removal of that person from Hong Kong in any ship or aircraft specified or indicated in the directions to a specified country, notwithstanding that such person did not arrive in Hong Kong in a ship or aircraft of which they are the owners or agents or in any ship or aircraft.
- (2) A person in respect of whom directions are given under subsection (1) may be placed under the authority of an immigration officer or immigration assistant on board any ship or aircraft in which he is to be removed in accordance with the directions. (Amended 57 of 1972 s. 6)
- (3) Where the ship in which a person arrived in Hong Kong is a ship not exceeding 500 gross tons-

- (a) the captain of that ship may be required under subsection (1)(a) to remove that person from Hong Kong forthwith in that ship; and
- (b) an immigration officer or a chief immigration assistant may take such steps as he thinks necessary to procure the immediate departure of that ship from Hong Kong. (Amended 65 of 1989 s. 3)
- (4) A person may be removed from Hong Kong under section 18 or 13E by land to a specified country; and for that purpose may be taken in the custody of an immigration officer, immigration assistant or police officer to the place at which he is to be removed. (Amended 57 of 1972 s. 6; 42 of 1982 s. 8)
- (5) Subject to section 25(5) and (5A), the expenses of or incidental to the removal from Hong Kong of a person who is removed in accordance with directions under subsection (1)(d) shall be met from moneys provided by the Legislative Council, but save as aforesaid the expenses of or incidental to the removal from Hong Kong of a person who is removed in accordance with directions under subsection (1) shall be met by the owners of the ship or aircraft. (Amended 31 of 1984 s. 9)

Section:	25	<b>Removal pursuant to removal order or deportation order</b>	E.R. 1 of 2013	25/04/2013
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- (1) A person in respect of whom a removal order or a deportation order is in force may be removed from Hong Kong in accordance with this section.
- (2) The Director may give directions-
  - (a) to the captain of any ship or aircraft about to leave Hong Kong requiring him to remove such person from Hong Kong to a specified country;
  - (b) to the owners or agents of any ship or aircraft requiring them to make arrangements for the removal of such person from Hong Kong in a ship or aircraft specified or indicated in the directions to any such country.
- (3) A person in respect of whom directions are given under subsection (2) may be placed under the authority of an immigration officer, immigration assistant or police officer on board any ship or aircraft in which he is to be removed in accordance with the directions. (Amended 57 of 1972 s. 7)
- (4) A person in respect of whom a removal order or a deportation order is in force may be removed by land to a specified country, and for that purpose may be taken in the custody of an immigration officer, immigration assistant or police officer to the place at which he is to be removed. (Amended 57 of 1972 s. 7)
- (5) The Chief Secretary for Administration may apply in or towards payment of the expenses of or incidental to- (Amended L.N. 362 of 1997)
  - (a) the voyage from Hong Kong of a person in respect of whom a removal order or a deportation order is in force; and (Amended 31 of 1984 s. 10)
  - (b) the maintenance until departure of such a person and his dependants, if any, any money belonging to that person; and except so far as they are paid as aforesaid the expenses of or incidental to the removal from Hong Kong of a person in respect of whom a removal order or a deportation order is in force shall be met from moneys provided by the Legislative Council.
- (5A) Any expenses under subsection (5) or section 24(5) or any part thereof met from moneys provided by the Legislative Council may be recovered from the person concerned as a civil debt due to the Government. (Added 31 of 1984 s. 10)
- (6) Without prejudice to subsection (5) or (5A), the Chief Secretary for Administration may require any person to whom subsection (5)(a) applies to use for the purposes of the voyage from Hong Kong any aeroplane or ship ticket or voucher issued in respect of that person. (Added 52 of 1976 s. 2. Amended 31 of 1984 s. 10; L.N. 362 of 1997)

Part:	VII	<b>Detention</b>	E.R. 1 of 2013	25/04/2013
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(\*Format changes—E.R. 1 of 2013)

**Note:**

\* The format of Part VII has been updated to the current legislative styles.

Section:	26	<b>Power to detain for inquiry</b>	E.R. 1 of 2013	25/04/2013
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Without prejudice to any other provision of this Ordinance-

- (a) where any member of the Immigration Service of or above the rank of chief immigration officer or any

police officer of or above the rank of superintendent is satisfied- (Amended 31 of 1984 s. 11)

- (i) that inquiry for the purposes of this Ordinance, other than the provisions relating to deportation, is necessary in the case of any person; and
  - (ii) that such person may abscond if he is not detained, such person may be detained for not more than 48 hours; and
- (b) where any member of the Immigration Service of or above the rank of principal immigration officer or any police officer of or above the rank of assistant commissioner of police is so satisfied, such person may be detained for not more than a further 5 days.

Section:	27	<b>Detention pending examination and decision as to landing</b>	E.R. 1 of 2013	25/04/2013
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A person who may be examined under section 4(1)(a) or is required to submit to further examination following an examination under section 4(1)(a) may be detained under the authority of an immigration officer-

- (a) for not more than 24 hours pending the examination; and
- (b) for not more than a further 24 hours pending a decision to give or refuse him permission to land.

Section:	28	<b>(Repealed 48 of 1992 s. 8)</b>		30/06/1997
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Section:	29	<b>Detention for inquiry as to deportation</b>	E.R. 1 of 2013	25/04/2013
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- (1) If it appears to the Secretary for Security-
  - (a) that there are reasonable grounds for inquiry as to whether a person ought to be deported under section 20; and
  - (b) that such person should be detained for the purposes of or during such inquiry, he may issue a warrant in the prescribed form authorizing the detention of such person for a period of 14 days.
- (2) If it appears to the Secretary for Security that it is desirable that a person detained under a detention warrant should be further detained-
  - (a) for the purposes referred to in subsection (1);
  - (b) for the purpose of inquiries into activities of that person which are prejudicial to the security of Hong Kong, being inquiries which in the opinion of the Secretary for Security should be conducted before the proceedings for the deportation of such person are completed; or
  - (c) while proceedings for his deportation are completed, the Secretary for Security may issue not more than 2 further warrants in the prescribed form authorizing the detention of such person for a further period of 7 days in each case. (Amended 48 of 1992 s. 9)
- (3) Any police officer may arrest a person in respect of whom a detention warrant is in force.
- (4) The Secretary for Security may at any time direct that a person detained under a detention warrant be released. (Amended 15 of 1980 s. 3)

Section:	30	<b>(Repealed 88 of 1997 s. 14)</b>		30/06/1997
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Section:	31	<b>Detention of deportee for inquiries</b>	E.R. 1 of 2013	25/04/2013
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- (1) If-
    - (a) a person who is in Hong Kong in contravention of a deportation order in force in respect of him is to be removed from Hong Kong under section 25; and
    - (b) it appears to the Governor-
      - (i) that the continued presence of such person in Hong Kong is necessary for the time being in connection with inquiries being carried on into activities of that person which are prejudicial to the security of Hong Kong; and (Amended 48 of 1992 s. 10)
      - (ii) that such person may abscond if he is not detained,
- the Governor may issue a warrant in the prescribed form authorizing the detention of such person for a period of 14 days.

- (2) If it appears to the Governor that a person detained under a warrant issued under subsection (1) or this subsection should be further detained for such purpose, he may issue not more than 2 further warrants in the prescribed form authorizing the detention of such person for a further period of 7 days in each case. (Amended 48 of 1992 s. 10)
- (3) The Governor may at any time direct that a person detained under a warrant issued under subsection (1) or (2) be no longer detained thereunder.

Section:	32	<b>Detention pending removal or deportation</b>	E.R. 1 of 2013	25/04/2013
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- (1) A person who is to be removed from Hong Kong under section 18 or 13E- (Amended 42 of 1982 s. 8)
- (a) may be detained pending his removal under that section, and may be so detained for not more than 48 hours under the authority of an immigration officer and thereafter under the authority of the Director; and (Amended 8 of 1998 s. 3)
- (b) may, if he is on board a ship or aircraft, be removed therefrom under the authority of an immigration officer for detention under this subsection.
- (1A) Where consideration is being given to applying for or making a removal order in respect of a person, that person may be detained as provided for in subsection (2) or (2A), whichever is appropriate in the particular case. (Added 62 of 1980 s. 6)
- (2) A person may be detained under the authority of the Secretary for Security-
- (a) for not more than 14 days pending the making of an application to the Governor for a removal order under section 19(1)(a) in respect of that person; and
- (b) for not more than a further 14 days pending the decision of the Governor as to whether or not a removal order should be made under section 19(1)(a) in respect of that person. (Replaced 62 of 1980 s. 6)
- (2A) A person may be detained pending the decision of the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration as to whether or not a removal order should be made under section 19(1)(b) in respect of that person- (Amended 8 of 1998 s. 4)
- (a) for not more than 7 days under the authority of the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration; (Amended 8 of 1998 s. 4)
- (b) for not more than a further 21 days under the authority of the Secretary for Security; and
- (c) where inquiries for the purpose of such decision have not been completed, for a further period of 21 days under the authority of the Secretary for Security, in addition to the periods provided under paragraphs (a) and (b). (Added 62 of 1980 s. 6)
- (3) A person in respect of whom a removal order under section 19(1)(a) or a deportation order is in force may be detained under the authority of the Secretary for Security pending his removal from Hong Kong under section 25. (Amended 15 of 1980 s. 4; 62 of 1980 s. 6)
- (3A) A person in respect of whom a removal order under section 19(1)(b) is in force may be detained under the authority of the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration pending his removal from Hong Kong under section 25. (Added 62 of 1980 s. 6. Amended 8 of 1998 s. 4)
- (3B) Subject to subsections (3C) and (3D), where-
- (a) a person is being detained pending his removal from Hong Kong; and
- (b) a request has been made to the relevant authorities of a place outside Hong Kong by the Government for approval to remove the person to that place,
- for the purposes of detention under subsection (1), (3) or (3A), **pending removal** (等候遣離) includes awaiting a response to the request from those authorities. (Added 8 of 1998 s. 3)
- (3C) For the avoidance of doubt, nothing in subsection (3B) shall be interpreted as giving authority under subsection (1), (3) or (3A) to detain a person for a purpose other than pending his removal from Hong Kong. (Added 8 of 1998 s. 3)
- (3D) For the further avoidance of doubt, nothing in subsection (3B) shall prevent a court, in applying subsection (4A), from determining that a person has been detained for an unreasonable period. (Added 8 of 1998 s. 3)
- (4) Notwithstanding subsections (1), (1A), (2), (2A), (3) and (3A), a person who is to be removed from Hong Kong under section 18 or 13E or in respect of whom a removal order or a deportation order is in force may be detained- (Amended 62 of 1980 s. 6; 42 of 1982 s. 8)
- (a) under the authority of the Secretary for Security for not more than 28 days; and (Amended 15 of 1980 s. 4)
- (b) by order of a court on the application of the Secretary for Justice for further periods, not exceeding 21 days

upon any one application, (Amended L.N. 362 of 1997)

for the purpose of giving evidence at the trial of any offence or of facilitating inquiries into any offence or suspected offence. (Added 42 of 1979 s. 3)

- (4A) The detention of a person under this section shall not be unlawful by reason of the period of the detention if that period is reasonable having regard to all the circumstances affecting that person's detention including, in the case of a person being detained pending his removal from Hong Kong-
- (a) the extent to which it is possible to make arrangements to effect his removal; and
  - (b) whether or not the person has declined arrangements made or proposed for his removal. (Added 8 of 1998 s. 3)
- (5) In subsection (4), *court* (法院) includes the District Court and a magistrate. (Added 42 of 1979 s. 3)

Section:	33	<b>Detention of persons on board ships or aircraft</b>	E.R. 1 of 2013	25/04/2013
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- (1) The captain of a ship or aircraft shall, if so required by an immigration officer, immigration assistant or police officer, take such steps as may be necessary for preventing-
- (a) a person who arrived in the ship or aircraft and has been refused permission to land in Hong Kong; or
  - (b) a person placed on board the ship or aircraft under section 24(2) or 25(3),
- from landing from the ship or aircraft before it leaves Hong Kong.
- (2) For the purpose of preventing any such person from landing from the ship or aircraft, the captain of the ship or aircraft may detain that person in custody on board the ship or aircraft.

Section:	34	<b>Detention of person arrested under section 54(3)</b>	E.R. 1 of 2013	25/04/2013
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A person who is arrested under section 54(3) may be detained-

- (a) by any police officer for the purpose of inquiries for not more than 48 hours; and
- (b) under the authority of the Secretary for Security for not more than a further 28 days pending the decision of the Governor as to whether or not the suspension of the deportation order made against him should be rescinded. (Amended 15 of 1980 s. 5; 82 of 1993 s. 6)

Section:	35	<b>General provisions as to detained persons</b>	E.R. 1 of 2013	25/04/2013
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- (1) Save as otherwise provided in this Ordinance, persons required or authorized to be detained by or under this Ordinance may be detained in such places as the Secretary for Security may by order direct; and the Governor may by order provide for the treatment of persons so detained. (Amended 15 of 1980 s. 6)
- (2) Subject to this Ordinance, the Secretary for Security may direct that-
- (a) a person required or authorized to be detained by or under this Ordinance; or
  - (b) persons of such class or description as he may specify, being persons required or authorized to be detained by or under this Ordinance,
- may be detained in such other place as he may specify, and-
- (i) a person in respect of whom such a direction has been given; or
  - (ii) a person of any class or description in respect of which such a direction has been given,
- may be detained in such place.
- (3) Without prejudice to any other Ordinance-
- (a) any person detained by virtue of this Ordinance; and
  - (b) any person who, being detained in pursuance of the sentence or order of a court, would otherwise be liable to be detained by virtue of this Ordinance,
- may be taken in the custody of an immigration officer, immigration assistant, officer of the Correctional Services Department or police officer to and from any place where his attendance is required for any purpose of this Ordinance. (Amended 57 of 1972 s. 9; 42 of 1982 s. 9)
- (4) Any person required or authorized to be detained by or under this Ordinance may be arrested without warrant by an immigration officer, immigration assistant, officer of the Correctional Services Department or police officer; and any person who is-
- (a) detained by virtue of this Ordinance;
  - (b) being removed from one place in which he is detained by virtue of this Ordinance to another place in which

- he may be so detained; or
- (c) being taken to any place in the custody of an immigration officer, immigration assistant, officer of the Correctional Services Department or police officer in accordance with this Ordinance, shall be deemed to be in lawful custody. (Amended 57 of 1972 s. 9; 42 of 1982 s. 9)

Section:	36	<b>Recognizance as alternative to detention</b>	E.R. 1 of 2013	25/04/2013
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- (1) An immigration officer and any police officer may require a person-
- (a) who is detained under section 27, 32, 34 or 37ZK; or (Amended 48 of 1992 s. 11; 88 of 1997 s. 15; 23 of 2012 s. 6)
  - (b) who, being liable to be detained under any of those sections, is not for the time being so detained, to enter into a recognizance in the prescribed form in such amount, with such number of sureties and subject to such conditions as the immigration officer or police officer may reasonably require or impose; and where a person who is so detained enters into such a recognizance he may be released. (Amended 23 of 2012 s. 6)
- (1A) Without limiting subsection (1), the conditions of a recognizance imposed under that subsection may include a condition that the person must—
- (a) report in person at the time and intervals, and at the office or police station, specified by the immigration officer or police officer;
  - (b) notify an immigration officer or police officer in writing of any change in the person's residential or correspondence address as soon as practicable after the change;
  - (c) (if the person is a claimant as defined by section 37U(1)) attend interviews scheduled by an immigration officer under section 37ZB(1)(b). (Added 23 of 2012 s. 6)
- (1B) An immigration officer or police officer may vary any condition of a recognizance imposed under subsection (1). (Added 23 of 2012 s. 6)
- (2) A person may be detained under section 27, 32, 34 or 37ZK notwithstanding that he has entered into a recognizance pursuant to a requirement under subsection (1); and where such person is so detained otherwise than in consequence of or following a breach of the recognizance, the recognizance shall thereupon cease to have effect. (Amended 48 of 1992 s. 11; 88 of 1997 s. 15; 23 of 2012 s. 6)
  - (3) If it appears to a magistrate on the application of the Director that any person may become liable to be detained under section 32(2), the magistrate may order that person to enter into a recognizance in the prescribed form in such amount and with such number of sureties as he thinks fit. (Added 52 of 1976 s. 3)
  - (4) The magistrate may order any person who wilfully fails to comply with an order under subsection (3) to be imprisoned for 6 months. (Added 52 of 1976 s. 3)
  - (5) A recognizance entered into pursuant to subsection (3) shall cease to have effect-
    - (a) where the person who has entered into the recognizance has been detained under section 32(2);
    - (b) where the person who has entered into the recognizance has a removal order or deportation order made against him;
    - (c) where it is decided that a removal order will not be made in respect of him;
    - (d) upon the expiration of 6 months from the date on which the recognizance was entered into or upon the expiration of the period for which the recognizance has been extended under subsection (6), whichever is the earlier. (Added 52 of 1976 s. 3)
  - (6) A magistrate may, on application by the Director prior to the expiration of a recognizance entered into pursuant to subsection (3), extend the recognizance for such period not exceeding 6 months as the magistrate thinks fit. (Added 52 of 1976 s. 3)

Section:	37	<b>Recovery of cost of maintaining person detained under section 32(1)</b>	E.R. 1 of 2013	25/04/2013
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If a person who is detained under section 32(1) pending his removal from Hong Kong under section 18 arrived in Hong Kong in a ship or aircraft, the Director of Immigration may require the owner of the ship or aircraft or his agent to pay to the Government the expense incurred by it in maintaining that person during his detention.

Part:	VIIA	<b>UNAUTHORIZED ENTRANTS</b>		30/06/1997
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(Part VIIA added 61 of 1979 s. 3)

Section:	37A	<b>Interpretation</b>		30/06/1997
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In this Part-

"passage" (旅程) in relation to an unauthorized entrant includes the travel and transport of the unauthorized entrant by ship, aircraft, vehicle or any other means whatsoever; and

"unauthorized entrant" (未獲授權進境者) means a person belonging to a class or description of persons who, by an order made under section 37B, are declared to be unauthorized entrants, other than a person who under subsection (2) of that section is excepted from the declaration in such order.

Section:	37B	<b>Declaration of unauthorized entrants</b>	28 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 28 of 1998 s. 2(2)

(1) The Governor in Council may by order declare any class or description of persons, other than persons who enjoy the right of abode in Hong Kong, or have the right to land in Hong Kong by virtue of section 2AAA, to be unauthorized entrants. (Amended 31 of 1987 s. 20; 88 of 1997 s. 16; 28 of 1998 s. 2(2))

(2) A declaration under subsection (1) may be made subject to such exceptions as are specified in the order.

Section:	37C	<b>Offence by crew etc., of ship carrying unauthorized entrants</b>		30/06/1997
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(1) Subject to subsection (2), if a ship enters Hong Kong with an unauthorized entrant on board-

- (a) each member of the crew;
- (b) the owner of the ship and his agent; and
- (c) any person who participated in making arrangements to enable the voyage on which the unauthorized entrant boarded the ship or was brought to Hong Kong to take place,

commits an offence and is liable-

- (i) on conviction on indictment to a fine of \$5000000 and to imprisonment for 14 years; and (Amended 82 of 1993 s. 7)
- (ii) on summary conviction to a fine of \$350000 and to imprisonment for 3 years. (Amended L.N. 25 of 1996)

(2) (a) The captain or owner of a ship shall not be convicted of an offence under subsection (1) if he proves that at the time of the entry of the ship into Hong Kong he did not know, had no reason to suspect and could not with reasonable diligence have discovered that there was on board the ship any unauthorized entrant.

(b) A person who is a member of the crew of a ship other than the captain shall not be convicted of an offence under subsection (1) if he proves that prior to the commencement of the voyage on which the unauthorized entrant was brought to Hong Kong, he did not know and had no reason to suspect that any unauthorized entrant would be carried on the ship.

(c) A person accused of an offence under subsection (1)(c) shall not be convicted of such offence if he proves that on the date or dates on which he participated in making any such arrangements as are referred to in that subsection he did not know and had no reason to suspect that any unauthorized entrant would be carried on the ship.

(d) A person who is the agent of the owner of a ship shall not be convicted of an offence under subsection (1) if he proves-

- (i) that prior to the commencement of the voyage on which any unauthorized entrant was brought to Hong Kong, he did not know and had no reason to suspect that any unauthorized entrant would be carried on the ship; and
- (ii) that he informed the Director at the earliest practicable opportunity of the presence on board the

ship of unauthorized entrants.

Section:	37D	<b>Arranging passage to Hong Kong of unauthorized entrants</b>		30/06/1997
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(1) Subject to subsection (2), any person who, on his own behalf or on behalf of any other person, whether or not such other person is in Hong Kong-

- (a) arranges or assists the passage to, or within, Hong Kong;
- (b) offers to arrange or assist the passage to, or within, Hong Kong; or
- (c) does or offers to do an act preparatory to or for the purpose of arranging or assisting the passage to, or within, Hong Kong,

of a person who is, or of a conveyance which carries, an unauthorized entrant, commits an offence and is liable-

- (i) on conviction on indictment to a fine of \$5000000 and to imprisonment for 14 years; (Amended 82 of 1993 s. 8)
- (ii) on summary conviction to a fine of \$350000 and to imprisonment for 3 years. (Amended L.N. 25 of 1996)

(2) No person shall be convicted of an offence under subsection (1) if he proves that he did not know, had no reason to suspect and could not with reasonable diligence have discovered-

- (a) that the person whose carriage on a conveyance or whose passage is the subject of the charge, was an unauthorized entrant; or
- (b) that the conveyance in relation to which he is charged was carrying, or would carry, any unauthorized entrant,

as the case may be.

(3) In this section "conveyance" (運輸工具) means a ship, aircraft, vehicle or any other means whatsoever of travel or transport.

Section:	37DA	<b>Assisting unauthorized entrant to remain</b>		30/06/1997
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(1) Any person who assists an unauthorized entrant to remain in Hong Kong commits an offence and shall be liable-

- (a) on conviction on indictment, to a fine of \$500000 and to imprisonment for 10 years; and
- (b) on summary conviction, to a fine of \$250000 and to imprisonment for 3 years. (Amended L.N. 25 of 1996)

(2) No person shall be convicted of an offence under subsection (1) if he proves that he did not know, had no reason to suspect and could not with reasonable diligence have discovered that the person he assisted was an unauthorized entrant.

(Added 75 of 1981 s. 8)

Section:	37E	<b>Forfeiture of ships</b>	L.N. 362 of 1997	01/07/1997
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(1) Where a ship is used in the commission of an offence under section 37C or 37D, the ship shall be liable to forfeiture whether or not any person is convicted of any such offence.

(2) With the approval in writing of the Secretary for Justice the Director may seize and detain any ship which appears to him to be liable to forfeiture under subsection (1) and within 21 days of any such seizure the Director shall serve notice of the seizure on the owner of the ship: (Amended L.N. 362 of 1997)

Provided that where there is more than one owner of a ship it shall be sufficient for the purposes of this subsection to give notice to one of the owners.

(3) A notice under subsection (2) shall be deemed to have been duly served on the owner if-

- (a) it is delivered to him, or to the person whom the Director believes to be the owner;
- (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Director; or
- (c) where in the opinion of the Director it is not practicable to serve the notice in accordance with paragraph (a) or (b) it is published in accordance with subsection (4).

(4) Within 21 days of the seizure of any ship which appears to the Director to be liable to forfeiture under subsection (1), notice of the seizure of the ship shall be published-

- (a) in the Gazette; and
- (b) in 1 newspaper published in Hong Kong in the English language and 1 newspaper so published in the Chinese language.

(5) Any person who has a claim to a ship which has been seized (in this section and in section 37F referred to as the claimant) may, within 30 days of the publication in the Gazette of notice of the seizure, give notice in writing to the Director that he claims that the ship is not liable to forfeiture.

(6) A notice under subsection (5) shall state an address within Hong Kong at which the claimant may be served in any proceedings arising out of the claim and in any such proceedings a document addressed to the claimant and sent by post to, or delivered at, that address shall for the purposes of this Part be deemed to be duly served on the claimant.

(7) The Director may at any time prior to the expiration of the period of time specified in subsection (5), terminate the seizure of the ship by serving notice to that effect on the owner in accordance with subsection (3), or in a similar manner on the person in possession of the ship at the time it was seized; and within 14 days of so terminating the seizure of the ship, the Director shall release the ship to the owner or to such person and publish notice of the termination of the seizure in the manner provided in subsection (4).

(8) If, on the expiry of the period of time specified in subsection (5) for the giving of a notice of a claim, no such notice has been given in writing to the Director, the ship shall thereupon be deemed to be duly forfeited to the Crown.

(9) A person has a claim for the purposes of this section and section 37F if-

- (a) he is the owner of the ship, or of an interest in the ship, or is the agent of the owner; or
- (b) he was in possession of the ship at the time it was seized.

Section:	37F	<b>Determination of application for forfeiture</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Where a notice of claim is given under section 37E(5) and the Director does not terminate the seizure under section 37E(7), the Director shall apply for the forfeiture of the ship.

(2) An application under subsection (1) may be made to a magistrate, the District Court or to the Court of First Instance, as the Secretary for Justice thinks fit. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)

(3) When an application under subsection (1) is made to a magistrate, the magistrate shall issue a summons to the claimant requiring him to appear before a magistrate on the hearing of the application and shall cause a copy of the summons to be served on the Director.

(4) When an application under subsection (1) is made to the District Court or the Court of First Instance, it shall be made and proceeded with, and may be withdrawn, in accordance with rules of court, and may be begun by motion. (Amended 25 of 1998 s. 2)

(5) If on the hearing of an application made under subsection (1)-

- (a) neither the claimant nor any other person appears before the court to make a claim and the court is satisfied that notice of the date of the hearing was duly served on the claimant; or
- (b) neither the claimant nor any person satisfies the court that he has a claim,

and the court is satisfied that the ship is liable to forfeiture, the court shall order that the ship be forfeited to the Crown.

(6) If, on the hearing of an application made under subsection (1) and not withdrawn, the court is satisfied that-

- (a) the ship is liable to forfeiture; and
- (b) a person has a claim in respect thereof,

it shall order that the ship be forfeited to the Crown unless that person satisfies the court that it is just and equitable in all the circumstances-

- (i) that the ship should not be forfeited; or
- (ii) that the ship should not be forfeited but that instead a sum under subsection (7) should be paid to the Crown.

(7) Where the court does not order that the ship be forfeited, it shall order that the ship be released to the owner or his agent either without payment to the Director or upon payment to the Director of-

- (a) such sum, if any, as appears to the court to be sufficient to reimburse the Government for expenditure reasonably incurred or to be incurred by the Government in seizing and detaining the ship and in supplying goods and services to it and to any person on board the ship;

(b) such sum, if any, as appears to the court to be just and equitable in lieu of forfeiture of the ship, having regard to all the circumstances including the value of the ship, the degree of blameworthiness of the owner or other claimant and any other relevant factors.

(8) If any sum ordered to be paid under subsection (7) is not paid to the Director within 1 month of the date of the order, then the ship shall thereupon be deemed to be duly forfeited to the Crown without prejudice to any order for the payment of any sum under subsection (7)(a), which may be recovered as a civil debt due to the Government.

(9) Where the court orders that the ship be forfeited, it may in addition order the owner or other claimant to pay to the Director the sum specified in subsection (7)(a).

(10) On the hearing of an application made under subsection (1), a certified true copy of the record of any proceedings, including the decision of the court, in respect of an offence under section 37C or 37D shall be admissible in evidence, and for the avoidance of doubt it is declared that such application is a civil proceeding.

(11) Subject to the provisions of this Ordinance, an application to a magistrate under subsection (1) may with the leave of the magistrate be withdrawn at any time prior to the making of an order under subsection (6) or (7), and shall be deemed for the purpose of the Magistrates Ordinance (Cap 227) to be a complaint to which section 8 of that Ordinance applies.

Section:	37G	<b>Forfeiture of property</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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**Remarks:**

Adaptation amendments retroactively made - see 25 of 1998 s. 2

An application may at any time be made by the Secretary for Justice to a magistrate in the prescribed form, or in accordance with rules of court to the District Court or the Court of First Instance by motion, for forfeiture under this section and if upon hearing such application or, where no such application is made, in the course of a prosecution for an offence under section 37C or 37D, it appears to the court that any property other than a ship- (Amended L.N. 362 of 1997; 25 of 1998 s. 2)

(a) has been, is being or is intended to be used in the commission or to procure or facilitate the commission of an offence under section 37C or 37D; or

(b) is the proceeds or represents the proceeds, directly or indirectly (as being the result of any disposal or realization of the whole or part of the proceeds) of any such offence,

the court shall, whether or not any person is convicted of any such offence, order the forfeiture of such property unless it is satisfied that it would not be just to do so or that there is other good reason why it should not do so.

Section:	37H	<b>Compensation for seizure of ship or property</b>	25 of 1998	01/07/1997
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**Remarks:**

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Where any ship or other property is seized under this Part and subsequently released to the owner, whether on the order of a court or otherwise, the owner or person in lawful possession may within 6 months of such release apply to the District Court or the Court of First Instance for compensation for any loss arising out of the seizure, which shall be recoverable as a civil debt due from the Government, and such application may be begun by motion. (Amended 25 of 1998 s. 2)

(2) An award of compensation under subsection (1) shall be an award of such sum, if any, as is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of-

(a) the owner of the ship or other property;

(b) the person in charge or control of the ship or other property at the time it was seized;

(c) the agents of the persons specified in paragraphs (a) and (b); and

(d) public officers and any other persons concerned.

Section:	37I	<b>Entry of ships with unauthorized entrants may be permitted in certain circumstances</b>		30/06/1997
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(1) Notwithstanding anything in this Part, no offence is committed, and no ship shall be liable to forfeiture,

under this Part in respect of the presence of an unauthorized entrant on board a ship-

- (a) which the Governor has in his discretion on special grounds granted permission to enter Hong Kong; or
- (b) whose first port of call is Hong Kong, if the unauthorized entrant was taken on board without reward pursuant to a legal obligation to go to his assistance.

(2) In any proceedings for an offence under this Part or for forfeiture arising out of such an offence, until it is proved that an unauthorized entrant was taken on board a ship-

- (a) without reward;
- (b) pursuant to a legal obligation to go to the assistance of the unauthorized entrant; and
- (c) whose first port of call was Hong Kong,

the contrary shall be presumed.

(3) For the purposes of this section "legal obligation" (法律義務) means an obligation imposed upon the state where the ship is registered, pursuant to-

- (a) an International Convention for the Safety of Life at Sea which has been acceded to by the United Kingdom and extended to Hong Kong;
- (b) any other international convention acceded to by the United Kingdom and extended to Hong Kong; or
- (c) customary international law.

(4) For the purposes of this section Hong Kong is the first port of call of a ship if-

- (a) (i) immediately before the ship first went to the assistance of any unauthorized entrants it was in the course of a business or commercial voyage and the next port of call at which the ship was due to call was Hong Kong; and
- (ii) immediately after going to the assistance of the unauthorized entrants the ship proceeded directly to Hong Kong; or
- (b) (i) it is necessary for the ship to enter Hong Kong as a port of refuge because there is a risk to the ship's safety arising from weather conditions or from the carriage of hazardous cargoes together with unauthorized entrants or because the lives of the crew or other persons on board the ship are in danger;
- (ii) the captain, owner or agent informs the Director of Marine at the earliest practicable opportunity of such of the circumstances specified in subparagraph (i) as apply to the ship; and
- (iii) the Secretary for Security in his discretion grants permission for the ship to enter Hong Kong.

Section:	37J	<b>Prosecution for acts outside Hong Kong</b>		30/06/1997
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Without prejudice to any law or enactment to the like or a similar effect as that of this section, where any person is in Hong Kong, he may be charged and convicted in respect of anything which was done or which occurred wholly or partly outside Hong Kong that would have been an offence under this Part if it had been done or had occurred within Hong Kong.

Section:	37K	<b>Proof</b>		30/06/1997
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(1) If in any proceedings under this Part a person is alleged to be, and there are reasonable grounds for believing that such person may be, an unauthorized entrant, that person shall be presumed to be such in the absence of evidence to the contrary. (Replaced 48 of 1992 s. 12)

(2) Where a person is charged with an offence under this Part as being, and there are reasonable grounds for believing that such person may be-

- (a) the owner of a ship;
- (b) the agent of the owner of a ship; or
- (c) a member of the crew of a ship,

that person shall be presumed to be such owner, agent or member, as the case may be, in the absence of evidence to the contrary. (Replaced 82 of 1993 s. 9)

Section:	37L	<b>Secretary for Justice to consent to prosecution</b>	L.N. 362 of 1997	01/07/1997
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No prosecution shall be brought under this Part without the consent of the Secretary for Justice.

(Amended L.N. 362 of 1997)

Section:	37M	<b>(Repealed 82 of 1993 s. 10)</b>		30/06/1997
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Part:	VIIB	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Section:	37N	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Section:	37O	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Section:	37P	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Section:	37Q	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Section:	37R	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Section:	37S	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Section:	37T	<b>(Omitted as expired—E.R. 1 of 2013)</b>	E.R. 1 of 2013	25/04/2013
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Part:	VIIC	<b>Torture Claims</b>	L.N. 147 of 2012	03/12/2012
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(Part VIIC added 23 of 2012 s. 7)

Part:	VIIC	<b>Preliminary</b>	L.N. 147 of 2012	03/12/2012
Division:	1			

Section:	37U	<b>Interpretation of Part VIIC</b>	L.N. 147 of 2012	03/12/2012
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(1) In this Part—

**appeal** (上訴) means an appeal made under section 37ZR;

**Appeal Board** (上訴委員會) means the Torture Claims Appeal Board established by section 37ZQ;

**claimant** (聲請人) means a person whose torture claim (not being a torture claim that has been withdrawn)—

- (a) is not yet finally determined; or
- (b) is a substantiated claim;

**Convention** (《公約》) means the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 as applied to Hong Kong;

**finally determined** (最終裁定)—see section 37V;

**non-refoulement protection** (免遣返保護), in relation to a claimant, means protection under Article 3 of the Convention against expulsion, return or extradition of the claimant to a torture risk State;

**removal** (遣離) means the removal of a person from Hong Kong under section 18 or under a removal order or a

deportation order;

**revocation decision** (撤銷決定) means—

- (a) a decision made by an immigration officer under section 37ZL(1); or
- (b) a decision made by the Appeal Board under section 37ZM(1);

**State** (國家) means a country other than China;

**subsequent claim** (後繼聲請) means a torture claim by a person who has previously made a torture claim that has been finally determined or withdrawn;

**substantiated claim** (已確立聲請) means a torture claim—

- (a) that is accepted as substantiated under section 37ZI(1)(a) and in respect of which no revocation decision has been made by an immigration officer; or
- (b) in respect of which—
  - (i) a decision rejecting the claim under section 37ZI(1)(b) was made but reversed on appeal to the Appeal Board and no revocation decision has been made by the Appeal Board; or
  - (ii) a revocation decision was made by an immigration officer but reversed on appeal to the Appeal Board;

**surrender** (移交) means the surrender of a person to a place outside Hong Kong under the Fugitive Offenders Ordinance (Cap 503), and **surrender proceedings** (移交逃犯法律程序) means proceedings instituted for such surrender;

**torture** (酷刑) means an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—

- (a) for such purposes as—
  - (i) obtaining from that person or a third person information or a confession;
  - (ii) punishing that person for an act which that person or a third person has committed or is suspected of having committed; or
  - (iii) intimidating or coercing that person or a third person; or
- (b) for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity, excluding pain or suffering arising only from, inherent in or incidental to lawful sanctions;

**torture claim** (酷刑聲請) means a claim for non-refoulement protection in Hong Kong on the ground of a torture risk made under section 37X or treated as having been made by virtue of section 37ZP(2)(b), including a torture claim re-opened under section 37ZE(2) or 37ZG(3);

**torture claim form** (酷刑聲請表格) means the torture claim form specified by the Director under section 37Y(4);

**torture risk** (酷刑風險) means the danger of being subjected to torture;

**torture risk State** (存在酷刑風險國家), in relation to a claimant, means a State in respect of which the claimant has made a torture claim on the ground that the claimant would be in danger of being subjected to torture in that State;

**withdrawn** (撤回), in relation to a claim, means withdrawn in accordance with section 37ZE or treated as withdrawn under section 37ZF or 37ZG.

(2) In this Part, a reference to this Part includes Schedule 1A and any subsidiary legislation made under section 37ZW.

Section:	37V	<b>When torture claim is finally determined</b>	L.N. 147 of 2012	03/12/2012
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- (1) Subject to subsections (2), (3), (4) and (5), a torture claim is finally determined once a decision on the claim is made by an immigration officer under section 37ZI.
- (2) For a torture claim rejected by a decision under section 37ZI(1)(b), the claim is finally determined—
  - (a) when the period within which an appeal may be lodged against the decision has expired (if an appeal against the decision has not been lodged within that period); or
  - (b) when the appeal has been disposed of (if an appeal has been lodged against the decision).
- (3) If a revocation decision is made by an immigration officer in respect of a substantiated claim, the claim must, on and from the making of that decision, be treated as not yet finally determined.

- (4) For a torture claim covered by subsection (3), the claim is finally determined—
- (a) when the period within which an appeal may be lodged against the revocation decision has expired (if an appeal against the revocation decision has not been lodged within that period); or
  - (b) when the appeal has been disposed of (if an appeal has been lodged against the revocation decision).
- (5) If a revocation decision is made by the Appeal Board in respect of a substantiated claim, the claim must be treated as finally determined on the making of that decision.

Part:	VIIC	<b>Procedure Relating to Torture Claims</b>	L.N. 147 of 2012	03/12/2012
Division:	2			

Section:	37W	<b>Restrictions on persons claiming non-refoulement protection in Hong Kong</b>	L.N. 147 of 2012	03/12/2012
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- (1) A person may claim non-refoulement protection in Hong Kong only if—
- (a) the person is subject or liable to removal; and
  - (b) apart from a torture risk State, the person does not have a right of abode or right to land in, or right to return to, any other State in which the person would be entitled to non-refoulement protection.
- (2) A person whose surrender is requested in surrender proceedings may claim non-refoulement protection in Hong Kong even if the person does not meet the descriptions in paragraphs (a) and (b) of subsection (1).

Section:	37X	<b>How torture claim is made</b>	L.N. 147 of 2012	03/12/2012
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- (1) A person who claims non-refoulement protection in Hong Kong on the ground of a torture risk must signify to an immigration officer in writing the person's intention to seek non-refoulement protection.
- (2) The written signification must give a general indication of the person's reasons for claiming non-refoulement protection in Hong Kong, being reasons that relate to an act falling within the meaning of *torture* as defined by section 37U(1).
- (3) On signifying an intention under subsection (1), the person must allow an immigration officer or an immigration assistant to take the person's fingerprints and photograph.
- (4) A torture claim is made when subsections (1), (2) and (3) have been complied with by the person making the claim.
- (5) A torture claim may be made only in respect of a person's removal or surrender to a place outside China.

Section:	37Y	<b>Submission of torture claim form</b>	L.N. 147 of 2012	03/12/2012
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- (1) A claimant must, on written request by an immigration officer—
- (a) complete a torture claim form, and the completed form must—
    - (i) state the grounds of the claim and the facts supporting the claim; and
    - (ii) include such other information as is required by the form; and
  - (b) return the torture claim form so completed to an immigration officer at an address specified in the form, together with all documents supporting the claim that are readily available to the claimant when the form is returned.
- (2) The claimant must return the completed torture claim form in accordance with subsection (1)(b)—
- (a) within the period of 28 days after a written request under subsection (1) is given to the claimant; or
  - (b) within any further period that an immigration officer allows under subsection (3).
- (3) An immigration officer may—
- (a) on an application made by a claimant in writing before the expiry of a period for returning a completed torture claim form in respect of the claimant's torture claim; and
  - (b) on being satisfied that, by reason of special circumstances, it would be unjust not to allow a further period for the claimant to return the completed form,
- allow a further period that the immigration officer considers appropriate for the claimant to return the completed form.

- (4) The torture claim form is to be in a form specified by the Director.

Section:	37Z	<b>Effect of making a torture claim</b>	L.N. 147 of 2012	03/12/2012
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- (1) A claimant may not be removed from Hong Kong to a torture risk State.
- (2) Despite subsection (1), the making of a torture claim does not—
- (a) affect the validity of any removal order or deportation order that has been made against the claimant; or
  - (b) preclude the making of a removal order or a deportation order against the claimant.
- (3) To avoid doubt, it is declared that—
- (a) a claimant may be removed, in accordance with section 24 or 25, to a specified country that is not a torture risk State;
  - (b) a person whose torture claim—
    - (i) is withdrawn; or
    - (ii) is not a substantiated claim on final determination,
 may be removed, in accordance with section 24 or 25, to a specified country whether or not the specified country was alleged to be a torture risk State.

Section:	37ZA	<b>Duties of claimant</b>	L.N. 147 of 2012	03/12/2012
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- (1) It is the duty of a claimant to substantiate a torture claim, and to this end, the claimant must—
- (a) provide to the Director and (on an appeal) to the Appeal Board all information relevant to the claim and make prompt and full disclosure of all material facts in support of the claim, including any document supporting those facts;
  - (b) comply with every requirement, procedure and condition (including any time limit)—
    - (i) prescribed by this Part; or
    - (ii) required or specified by any person under this Part.
- (2) A claimant must provide to the Director and (on an appeal) to the Appeal Board—
- (a) the claimant's residential address in Hong Kong; and
  - (b) the claimant's correspondence address in Hong Kong (if different from the residential address),
- and must notify the Director and (on an appeal) the Appeal Board in writing of any change in either of those addresses as soon as practicable after the change.

Section:	37ZB	<b>Power to require information etc.</b>	L.N. 147 of 2012	03/12/2012
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- (1) After a completed torture claim form is returned by a claimant, an immigration officer—
- (a) may require the claimant to provide the immigration officer with any information or documentary evidence related to the claimant's torture claim that the immigration officer specifies; and
  - (b) must require the claimant to attend an interview to provide information and answer questions relating to the claimant's torture claim.
- (2) Information or documentary evidence required to be provided to an immigration officer under subsection (1)(a) must be provided within the time specified by the immigration officer.

Section:	37ZC	<b>Medical examination</b>	L.N. 147 of 2012	03/12/2012
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- (1) If the physical or mental condition of the claimant is in dispute and is relevant to the consideration of a torture claim—
- (a) an immigration officer or (on an appeal) the Appeal Board may require the claimant to undergo a medical examination to be conducted by a medical practitioner as arranged by an immigration officer; or
  - (b) an immigration officer may, at the request of the claimant, arrange for a medical examination of the claimant to be conducted by a medical practitioner.
- (2) If a medical examination is arranged under subsection (1), the claimant must attend the examination at the time and place that the immigration officer notifies to the claimant.
- (3) A claimant must disclose to an immigration officer and (on an appeal) the Appeal Board the medical report of

any examination arranged for the claimant under this section.

Section:	37ZD	<b>Credibility of claimant</b>	L.N. 147 of 2012	03/12/2012
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- (1) In considering a torture claim, an immigration officer or the Appeal Board may take into account, as damaging the claimant's credibility, the following behaviour of the claimant—
- (a) any behaviour that the immigration officer or the Appeal Board considers is designed to, or is likely to be designed to—
    - (i) conceal information;
    - (ii) mislead; or
    - (iii) obstruct or delay the handling or determination of the claimant's torture claim;
  - (b) a failure to take advantage of a reasonable opportunity to claim non-refoulement protection in respect of a torture risk State while in a place outside Hong Kong to which the Convention applies (other than a torture risk State);
  - (c) if the claimant is a person who is subject or liable to removal, a failure to make the claim when, or as soon as practicable after—
    - (i) the claimant has become subject or liable to removal; or
    - (ii) the events on which the claim is based have taken place, whichever is later;
  - (d) if the claimant is a person whose surrender is requested in surrender proceedings, a failure to make the claim when, or as soon as practicable after—
    - (i) it comes to the claimant's notice that the surrender proceedings have been commenced; or
    - (ii) the events on which the claim is based have taken place, whichever is later; and
  - (e) a failure to make the claim before being arrested or detained under a provision of this Ordinance, unless—
    - (i) the claimant had no reasonable opportunity to make the claim before the arrest or detention; or
    - (ii) the claim relies wholly on matters arising after the arrest or detention.
- (2) Without limiting subsection (1)(a), behaviour described in any of the following paragraphs is behaviour within the meaning of that subsection—
- (a) the production of a false document as proof of the claimant's identity;
  - (b) a failure, without reasonable excuse, to produce a document as proof of the claimant's identity on request by an immigration officer;
  - (c) the destruction, alteration or disposal, without reasonable excuse, of a passport, ticket or other document containing information about the route of the claimant's travel to Hong Kong;
  - (d) a failure, without reasonable excuse, to provide the information or documentary evidence required by an immigration officer under section 37ZB(1)(a);
  - (e) a failure, without reasonable excuse, to—
    - (i) attend an interview scheduled by an immigration officer under section 37ZB(1)(b); or
    - (ii) provide information or answer any question put by an immigration officer at the interview;
  - (f) a failure, without reasonable excuse, to make a full disclosure of the material facts in support of the torture claim, including any document supporting those facts, before the date fixed for the first interview scheduled by an immigration officer under section 37ZB(1)(b);
  - (g) a failure, without reasonable excuse, to—
    - (i) attend a medical examination arranged under section 37ZC; or
    - (ii) disclose to an immigration officer and (on an appeal) the Appeal Board the medical report of the examination;
  - (h) a failure, without reasonable excuse, to comply with any requirement, procedure or condition (including any time limit)—
    - (i) prescribed by this Part; or
    - (ii) required or specified by any person under this Part.
- (3) This section does not prevent an immigration officer or the Appeal Board from taking into account any other behaviour of the claimant as damaging the claimant's credibility.

Section:	37ZE	<b>Withdrawal of torture claim by claimant</b>	L.N. 147 of 2012	03/12/2012
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- (1) A claimant may, before a torture claim is decided under section 37ZI, withdraw the claim by notifying an immigration officer in writing.
- (2) Subject to section 37ZF(3), a torture claim that has been withdrawn under subsection (1) may be re-opened if the person who made the claim provides sufficient evidence in writing to satisfy an immigration officer that—
  - (a) since the withdrawal, there has been a change of circumstances that—
    - (i) could not reasonably have been foreseen by the person when the person gave the notification under subsection (1); and
    - (ii) when taken together with the material previously submitted for the claim, could increase the prospect of success of the claim; or
  - (b) by reason of special circumstances, it would be unjust not to re-open the claim.
- (3) If an immigration officer decides to re-open a person's torture claim under subsection (2), the immigration officer must, by written notice, inform the person of the decision.
- (4) If an immigration officer decides not to re-open the person's torture claim, the immigration officer must, by written notice, inform the person of—
  - (a) the decision;
  - (b) the reasons for the decision; and
  - (c) the person's right under section 37ZR to appeal against the decision.
- (5) If a torture claim is re-opened under subsection (2), subject to subsections (6) and (7), processing of the claim is to continue in accordance with this Part as if the claim had not been withdrawn.
- (6) If the period for returning a completed torture claim form in respect of a torture claim under section 37Y(2) has not expired at the time the claim is withdrawn under subsection (1), section 37Y(2) applies to the claim as if for paragraph (a) of that section there were substituted—  
“(a) within the period of 28 days after the notice under section 37ZE(3) is given to the claimant; or” .
- (7) If a completed torture claim form in respect of the torture claim is not returned in accordance with section 37Y(2) as read with subsection (6), the claim is to be treated as withdrawn under section 37ZG(1)—
  - (a) on the expiry of the 28-day period; or
  - (b) if a further period is allowed under section 37Y(3), on the expiry of the further period.

Section:	37ZF	<b>Deemed withdrawal of torture claim on claimant's departure</b>	L.N. 147 of 2012	03/12/2012
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- (1) A torture claim (whether a claim pending final determination or a substantiated claim) made by a claimant who is subject or liable to removal must be treated as withdrawn if the claimant (for whatever reason) leaves Hong Kong.
- (2) A torture claim that is treated as withdrawn under subsection (1) must not be re-opened.
- (3) If a person leaves Hong Kong after the person has given notice to withdraw a torture claim under section 37ZE(1), the claim must be treated as having been withdrawn under subsection (1) and must not be re-opened.

Section:	37ZG	<b>Deemed withdrawal of torture claim on failure to return completed torture claim form</b>	L.N. 147 of 2012	03/12/2012
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- (1) A torture claim must be treated as withdrawn if the person who made the claim fails to return a completed torture claim form as required under section 37Y(2).
- (2) An immigration officer must give the person who made the claim a written notice stating that—
  - (a) the torture claim is treated as withdrawn under subsection (1); and
  - (b) the person may apply to re-open the claim under subsection (3).
- (3) A torture claim treated as withdrawn under subsection (1) may be re-opened if the person who made the claim provides sufficient evidence in writing to satisfy an immigration officer that due to circumstances beyond the person's control, the person had not been able to return a completed torture claim form as required under section 37Y(2).
- (4) If an immigration officer decides to re-open a person's torture claim under subsection (3), the immigration

officer must, by written notice, inform the person—

- (a) of the decision; and
  - (b) that the person is required to return a completed torture claim form in respect of the claim to an immigration officer at an address specified in the form within 14 days after the notice is given.
- (5) If an immigration officer decides not to re-open the person’s torture claim, the immigration officer must, by written notice, inform the person of—
- (a) the decision;
  - (b) the reasons for the decision; and
  - (c) the person’s right under section 37ZR to appeal against the decision.
- (6) If a torture claim is re-opened under subsection (3), subject to subsections (7) and (8), processing of the claim is to continue in accordance with this Part as if the claim had not been withdrawn.
- (7) Section 37Y(2) applies to the torture claim as if for paragraph (a) of that section there were substituted—  
“(a) within the period of 14 days after the notice under section 37ZG(4) is given to the claimant; or” .
- (8) If a completed torture claim form in respect of the torture claim is not returned in accordance with section 37Y(2) as read with subsection (7), the claim is to be treated as withdrawn under subsection (1)—
- (a) on the expiry of the 14-day period; or
  - (b) if a further period is allowed under section 37Y(3), on the expiry of the further period.

Section:	37ZH	<b>Order in which claims are processed</b>	L.N. 147 of 2012	03/12/2012
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The Director may decide the order in which torture claims are to be processed, and no determination on a torture claim is to be called into question on the basis that it ought to have been processed earlier or later than any other torture claim or category of torture claims.

Section:	37ZI	<b>Decision on torture claim</b>	L.N. 147 of 2012	03/12/2012
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- (1) Unless a torture claim is withdrawn, an immigration officer is to decide whether to—
  - (a) accept the claim as substantiated; or
  - (b) reject the claim.
- (2) A decision may be made under subsection (1) even if the claimant fails to attend an interview scheduled by an immigration officer under section 37ZB(1)(b) or otherwise fails to proceed with the claim in accordance with this Part.
- (3) A torture claim must be accepted as substantiated if there are substantial grounds for believing that the claimant would be in danger of being subjected to torture if the claimant were removed or surrendered to a torture risk State.
- (4) A torture claim must be rejected in the absence of the substantial grounds for belief referred to in subsection (3).
- (5) In determining whether there are substantial grounds for the belief referred to in subsection (3), all relevant considerations are to be taken into account, including, where applicable, the following matters in relation to the conditions in the torture risk State—
  - (a) whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the torture risk State; and
  - (b) whether there is any region within the torture risk State in which the claimant would not be in danger of being subjected to torture.

Section:	37ZJ	<b>Immigration officer to notify decision on torture claim</b>	L.N. 147 of 2012	03/12/2012
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- (1) After an immigration officer has decided to accept, or reject, a torture claim under section 37ZI(1)(a) or (b), the immigration officer must, by written notice, inform the claimant of the decision.
- (2) An immigration officer must, in a notice given under subsection (1) in respect of a decision rejecting a torture claim, also inform the claimant of—
  - (a) the reasons for the decision; and
  - (b) the claimant’s right under section 37ZR to appeal against the decision.

Section:	37ZK	<b>Detention pending final determination</b>	L.N. 147 of 2012	03/12/2012
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Without limiting any other power conferred by this Ordinance, a claimant may be detained under the authority of the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration pending final determination of the claimant's torture claim.

Section:	37ZL	<b>Revocation of immigration officer's decision to accept torture claim</b>	L.N. 147 of 2012	03/12/2012
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- (1) An immigration officer may, on a ground for a revocation decision specified in section 37ZN, revoke a decision made by an immigration officer under section 37ZI(1)(a) accepting a torture claim as substantiated.
- (2) An immigration officer must give the claimant written notice of a proposed revocation, and the notice must—
  - (a) state the reasons for the proposed revocation; and
  - (b) state that the claimant may, within 14 days after the notice is given, inform the immigration officer by written notice of the claimant's objection to the proposed revocation and the reasons for the objection (*objection notice*).
- (3) If—
  - (a) the claimant has not given an objection notice in accordance with subsection (2)(b) and an immigration officer decides to make a revocation decision under subsection (1); or
  - (b) after having considered the claimant's objection notice, an immigration officer decides to make a revocation decision under subsection (1),
the immigration officer must give the claimant written notice of the revocation decision, reasons for the revocation decision and the claimant's right under section 37ZR to appeal against the revocation decision.

Section:	37ZM	<b>Revocation of Appeal Board's decision to reverse decision rejecting torture claim</b>	L.N. 147 of 2012	03/12/2012
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- (1) On an application made by an immigration officer, the Appeal Board may, on a ground for a revocation decision specified in section 37ZN, revoke its decision that reversed a decision made by an immigration officer under section 37ZI(1)(b) rejecting a torture claim.
- (2) Before making an application under subsection (1), an immigration officer must give the claimant written notice of the intended application, and the notice must—
  - (a) state the reasons for the intended application; and
  - (b) state that the claimant may, within 14 days after the notice is given, inform the immigration officer by written notice of the claimant's objection to the intended application and the reasons for the objection (*objection notice*).
- (3) If—
  - (a) the claimant has not given an objection notice in accordance with subsection (2)(b) and an immigration officer decides to make an application under subsection (1); or
  - (b) after having considered the claimant's objection notice, an immigration officer decides to make an application under subsection (1),
the immigration officer must make the application by filing with the Appeal Board a notice of application in a form specified by the Chairperson of the Appeal Board.
- (4) As soon as practicable after the filing of a notice of application, an immigration officer must serve on the claimant a copy of the notice of application.

Section:	37ZN	<b>Grounds for revocation decision</b>	L.N. 147 of 2012	03/12/2012
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A ground specified in any of the following paragraphs is a ground for a revocation decision mentioned in section 37ZL(1) or 37ZM(1)—

- (a) any information or documentary evidence submitted in support of the claim is false or misleading and the false or misleading information or evidence is material to the substantiation of the claim;
- (b) information was not disclosed to an immigration officer or (on an appeal) the Appeal Board and the

undisclosed information would undermine, to a material extent, the merits of the claim;

- (c) the torture risk giving rise to the claim has ceased to exist due to changes in circumstances of the claimant or the torture risk State.

Section:	37ZO	<b>Limitation on subsequent claim</b>	L.N. 147 of 2012	03/12/2012
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- (1) Except as provided in subsection (2), a person who has previously made a torture claim must not subsequently make another torture claim.
- (2) A person may make a subsequent claim if the person provides sufficient evidence in writing to satisfy an immigration officer that—
  - (a) there has been a significant change of circumstances since the previous claim was finally determined or withdrawn; and
  - (b) the change, when taken together with the material previously submitted in support of the previous claim, would give the subsequent claim a realistic prospect of success.
- (3) In deciding whether or not a person may make a subsequent claim under subsection (2), an immigration officer may take into account any finding of credibility or fact made by an immigration officer or the Appeal Board in relation to a torture claim previously made by the person.
- (4) If an immigration officer decides that a person may make a subsequent claim under subsection (2), the immigration officer must give the person written notice of the decision.
- (5) If an immigration officer decides that a person may not make a subsequent claim under subsection (2), the immigration officer must give the person written notice of the decision, and the notice must also include the reasons for the decision.

Section:	37ZP	<b>Processing of subsequent claim</b>	L.N. 147 of 2012	03/12/2012
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- (1) Subject to subsection (2)—
  - (a) a subsequent claim must be made in accordance with section 37X but despite section 37X(4), a subsequent claim is not made unless section 37ZO(2) is complied with; and
  - (b) all of the other provisions of this Part apply to a subsequent claim as they apply to any other torture claim.
- (2) If a subsequent claim is made by a person whose removal is pending following a decision under section 37ZI(1)(b) rejecting the person’s previous torture claim (including such a decision confirmed by the Appeal Board on an appeal against the decision), or following a revocation decision in respect of the person’s previous torture claim—
  - (a) section 37X(1), (2), (3) and (4) does not apply in relation to the subsequent claim;
  - (b) the subsequent claim is taken to be made on the day when a notice under section 37ZO(4) is given notifying the person the subsequent claim may be made; and
  - (c) for the purposes of this Part, section 37Y is taken to have been complied with in respect of the subsequent claim.
- (3) In determining a subsequent claim, an immigration officer and (on an appeal) the Appeal Board may take into account any finding of credibility or fact made by an immigration officer or the Appeal Board in relation to a torture claim previously made by the person making the subsequent claim.

Part:	VIIC	<b>Torture Claims Appeal Board</b>	L.N. 147 of 2012	03/12/2012
Division:	3			

Section:	37ZQ	<b>Appeal Board established</b>	L.N. 147 of 2012	03/12/2012
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- (1) A board to be known as the “Torture Claims Appeal Board” is established.
- (2) The function of the Appeal Board is to hear and determine—
  - (a) an appeal made under section 37ZR; and
  - (b) an application for a revocation decision under section 37ZM.

Section:	37ZR	<b>Appeal</b>	L.N. 147 of 2012	03/12/2012
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A person aggrieved by a decision of an immigration officer may appeal to the Appeal Board if the decision is made in respect of the person under—

- (a) section 37ZE(4) or 37ZG(5) (decision not to re-open a torture claim);
- (b) section 37ZI(1)(b) (decision rejecting a torture claim); or
- (c) section 37ZL(1) (revocation decision made by an immigration officer).

Section:	37ZS	<b>Notice of appeal</b>	L.N. 147 of 2012	03/12/2012
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- (1) A person who wishes to appeal against a decision referred to in section 37ZR must file with the Appeal Board a notice of appeal within 14 days after notice of the decision is given to the person unless late filing of the notice is allowed by the Board under section 37ZT(3).
- (2) A notice of appeal must be—
  - (a) in a form specified by the Chairperson of the Appeal Board; and
  - (b) accompanied by a copy of the notice of the decision being appealed against.

Section:	37ZT	<b>Late filing of notice of appeal</b>	L.N. 147 of 2012	03/12/2012
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- (1) If a notice of appeal is filed after the expiry of the 14-day period referred to in section 37ZS(1), it must include an application for late filing of the notice, which—
  - (a) must include a statement of the reasons for failing to file the notice within that period; and
  - (b) must be accompanied by any documentary evidence relied on in support of the reasons referred to in paragraph (a).
- (2) The Appeal Board must decide, as a preliminary decision without a hearing, whether the Board allows the late filing of the notice of appeal under subsection (3), and in doing so, the Board may only take account of—
  - (a) the statement of reasons stated in the application for late filing of the notice of appeal and any accompanying documentary evidence relied on in support of those reasons; and
  - (b) any other relevant matters of fact within the knowledge of the Board.
- (3) If the Appeal Board is satisfied that by reason of special circumstances, it would be unjust not to allow the late filing of the notice of appeal, the Board may allow the late filing of the notice and must, by written notice, inform the person filing the notice of the Board's decision.
- (4) If the Appeal Board does not allow the late filing of the notice of appeal, the Board must, by written notice, inform the person filing the notice that the Board refuses the notice as it is filed out of time.

Section:	37ZU	<b>Practice and procedure of Appeal Board</b>	L.N. 147 of 2012	03/12/2012
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Schedule 1A has effect with respect to the Appeal Board and its members and to the proceedings of, and procedural and other matters concerning, the Appeal Board.

Part:	VIIC	<b>Miscellaneous</b>	L.N. 147 of 2012	03/12/2012
Division:	4			

Section:	37ZV	<b>Notices</b>	L.N. 147 of 2012	03/12/2012
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- (1) A notice or other document (howsoever described) required to be served or given (howsoever described) by the Director, an immigration officer or the Appeal Board on or to another person under this Part may be served on or given to that other person—
  - (a) personally;
  - (b) by leaving it for the person, or by sending it by post addressed to the person—
    - (i) if the person is a claimant, at the last known residential or correspondence address provided by the claimant to the Director or the Appeal Board under section 37ZA(2); or

- (ii) if the person is not a claimant, at the person's usual or last known place of abode or business; or
  - (c) if the person is acting by a legal representative, by leaving it for the legal representative, or by sending it by post addressed to the legal representative, at the place of business or correspondence address of the legal representative.
- (2) A notice or other document served or given in the manner described in subsection (1), other than by sending it by post, is conclusively presumed to have been served or given and received at the following time—
- (a) if it is served on or given to the person personally, when it is so served or given; or
  - (b) if it is left at a place of abode or business or an address, on the second working day after it was so sent.
- (3) A notice or other document served or given by sending it by post in the manner described in subsection (1) is presumed, in the absence of evidence to the contrary, to have been served or given and received on the second working day after it was so sent.

Section:	37ZW	<b>Regulations</b>	L.N. 147 of 2012	03/12/2012
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The Secretary for Security may by regulation provide for—

- (a) any matter in relation to—
  - (i) the making or processing of a torture claim;
  - (ii) the making of a decision on a torture claim (whether or not a subsequent claim);
  - (iii) the withdrawal or re-opening of a torture claim; or
  - (iv) a revocation decision;
- (b) the procedure for the extension of any period allowed under this Ordinance;
- (c) the practice and procedure of the Appeal Board; and
- (d) generally for the better carrying out of the purposes of this Part.

Section:	37ZX	<b>Claimant of substantiated claim may apply for permission to take employment etc.</b>	L.N. 147 of 2012	03/12/2012
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- (1) The Director may, on an application of a claimant who has a substantiated claim, permit the claimant to take employment or establish or join in a business.
- (2) A permission must not be given under subsection (1) unless the Director is satisfied that exceptional circumstances exist that justify such a permission being given to the claimant.
- (3) A permission given under this section—
  - (a) may be given subject to a time limit and any other condition the Director thinks fit to impose; and
  - (b) must be given in writing.
- (4) A permission given under this section expires immediately on—
  - (a) the expiry of the time limit (if any); or
  - (b) the breach of any other condition, subject to which the permission is given.
- (5) The Director may, before a permission expires under subsection (4), vary any time limit or any other condition imposed under subsection (3).
- (6) To avoid doubt, a permission given under this section is not and must not be taken as—
  - (a) a limit of stay or other condition of stay imposed or varied under section 11; or
  - (b) the Director's authority under section 13 for the claimant to remain in Hong Kong.

Section:	37ZY	<b>Claimant not ordinarily resident in Hong Kong</b>	L.N. 147 of 2012	03/12/2012
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Without limiting section 2(4), a person must not be treated as ordinarily resident in Hong Kong for the purposes of this Ordinance during any period in which the person remains in Hong Kong only by virtue of the person's torture claim (whether or not the person is a claimant who has a substantiated claim and whether or not permission has been given to the person under section 37ZX).

Section:	37ZZ	<b>Savings and transitional arrangements</b>	L.N. 147 of 2012	03/12/2012
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Schedule 4 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Immigration (Amendment) Ordinance 2012 (23 of 2012).

Part:	VIII	<b>Offences and Forfeiture</b>	E.R. 1 of 2013	25/04/2013
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(\*Format changes—E.R. 1 of 2013)

**Note:**

\* The format of Part VIII has been updated to the current legislative styles.

Section:	38	<b>Prohibition of landing and remaining without permission, and penalty for carrying illegal immigrant</b>	E.R. 1 of 2013	25/04/2013
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- (1) Subject to subsection (2), a person who-
  - (a) being a person who by virtue of section 7 may not land in Hong Kong without the permission of an immigration officer or immigration assistant, lands in Hong Kong without such permission; or (Amended 15 of 1980 s. 10)
  - (b) having landed in Hong Kong unlawfully, remains in Hong Kong without the authority of the Director, shall be guilty of an offence and shall be liable on conviction to a fine at level 4 and to imprisonment for 3 years. (Amended 75 of 1990 s. 3; L.N. 25 of 1996)
- (2) A person may land in Hong Kong, without the permission of an immigration officer or immigration assistant, for the purpose of examination under section 4(1)(a) or for the purpose of verification of identity by an automated means provided under section 4A in accordance with arrangements in that behalf approved by the Director, and if he submits himself forthwith to such examination or verification of identity shall be deemed for the purposes of subsection (1) not to have landed unless and until permission to land is granted to him. (Amended 15 of 1980 s. 10; 6 of 2005 s. 4)
- (3) The Governor may by order provide that subsection (1) shall not apply to an immigrant who lands from a ship or aircraft in such circumstances as may be specified in the order.
- (4) If a person lands from a ship in contravention of subsection (1)(a)-
  - (a) the captain of the ship; and
  - (b) the owner of the ship and his agent,
 shall be guilty of an offence and shall be liable-
  - (i) on conviction on indictment, to a fine of \$600000 and to imprisonment for 7 years; and
  - (ii) on summary conviction, to a fine of \$600000 and to imprisonment for 3 years, (Amended L.N. 25 of 1996)
 unless he proves that all reasonable steps had been taken to ensure that persons did not land from the ship in contravention of subsection (1).

Section:	38AA	<b>Prohibition of taking employment and establishing business, etc.</b>	E.R. 1 of 2013	25/04/2013
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- (1) A person-
  - (a) who, having landed in Hong Kong unlawfully, remains in Hong Kong without the authority of the Director under section 13; or
  - (b) in respect of whom a removal order or a deportation order is in force, must not take any employment, whether paid or unpaid, or establish or join in any business.
- (1A) Subsection (1) does not apply to a person if the person has the Director's permission under section 37ZX to take employment or establish or join in a business. (Added 23 of 2012 s. 8)
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 years.

Section:	38A	<b>Site controller commits offence if illegal immigrant on construction site, etc.</b>	E.R. 1 of 2013	25/04/2013
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(1) In this section-

**construction site** (建築地盤) means a place where construction work is undertaken and includes any area in the immediate vicinity which is used for the storage of materials or plant used or intended to be used for the purpose of the construction work;

**construction site controller** (建築地盤主管) means a principal or main contractor and includes a subcontractor, owner, occupier or other person who has control over or is in charge of a construction site;

**construction work** (建築工程) has the same meaning as in the Factories and Industrial Undertakings Ordinance (Cap 59) but does not include redecoration, renovation, alteration, maintenance or repair of domestic premises by-

- (a) an occupier of the premises; or
- (b) an owner of the premises if that is the only premises owned by him in the building which contains the premises;

**domestic premises** (住用處所) means premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit.

(2) Where it is proved that a person to whom section 38(1) applies was on a construction site, the construction site controller of that construction site commits an offence and is liable to a fine of \$350000. (Amended L.N. 25 of 1996)

(3) It is a defence in proceedings for an offence under subsection (2) for the person charged to prove that he took all practicable steps to prevent persons to whom section 38(1) applies from being on the construction site. (Amended 6 of 1999 s. 3)

(4) Where it is proved that a person, who is not lawfully employable by virtue of section 17G(2), has committed an offence under section 41 by taking employment on a construction site, the construction site controller of that construction site commits an offence and is liable to a fine of \$350000. (Added 6 of 1999 s. 3)

(5) It is a defence in proceedings for an offence under subsection (4) for the construction site controller charged to prove that he took all practicable steps to prevent persons who are not lawfully employable from taking employment on the construction site. (Added 6 of 1999 s. 3)

(6) Where a construction site controller is charged with an offence under subsection (4), a certificate purporting to be signed by the Director and certifying that the person concerned who has committed an offence under section 41 by taking employment on a construction site was, at the date of the alleged offence, not lawfully employable, shall be admitted in evidence on its production without further proof and, until evidence to the contrary is adduced, it shall be presumed-

- (a) that the certificate was signed by the Director; and
- (b) that the person concerned who has committed an offence under section 41 by taking employment on a construction site was, at the date of the alleged offence, not lawfully employable. (Added 6 of 1999 s. 3)

(7) Section 17G shall apply to this section as it applies to Part IVB. (Added 6 of 1999 s. 3)

(Added 75 of 1990 s. 4)

Section:	39	<b>Liability of captain of ship carrying persons seeking to land unlawfully</b>	E.R. 1 of 2013	25/04/2013
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If a person on board a ship is seeking to land from the ship in contravention of section 38(1)(a), the captain of the ship shall be guilty of an offence and shall be liable-

- (a) on conviction on indictment, to a fine of \$600000 and to imprisonment for 7 years; and
- (b) on summary conviction, to a fine of \$600000 and to imprisonment for 3 years, (Amended L.N. 25 of 1996)

unless he proves that he did not know and had no reason to suspect that such person was seeking to land in contravention of section 38(1)(a).

Section:	40	<b>Aircraft passengers arriving without valid travel document</b>	E.R. 1 of 2013	25/04/2013
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If a passenger who arrives in Hong Kong in an aircraft does not have a valid travel document, the owner of the aircraft and his agent shall be guilty of an offence and shall be liable on conviction to a fine at level 3.

(Amended 82 of 1993 s. 11; L.N. 25 of 1996)

Section:	41	<b>Breach of condition of stay</b>	E.R. 1 of 2013	25/04/2013
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Any person who contravenes a condition of stay in force in respect of him shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(Amended L.N 25 of 1996)

Section:	42	<b>False statements, forgery of documents and use and possession of forged documents</b>	E.R. 1 of 2013	25/04/2013
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- (1) Any person who makes or causes to be made-
- (a) to an immigration officer, immigration assistant or any other person lawfully acting under or in the execution of Part IB, II, III, IV or VIIC of this Ordinance; (Amended 23 of 2012 s. 9)
  - (b) in any document furnished to an immigration officer or immigration assistant pursuant to this Ordinance or a requirement made thereunder; or
  - (c) for the purpose of obtaining, whether for himself or any other person, any travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card,
- any statement or representation which he knows to be false or does not believe to be true shall be guilty of an offence. (Amended 57 of 1972 s. 10)
- (2) Any person who-
- (a) (i) alters without lawful authority or forges; or  
(ii) transfers to another without reasonable excuse,  
any travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card or any document whatsoever issued, kept or made under or for the purposes of Part IB, II, III or IV of this Ordinance; (Replaced 61 of 1986 s. 3)
  - (b) uses for the purposes of Part IB, II, III, IV or VIIC of this Ordinance any forged, false or unlawfully obtained or altered travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass, Vietnamese refugee card or other document;
  - (c) has in his possession-
    - (i) any forged, false or unlawfully obtained or altered travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card; or
    - (ii) any forged, false or unlawfully altered document whatsoever intended for use for the purposes of Part IB, II, III, IV or VIIC of this Ordinance,
 shall be guilty of an offence. (Amended 23 of 2012 s. 9)
- (3) A travel document, certificate of entitlement, entry permit, re-entry permit, certificate of identity, document of identity, APEC business travel card, travel pass or Vietnamese refugee card shall be deemed to be unlawfully obtained for the purposes of this section if any person made a false statement or representation for the purposes of or in connection with an application for the issue or renewal of the same.
- (4) Any person who is guilty of an offence under this section shall be liable-
- (a) on conviction on indictment, to a fine of \$150000 and to imprisonment for 14 years; and (Amended 66 of 1981 s. 3)
  - (b) on summary conviction, to a fine at level 6 and to imprisonment for 2 years. (Amended L.N. 25 of 1996)
- (5) In this section, **false** (虛假) means false in a material particular and **forged** (偽造) has the meaning assigned to that term by Part IX of the Crimes Ordinance (Cap 200). (Amended 49 of 1992 s. 5)
- (Amended 62 of 1980 s. 7; 124 of 1997 s. 5; 6 of 1999 s. 4)

Section:	43	<b>Breach of deportation order, and landing from ship or aircraft in which removal to be effected</b>	E.R. 1 of 2013	25/04/2013
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- (1) Subject to subsection (2), if-

- (a) any person in respect of whom a deportation order is in force is in Hong Kong in contravention of the order;  
or
- (b) any person who has been placed on board a ship or aircraft under section 25(3) lands from the ship or aircraft before it leaves Hong Kong,  
he shall be guilty of an offence and shall be liable-
- (i) on conviction on indictment, to imprisonment for 7 years; and
- (ii) on summary conviction, to imprisonment for 3 years.
- (2) A person who has not been given notice-
- (a) of a deportation order made against him;
- (b) of the rescission of a suspension of the deportation order made against him,  
shall not be guilty of an offence under subsection (1)(a).

Section:	43A	<b>Disrupting proceedings of Torture Claims Appeal Board</b>	L.N. 147 of 2012	03/12/2012
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A person who, without reasonable excuse, disrupts the proceedings of the Torture Claims Appeal Board established by section 37ZQ commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months.

(Added 23 of 2012 s. 10)

Section:	44	<b>Miscellaneous offences</b>	E.R. 1 of 2013	25/04/2013
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Any person who without reasonable excuse knowingly contravenes-

- (a) section 3(1), (3), (4) or (5), 5(4) or (5), 6(1), (2) or (4), 14(1), 16(1), 17(1), (2) or (3) or 33(1);
- (b) any requirement made under section 3(2), 5(1), (3), (6) or (7), 6(3), 11(8) or 15(1);
- (c) any directions given under section 5(8), 24(1) or 25(2); or
- (d) any condition imposed under section 13,

shall be guilty of an offence and shall be liable on conviction to a fine of \$120000.

(Amended L.N. 25 of 1996)

Section:	45	<b>Continuance of an offence</b>	E.R. 1 of 2013	25/04/2013
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Where a person is convicted of an offence under section 44 consisting of a contravention of section 14(1) and the contravention continues after the conviction, then, unless he has a reasonable excuse for the continuance of the contravention, he shall be guilty of a further offence under section 44 and shall be liable on conviction to be punished accordingly.

Section:	46	<b>Limitation of time for prosecution of summary offences</b>	E.R. 1 of 2013	25/04/2013
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- (1) Subject to subsection (2), a complaint may be made or an information laid in respect of an offence under this Ordinance punishable only on summary conviction within 2 years from the time when the matter of such complaint or information respectively arose.
- (2) A complaint may be made or an information laid in respect of an offence under section 38(1)(b) or 41 within 3 years from the time when the matter of such complaint or information respectively arose.

(Replaced 52 of 1976 s. 4)

Section:	46A	<b>Forfeiture of property other than a ship or vehicle</b>	E.R. 1 of 2013	25/04/2013
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- (1) An application may at any time be made by the Secretary for Justice to a magistrate in the prescribed form, or in accordance with rules of court to the District Court or the Court of First Instance by motion, for forfeiture under subsection (2) of any property other than a ship or vehicle. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)
- (2) If in the course of a prosecution for an offence under section 38(1) or under section 90(1) of the Criminal Procedure Ordinance (Cap 221) where the arrestable offence which a person has committed is an offence under section 38(1), or of the hearing of an application made under subsection (1) by the Secretary for Justice for forfeiture under this section, it appears to the court that any property other than a ship or vehicle- (Amended L.N. 362 of 1997)

- (a) has been, is being or is intended to be used in the commission or to procure or facilitate the commission of such an offence; or
  - (b) is the proceeds or represents the proceeds directly or indirectly (as being the result of any disposal or realization of the whole or part of the proceeds) of any such offence,
- the court shall, whether or not any person is convicted of any such offence, order the forfeiture of such property unless it is satisfied that it would not be just to do so or that there is other good reason why it should not do so.
- (3) Where it appears to a court which is considering making an order for forfeiture under this section that a person who is not before the court may claim ownership of, or an interest in, the property which may be forfeited, it shall give that person an opportunity to make representations to the court as to why such an order should not be made.

(Added 61 of 1979 s. 5)

Section:	46B	<b>Power to restrain disposal of property</b>	E.R. 1 of 2013	25/04/2013
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- (1) A court, in the course of a prosecution under this Ordinance, or of the hearing of any application by the Secretary for Justice for forfeiture under this Ordinance, may of its own motion or upon application by the Secretary for Justice, by written notice to any person in possession or control of money or property that may be forfeited, direct that such person shall not dispose of or otherwise deal with the property specified in the notice without the consent of the court. (Amended L.N. 362 of 1997)
- (2) A person who disposes of, or otherwise deals with property specified in a notice under subsection (1) other than in accordance with the consent of the court shall be guilty of an offence and liable to a fine at level 5 or the value of the property disposed of or otherwise dealt with, whichever is the greater, and to imprisonment for 3 years. (Amended L.N. 25 of 1996)

(Added 61 of 1979 s. 5)

Section:	47	<b>Forfeiture of ships and vehicles</b>	E.R. 1 of 2013	25/04/2013
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- (1) Where the captain of a ship is guilty of an offence under section 38(4) or 39, the ship shall be liable to forfeiture, whether or not the captain is convicted in respect of such offence. (Amended 42 of 1979 s. 4)
- (2) Any vehicle which has been used in the commission of-
- (a) an offence under section 38(1); or
  - (b) an offence under section 90(1) of the Criminal Procedure Ordinance (Cap 221) where the arrestable offence which a person has committed is an offence under section 38(1) of this Ordinance,
- shall be liable to forfeiture, whether or not any person has been convicted in respect of such offence.
- (3) Within 21 days of the seizure of any ship or vehicle which appears to him to be liable to forfeiture under subsection (1) or (2), the Director may serve notice of such seizure on the owner of the ship or vehicle: Provided that where there is more than one owner of a ship or vehicle it shall be sufficient for the purposes of this subsection to give notice to one of the owners.
- (4) A notice under subsection (3) shall be deemed to have been duly served if-
- (a) it is delivered to the person on whom it is to be served;
  - (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Director; or
  - (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited in the Immigration Department in a place to which the public have access for a period of not less than 7 days commencing within 21 days of the seizure of the ship or vehicle.
- (5) Within 7 days after the service under subsection (3) of a notice of seizure, notice of the seizure of the ship or vehicle shall be published-
- (a) in the Gazette; and
  - (b) in 1 newspaper published in Hong Kong in the English language and in 1 newspaper so published in the Chinese language.
- (6) Where a notice of seizure has been served under subsection (3), any person who has a claim (hereinafter referred to as the claimant) may within 30 days after-
- (a) the date of the notice, if it was served under subsection (4)(a) or (b); or
  - (b) the first day on which the notice was exhibited, if it was served under subsection (4)(c),
- give notice in writing to the Director that he claims that the ship or vehicle is not liable to forfeiture.

- (7) If, on the expiry of the appropriate period of time specified in subsection (6) for the giving of a notice of claim, no such notice has been given in writing to the Director, the ship or vehicle shall be forfeited forthwith to the Crown.
- (8) A person has a claim for the purposes of this section and section 48 if-
- (a) he is the owner of the ship or vehicle or the agent of the owner; or
  - (b) he was in possession of the ship or vehicle at the time it was seized.

Section:	48	<b>Determination of applications for forfeiture</b>	E.R. 1 of 2013	25/04/2013
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- (1) Where a notice of claim is given under section 47(6), the Director shall apply in the prescribed form to a magistrate for the forfeiture of the ship or vehicle and shall state in the application the name and address of the claimant as specified in the notice of claim.
- (2) When any such application is made to a magistrate, the magistrate shall issue a summons in the prescribed form to the claimant, requiring him to appear before a magistrate on the hearing of the application, and shall cause a copy of the summons to be served on the Director.
- (3) If, on the hearing of an application under this section-
- (a) neither the claimant nor any other person appears before the magistrate to make a claim and the magistrate is satisfied that the summons was duly served; or
  - (b) neither the claimant nor any other person satisfies the magistrate that he has a claim, and the magistrate is satisfied that the ship or vehicle is liable to forfeiture, the magistrate shall order that the ship or vehicle be forfeited to the Crown.
- (4) If, on the hearing of an application under this section-
- (a) a person satisfies the magistrate that he has a claim; and
  - (b) the magistrate is satisfied that the ship or vehicle is liable to forfeiture, the magistrate may order that the ship or vehicle be-
    - (i) forfeited to the Crown; or
    - (ii) delivered to the owner thereof or his agent.
- (5) If, on the hearing of an application under this section, the magistrate is not satisfied that the ship or vehicle is liable to forfeiture, he shall order that it be delivered to the owner thereof or his agent.
- (6) On the hearing of an application under this section a certified true copy of the record of the proceedings, including the decision of the court, in any proceedings in respect of the offence under section 38(1) or (4) or 39 of this Ordinance or section 90(1) of the Criminal Procedure Ordinance (Cap 221) shall be admissible in evidence. (Replaced 42 of 1979 s. 5)
- (7) Subject to the provisions of this Ordinance, an application under this section shall be deemed for the purposes of the Magistrates Ordinance (Cap 227) to be a complaint to which section 8 of that Ordinance applies.

Section:	49	<b>Security in lieu of detention where application made for forfeiture of ship or vehicle</b>	E.R. 1 of 2013	25/04/2013
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- (1) Where an application has been made under section 48, a magistrate may, on payment into court by way of security of a sum of money not less in amount than the value of the ship as assessed by the Director of Marine or the value of the vehicle as assessed by the Director, order that the ship or vehicle be delivered to the claimant, subject to a condition that it be re-delivered into the custody of the Director before the date of hearing of the application.
- (2) If a ship or vehicle which has been delivered to a claimant under subsection (1) is not re-delivered to the Director before the date of hearing of the application under section 48, the magistrate hearing the application may, in lieu of ordering that the ship or vehicle be forfeited to the Crown, order that the money paid into court under subsection (1) be forfeited to the Crown.
- (3) Save as provided in subsection (2), the magistrate hearing the application shall, at the conclusion of the proceedings, order that the amount of the money paid into court under subsection (1) shall be repaid to the person who paid it into court.

Section:	50	<b>Claims for return of forfeited ships, vehicles or money</b>	E.R. 1 of 2013	25/04/2013
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- (1) The owner of any ship or vehicle forfeited to the Crown under section 47 or 48 or his agent or the person by

whom money forfeited to the Crown under section 49 was paid into court may within 6 weeks after-

- (a) the ship, vehicle or money was forfeited to the Crown; or
  - (b) the determination of any appeal against the order for its forfeiture,
- give notice in writing to the Director of his intention to submit to the Governor a moral claim in respect of the forfeited ship, vehicle or money.
- (2) Where the owner of a forfeited ship or vehicle or the person by whom forfeited money was paid into court has given notice in writing to the Director under subsection (1) and has submitted a moral claim to the Governor by lodging it with the Chief Secretary for Administration within 1 month from the date of such notice, the Governor may- (Amended L.N. 362 of 1997)
    - (a) order the return of the forfeited ship or vehicle to the owner or his agent or the return of the forfeited money to the person by whom it was paid into court, as the case may be; or
    - (b) direct that the claim be referred to the Governor in Council.
  - (3) The Governor in Council, on considering a claim referred to him under subsection (2), may-
    - (a) order the return of the forfeited ship or vehicle to the owner or his agent or the return of the forfeited money to the person by whom it was paid into court, as the case may be; or
    - (b) reject the claim.

Part:	IX	<b>Miscellaneous</b>	E.R. 1 of 2013	25/04/2013
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(\*Format changes—E.R. 1 of 2013)

**Note:**

\* The format of Part IX has been updated to the current legislative styles.

Section:	51	<b>Public officers to be subject to Governor's directions</b>	E.R. 1 of 2013	25/04/2013
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- (1) The Governor may give such directions as he thinks fit (either generally or in any particular case) with respect to the exercise or performance by any public officer, not being a judge, a district judge or a magistrate, of any powers, functions or duties under this Ordinance.
- (2) Any public officer shall, in the exercise or performance of any powers, functions or duties under this Ordinance, comply with any directions given by the Governor under subsection (1).

Section:	52	<b>Immigration officers to be subject to directions of Director of Immigration</b>	E.R. 1 of 2013	25/04/2013
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- (1) The Director of Immigration may give such directions as he thinks fit (either generally or in any particular case) with respect to the exercise or performance by any other immigration officer or an immigration assistant of any powers, functions or duties under this Ordinance. (Amended 57 of 1972 s. 11)
- (2) Any immigration officer or immigration assistant shall, in the exercise or performance of any powers, functions or duties under this Ordinance, comply with any directions given by the Director of Immigration under subsection (1) in addition to complying with directions given by the Governor under section 51(1). (Amended 57 of 1972 s. 11)
- (3) Directions given under subsection (1) shall not be inconsistent with directions given by the Governor under section 51(1).

Section:	53	<b>Review of decisions of public officers</b>	E.R. 1 of 2013	25/04/2013
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- (1) Subject to subsection (8), any person aggrieved by a decision, act or omission of any public officer taken, done or made in the exercise or performance of any powers, functions or duties under this Ordinance may by notice in writing lodged with the Chief Secretary for Administration within the time prescribed in subsection (2) object to that decision, act or omission. (Amended 62 of 1980 s. 8; L.N. 362 of 1997)
- (2) An objection under subsection (1) shall be lodged within the period hereinafter specified after the person aggrieved was informed of the decision, act or omission or the same became known to him (whichever is the earlier), that is to say-
  - (a) within 24 hours, in the case of a person who, having landed in Hong Kong unlawfully, has been in Hong

Kong in the opinion of the Director for less than 10 days; (Amended 75 of 1981 s. 9)

- (b) within 14 days, in any other case.
- (3) An objection under subsection (1) by a person referred to in subsection (2)(a) shall be considered by the Governor; any other objection under subsection (1) shall be considered by the Governor in Council.
- (4) On consideration of an objection under subsection (1), the Governor or the Governor in Council, as the case may be, may confirm, vary or reverse the decision, act or omission of the public officer or substitute therefor such other decision or make such other order as he thinks fit.
- (5) The Governor in Council may at any time of his own motion vary or reverse any decision, act or omission of any public officer taken, done or made in the exercise or performance of any powers, functions or duties under this Ordinance or substitute therefor such other decision or make such other order as he thinks fit.
- (6) Nothing in this section entitles a person to object under this section to any decision, act or omission of the Governor, the Governor in Council or any court or entitles the Governor in Council to review any decision, act or omission of a court.
- (7) For the removal of doubt, it is hereby declared that the lodging of an objection does not give the person by whom or on whose behalf it is lodged the right of abode in Hong Kong or right to land or remain in Hong Kong pending the decision on the objection of the Governor or the Governor in Council. (Amended 31 of 1987 s. 21)
- (8) No objection shall be made under this section-
  - (a) (Repealed 48 of 1992 s. 13)
  - (aa) to non-acceptance of an application under section 2AB(3) or section 2AC(3); (Added 124 of 1997 s. 6)
  - (ab) to the decision of the Director on an application under section 2AB(6) or 2AC(6); (Added 124 of 1997 s. 6)
  - (b) to a removal order made by the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration; or (Amended 8 of 1998 s. 4)
  - (c) to the decision of an adjudicator; or
  - (d) to the decision of a public officer in respect of the right of abode in Hong Kong of any person where the Registration of Persons Tribunal has previously determined that that person does not enjoy that right; or (Replaced 31 of 1987 s. 21. Amended 23 of 1989 s. 5)
  - (e) to any decision in respect of which a right to apply to a Board under section 13F(1) has at any time subsisted; or (Added 23 of 1989 s. 5)
  - (f) to an order for the removal of a person from Hong Kong under section 13E; or (Added 23 of 1989 s. 5. Amended 52 of 1991 s. 5)
  - (g) to a decision to transfer, from one detention centre to another, a person detained under section 13D(1); or (Added 52 of 1991 s. 5. Amended 23 of 2012 s. 11)
  - (h) to a decision made by an immigration officer-
    - (i) under section 37ZE(4) or 37ZG(5) not to re-open a torture claim that has been withdrawn;
    - (ii) under section 37ZI(1)(b) to reject a torture claim;
    - (iii) under section 37ZL(1) to revoke a decision accepting a torture claim as substantiated;
    - (iv) under section 37ZO(5) not to allow a subsequent claim to be made by a person who has previously made a torture claim; or (Added 23 of 2012 s. 11)
  - (i) to any decision made in the performance of a function of the Torture Claims Appeal Board under Part VIIC. (Added 23 of 2012 s. 11)

Section:	53A	<b>Appeal against removal orders made by Director or Deputy Director of Immigration</b>	E.R. 1 of 2013	25/04/2013
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- (1) A person against whom a removal order has been made by the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration may appeal to the Tribunal against the removal order on the ground that on the facts of his case- (Amended 8 of 1998 s. 4)
  - (aa) he enjoys the right of abode in Hong Kong; or (Added 31 of 1987 s. 22)
  - (ab) he has the right to land in Hong Kong by virtue of section 2AAA; or (Added 28 of 1998 s. 2(2))
  - (a) (Repealed 88 of 1997 s. 17)
  - (b) he had at the date when the removal order was made the permission of the Director of Immigration to remain in Hong Kong.
- (2) A person who wishes to appeal under subsection (1) shall serve written notice of appeal, stating his grounds of appeal and the facts upon which he relies, upon an immigration officer or immigration assistant, within 24 hours of being notified of the removal order under section 19(5):

Provided that such notice shall not preclude such person from raising other facts prior to the determination of his appeal by the Tribunal and relying upon those facts.

- (3) Where the Tribunal, upon an examination of-
- (a) the written notice of appeal served under subsection (2) on which a person ("the appellant") appealing under subsection (1) seeks to rely; and
  - (b) the summary or record of the proceedings of the Registration of Persons Tribunal in respect of an unsuccessful appeal by the appellant under section 3D(1) of the Registration of Persons Ordinance (Cap 177),
- is satisfied that the facts or matters on which the appellant is seeking to rely are the same or substantially the same facts or matters on which the appellant sought to rely on the appeal to the Registration of Persons Tribunal, it may dismiss the appeal under subsection (1) without a hearing and shall cause written notice of such dismissal to be given or sent by post to the appellant. (Added 31 of 1987 s. 22)

(Added 62 of 1980 s. 9)

Section:	53B	<b>Removal orders not to be executed pending appeal</b>	E.R. 1 of 2013	25/04/2013
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A person shall not be removed pursuant to a removal order made by the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration- (Amended 8 of 1998 s. 4)

- (a) until the time limited for an appeal has passed or the person against whom the removal order has been made declares in writing that he does not intend to appeal, whichever is the sooner; or
- (b) where an appeal against the order is commenced, until the appeal is determined by the Tribunal, or the appellant declares in writing that he is abandoning his appeal, whichever is the sooner.

(Added 62 of 1980 s. 9)

Section:	53C	<b>Dismissal of appeal without hearing</b>	E.R. 1 of 2013	25/04/2013
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Where the Tribunal, upon an examination of the written grounds of appeal on which a person appealing under section 53A seeks to rely, is satisfied that the facts or matters on which the appellant is seeking to rely-

- (a) would not entitle the appellant to succeed in the appeal; or
- (b) are the same or substantially the same facts or matters on which the appellant sought to rely on an unsuccessful appeal under section 53A,

it may dismiss the appeal without a hearing and in any such case it shall cause written notice of such dismissal to be given to the appellant and to the Director of Immigration.

(Replaced 82 of 1993 s. 12)

Section:	53D	<b>Determination of appeals</b>	E.R. 1 of 2013	25/04/2013
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- (1) On an appeal under section 53A against a removal order-
  - (a) where the Tribunal determines that on the facts of the case as it finds them the appellant-
    - (ia) does not enjoy the right of abode in Hong Kong; and (Added 31 of 1987 s. 23)
    - (ib) does not have the right to land under section 2AAA; and (Added 28 of 1998 s. 2(2))
    - (i) (Repealed 88 of 1997 s. 18)
    - (ii) does not, disregarding the effect of the removal order under section 19(4), have the permission of the Director of Immigration to remain in Hong Kong,
 it shall dismiss the appeal; and
  - (b) in any other case, subject to subsection (3), it shall allow the appeal and rescind the removal order. (Amended 124 of 1997 s. 7)
- (2) The decision of the Tribunal under this section or section 53C shall be final.
- (3) The Tribunal shall not allow an appeal on the ground that the appellant enjoys the right of abode in Hong Kong by virtue of being a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1 unless the appellant's status as such a permanent resident has been established by his holding of-
  - (a) a valid travel document issued to him and of a valid certificate of entitlement also issued to him and affixed to such travel document;
  - (b) a valid HKSAR passport issued to him; or
  - (c) a valid permanent identity card issued to him. (Added 124 of 1997 s. 7)

- (4) In any proceedings before the Tribunal, a certificate purporting to be signed by the Director and certifying that a person does not hold a valid certificate of entitlement shall be admitted in evidence without further proof and-
- (a) until the contrary is proved it shall be presumed that the certificate was signed by the Director; and
  - (b) the certificate shall be prima facie evidence of the fact contained in it. (Added 124 of 1997 s. 7)
- (Added 62 of 1980 s. 9)

Section:	53E	<b>Release of successful appellant</b>	E.R. 1 of 2013	25/04/2013
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Where an appeal under section 53A is successful the appellant shall be released forthwith unless he may be held in lawful custody on some other matter.

(Added 62 of 1980 s. 9)

Section:	53F	<b>Establishment of Immigration Tribunal</b>	E.R. 1 of 2013	25/04/2013
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- (1) There is hereby established a tribunal to be known as the Immigration Tribunal.
- (2) For the purpose of exercising the jurisdiction of the Tribunal, the Governor shall appoint a chief adjudicator, deputy chief adjudicator and such number of other adjudicators as from time to time may be necessary.
- (3) The remuneration, if any, of the chief adjudicator, deputy chief adjudicator and other adjudicators shall be determined by the Governor.

(Added 62 of 1980 s. 9. Amended 24 of 1984 s. 3)

Section:	53G	<b>Practice and procedure of Tribunal</b>	E.R. 1 of 2013	25/04/2013
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- (1) The practice and procedure on appeals under section 2AD or 53A, and of the Tribunal shall be such as shall be prescribed, and without prejudice to the generality of the foregoing and of section 59, the following matters may be prescribed and provided for under section 59- (Amended 124 of 1997 s. 8)
  - (a) the number of adjudicators who shall hear and determine any appeal;
  - (b) provision as to witnesses and the production of documents similar to that in sections 21 and 22 of the Magistrates Ordinance (Cap 227);
  - (ba) provision for the payment of an allowance to witnesses at a hearing of an appeal similar to that contained in rules made under section 9B of the Criminal Procedure Ordinance (Cap 221) for the payment of an allowance to witnesses in criminal proceedings before any court; (Added 24 of 1984 s. 4)
  - (c) the hearing of an appeal in the absence of the appellant where he cannot attend by reason of illness or injury or where his attendance would present a threat to the health or safety of other persons at the hearing or in other circumstances; and
  - (d) provision empowering the Tribunal to allow, if it thinks fit, the appellant and respondent to be represented by counsel or a solicitor.
- (2) The Tribunal and any adjudicator may in the discharge of any function under this Ordinance consult any member of a panel of legal advisers to the Tribunal appointed by the Secretary for Justice. (Amended L.N. 362 of 1997)
- (3) The proceedings before the Tribunal may be conducted in the English or Chinese language or both as the Tribunal thinks fit. (Added 51 of 1995 s. 11)
- (4) Notwithstanding subsection (3)-
  - (a) any party to proceedings in the Tribunal may address the Tribunal in any language;
  - (b) any witness in proceedings in the Tribunal may testify in any language;
  - (c) a legal representative in any proceedings may use either or both of the official languages. (Added 51 of 1995 s. 11)

(Added 62 of 1980 s. 9)

Section:	54	<b>Suspension of deportation orders</b>	E.R. 1 of 2013	25/04/2013
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- (1) The Governor may suspend the deportation order made against any person on such conditions as he thinks fit, and during the continuance of the suspension the deportation order shall not be in force.
- (2) The Governor may rescind the suspension of a deportation order, whereupon the deportation order shall again be

in force in respect of the person against whom it was made. (Amended 82 of 1993 s. 13)

- (3) Any police officer who has reason to suspect that a person has contravened any condition subject to which the deportation order made against that person is suspended may arrest such person.
- (4) If a person who has been arrested under subsection (3) is charged with any offence, he shall be brought before a magistrate within 48 hours after his arrest.

Section:	55	<b>Rescission of deportation orders</b>	E.R. 1 of 2013	25/04/2013
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- (1) The Governor may rescind the deportation order made against any person, but the rescission of the deportation order shall not affect the power of the Governor to make another such order against that person.
- (2) The Governor may, on rescinding the deportation order made against any person, require that person to enter into a recognizance in the prescribed form in such amount and with such sureties as the Governor may specify. (Amended 55 of 1983 s. 3)
- (3) A requirement under subsection (2) shall be deemed for the purposes of the provisions of the Magistrates Ordinance (Cap 227) relating to recognizances to be an order under section 61(1) of that Ordinance. (Amended 82 of 1993 s. 14)

Section:	56	<b>Miscellaneous powers of immigration officers and immigration assistants</b>	E.R. 1 of 2013	25/04/2013
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- (1) For the purposes of this Ordinance, an immigration officer or immigration assistant may- (Amended 15 of 1980 s. 8)
  - (a) board and search any ship, aircraft, vehicle or train which has arrived in Hong Kong (not being a ship of war or a military aircraft);
  - (b) search any person being examined under section 4(1), other than a person who enjoys the right of abode in Hong Kong, or has the right to land in Hong Kong by virtue of section 2AAA, and any property belonging to such person or under his control; (Amended 31 of 1987 s. 24; 88 of 1997 s. 19; 28 of 1998 s. 2(2))
  - (c)-(d) (Repealed 15 of 1980 s. 8)
  - (e) seize, remove and detain any thing which may be forfeited under this Ordinance or which is or contains evidence of the commission of an offence under this Ordinance or of the landing of any person in Hong Kong unlawfully; (Amended 75 of 1981 s. 10)
  - (f) (Repealed 15 of 1980 s. 8)
  - (g) search any person who is or has been or may be arrested or detained under this Ordinance and any property belonging to him or under his control.
- (1A) For the purposes of this Ordinance, an immigration officer or immigration assistant may- (Amended 31 of 1984 s. 12)
  - (a) detain for not more than 7 days any document-
    - (i) produced pursuant to a requirement under section 5(6)(b); or
    - (ii) found on any person searched under subsection (1)(b);
  - (b) arrest and detain any person if he has reason to suspect that such person has committed an offence under this Ordinance, or has landed in Hong Kong unlawfully and has not been authorized by the Director to remain; (Amended 75 of 1981 s. 10)
  - (c) board and search any ship, aircraft, vehicle or train (not being a ship of war or a military aircraft), if he has reason to suspect that there is therein- (Amended 68 of 1995 s. 55)
    - (i) any person who may be arrested under this Ordinance; or
    - (ii) any thing which may be seized under this Ordinance; (Added 15 of 1980 s. 8)
  - (d) enter and search any premises or place if he has reason to suspect that there is therein any person who may be arrested under this Ordinance; (Added 68 of 1995 s. 55)
  - (e) without a warrant where it would not be reasonably practicable to obtain one, enter and search any premises or place if he has reason to suspect that there is therein any thing which may be seized under this Ordinance. (Added 68 of 1995 s. 55)
- (2) For the purposes of this Ordinance, any public officer may-
  - (a) break open any outer or inner door of or in any premises or place which he is empowered to enter and search;
  - (b) stop and forcibly board any ship, aircraft, vehicle or train which he is empowered to board and search;

- (c) stop any person whom he is empowered to search;
  - (d) remove by force any person or thing obstructing any arrest, boarding, entry, search, seizure, removal or detention which he is empowered to make;
  - (e) detain every person found in any premises or place which he is empowered to search until the same has been searched;
  - (f) detain every person on board any ship, aircraft, vehicle or train which he is empowered to search, and prevent any person from approaching or boarding such ship, aircraft, vehicle or train, until it has been searched.
- (3) No person shall be searched under this section except by a person of the same sex and no person shall be searched under this section in a public place if he objects to being so searched. (Amended 67 of 1995 s. 91(2))
- (4) Where a document is detained under subsection (1A)(a), the person by whom it was produced or on whom it was found shall be supplied with a photographic copy of such document if he so requests and makes payment therefor, and the copy so supplied to a person shall be made in his presence. (Amended 31 of 1984 s. 12)

Section:	56AA	<b>Warrant for entry and search, etc.</b>	E.R. 1 of 2013	25/04/2013
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- (1) Whenever it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any premises or place any thing which may be seized under this Ordinance, such magistrate may by warrant directed to any member of the Immigration Service or any police officer empower such member or officer with such assistants as may be necessary by day or by night to enter and if necessary to break into or forcibly enter the premises or place named in the warrant and there to search for and seize, remove and detain any such thing which may be seized under this Ordinance.
- (2) Whenever it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any building, vessel (not being a ship of war or a ship having the status of a ship of war) or place any document, or any portion or extract therefrom, or any other article or chattel which is likely to be of value (whether by itself or together with anything else) to the investigation of any offence that has been committed, or that is reasonably suspected to have been committed or to be about to be committed or to be intended to be committed against the provisions of this Ordinance, such magistrate may by warrant directed to any member of the Immigration Service or any police officer empower such member or officer with such assistants as may be necessary by day or by night- (Amended 53 of 1996 s. 10)
- (a) to enter and if necessary to break into or forcibly enter such building, vessel or place and to search for and take possession of any such document or portion of or extract therefrom or any such other article or chattel which may be found therein; and
  - (b) to detain, during such period as is reasonably required to permit such a search to be carried out, any person who may appear to have such document or portion thereof or extract therefrom or other article or chattel in his possession or under his control and who, if not so detained, might prejudice the purpose of the search.
- (Added 68 of 1995 s. 56)

Section:	56A	<b>Exercise by customs officers of certain powers of immigration officers</b>	E.R. 1 of 2013	25/04/2013
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- (1) Any member of the Customs and Excise Service authorized in writing by the Commissioner of Customs and Excise may exercise the powers conferred on an immigration officer by section 3(2), 4(1), 5(3), (6) or (7), 11(1), (1A) or (2), 18(1)(a), 24(1)(a) or (3), 27, 32(1) or 56(1) or (1A).
- (2) An authorization given by the Commissioner of Customs and Excise under subsection (1) may be given to a member of the Customs and Excise Service by name or may be given to any such member holding such rank or performing such duties as the Commissioner may specify, and may extend to all the powers specified in subsection (1) or to such of those powers as the Commissioner may specify.
- (3) The Commissioner of Customs and Excise may, after consultation with the Director of Immigration, give such directions as the Director may specify to members of the Customs and Excise Service authorized under this section to exercise any of the powers of an immigration officer.
- (4) A member of the Customs and Excise Service shall, in the exercise of any powers which he is authorized under this section to exercise, comply with any directions given by the Commissioner of Customs and Excise under subsection (3) in addition to complying with directions given by the Governor under section 51(1).
- (5) Directions given under subsection (3) shall not be inconsistent with directions given by the Governor under

section 51(1).

(6) The Commissioner of Customs and Excise may, after consultation with the Director of Immigration, cancel any authorization given under subsection (1) and, in the event of such cancellation, any directions given by the Commissioner under subsection (3) shall cease to have effect.

(7) In this section-

**Commissioner of Customs and Excise** (香港海關總監) includes a Deputy Commissioner of Customs and Excise and an Assistant Commissioner of Customs and Excise; (Amended 40 of 1985 s. 8)

**member of the Customs and Excise Service** (海關人員) means any person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap 342).

(Added 31 of 1984 s. 13)

Section:	57	<b>Exercise by police officers of certain powers of immigration officer</b>	E.R. 1 of 2013	25/04/2013
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(1) Any police officer authorized in writing by the Commissioner of Police may exercise the powers conferred on an immigration officer by section 3(2), 4(1), 5(3), (6) or (7), 11(1), (1A) or (2), 18(1)(a), 24(1)(a) or (3), 27, 32(1) or 56(1) or (1A). (Amended 66 of 1981 s. 4; 79 of 1982 s. 9)

(2) An authorization given by the Commissioner of Police under subsection (1) may be given to a police officer by name or may be given to any police officer holding such rank or performing such duties as the Commissioner may specify, and may extend to all the powers specified in subsection (1) or to such of those powers as the Commissioner may specify.

(3) The Commissioner of Police may, after consultation with the Director of Immigration, give such directions as the Director may specify to police officers authorized under this section to exercise any of the powers of an immigration officer.

(4) A police officer shall, in the exercise of any powers which he is authorized under this section to exercise, comply with any directions given by the Commissioner of Police under subsection (3) in addition to complying with directions given by the Governor under section 51(1).

(5) Directions given under subsection (3) shall not be inconsistent with directions given by the Governor under section 51(1).

(5A) The Commissioner of Police may, after consultation with the Director of Immigration, cancel any authorization given under subsection (1) and, in the event of such cancellation, any directions given by the Commissioner under subsection (3) shall cease to have effect. (Added 31 of 1984 s. 14)

(6) In this section, **Commissioner of Police** (警務處處長) includes any deputy commissioner of police, senior assistant commissioner of police or assistant commissioner of police.

Section:	57A	<b>(Repealed 2 of 2012 s. 3)</b>	2 of 2012	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

Section:	57B	<b>(Repealed 2 of 2012 s. 3)</b>	2 of 2012	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

Section:	57C	<b>(Repealed 20 of 1997 s. 25)</b>		30/06/1997
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Section:	58	<b>(Repealed 2 of 2012 s. 3)</b>	2 of 2012	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

Section:	58A	<b>(Repealed 2 of 2012 s. 3)</b>	2 of 2012	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

Section:	59	<b>Power to make regulations</b>	E.R. 1 of 2013	25/04/2013
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The Governor in Council may make regulations for all or any of the following purposes-

- (a) providing for any matter or thing which is to be or may be prescribed under this Ordinance;
- (b) the issue, in such form as the Director of Immigration may determine, of any document for the purposes of this Ordinance; (Replaced 21 of 1987 s. 3)
- (c) the fees payable in respect of the issue or renewal of documents issued by or on behalf of the Director of Immigration or in respect of visas or any other matters arising under this Ordinance;
- (d) generally for the better carrying out of the purposes of this Ordinance.

Section:	59A	<b>Amendment of Schedule 1</b>	E.R. 1 of 2013	25/04/2013
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The Legislative Council may by resolution amend Schedule 1.

(Added 78 of 1982 s. 10)

Section:	60	<b>Designation of approved immigration anchorages and approved landing places</b>	E.R. 1 of 2013	25/04/2013
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The Secretary for Security may by order designate the places which shall be approved immigration anchorages and approved landing places for the purposes of this Ordinance.

(Amended 15 of 1980 s. 9)

Section:	61	<b>Visa issued in respect of valid travel document and its holder*</b>	E.R. 1 of 2013	25/04/2013
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- (1) Subject to subsection (2) and without prejudice to any other provision of this Ordinance, a document is not a valid travel document for the purposes of this Ordinance unless it bears, or its holder has obtained, a visa which was issued by or on behalf of the Director of Immigration and is in force on the date on which its holder arrives in Hong Kong. (Amended 13 of 2009 s. 6)
- (2) The Director of Immigration may exempt from subsection (1) any person or any class or description of person.

**Note:**

\* (Replaced 13 of 2009 s. 6)

Section:	62	<b>Presumptions</b>	E.R. 1 of 2013	25/04/2013
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- (1) For any of the purposes of this Ordinance, if a person who by virtue of section 7 may not land or remain in Hong Kong without the permission of an immigration officer or immigration assistant does not produce an identity card relating to himself when required to do so by an immigration officer, immigration assistant or police officer, such person shall be deemed, until the contrary is proved, to have landed in Hong Kong unlawfully. (Amended 79 of 1982 s. 10)
- (2) For any of the purposes of this Ordinance, if a person who by virtue of section 7 may not land in Hong Kong without the permission of an immigration officer or immigration assistant is on board a ship proceeding through the waters of Hong Kong, such person shall be deemed to be seeking to land in contravention of section 38(1)(a) unless it is proved that-
  - (a) he was a member of the crew of the ship;
  - (b) he was ordinarily resident in Hong Kong;
  - (c) he was in possession of a travel document, entry permit or re-entry permit; or
  - (d) the ship was leaving Hong Kong.

(Amended 15 of 1980 s. 10)

Section:	63	<b>Evidence of certain acts under Ordinance</b>	E.R. 1 of 2013	25/04/2013
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- (1) Any document purporting to be-
- (a) a removal order signed by the Governor or by the Director of Immigration, the Deputy Director of Immigration or any assistant director of immigration, or a deportation order signed by the Clerk to the Executive Council; or (Replaced 62 of 1980 s. 10. Amended 8 of 1998 s. 4)
  - (b) a copy of a removal order or a deportation order certified by the Chief Secretary for Administration or the Clerk to the Executive Council to be a true copy of the removal order or deportation order, (Amended L.N. 362 of 1997)
- shall be admitted in evidence in any proceedings on its production without further proof, and until the contrary is proved it shall be presumed that the removal order or deportation order was made against the person named and on the date specified therein. (Amended 14 of 1994 s. 24)
- (2) A certificate purporting to be made for the purposes of this subsection and to set out-
- (a) a requirement made in writing under section 5(1), (3) or (7), 6(3) or 15(1);
  - (b) directions given in writing under section 5(8) or 24(1); or
  - (c) any exemption granted under section 5(9), 11(9) or 14(2) to any class or description of persons,
- and purporting to be signed by the Director of Immigration shall be admitted in evidence in any proceedings on its production without further proof, and-
- (i) until the contrary is proved, it shall be presumed that the certificate was signed by the Director of Immigration and that the requirement was made or the directions given to the person named and on the date specified in the certificate or that the exemption was granted and was in force on the date so specified, as the case may be; and
  - (ii) the certificate shall be prima facie evidence of the requirement, directions or exemption.
- (3) A certificate purporting to be made for the purposes of this subsection and to set out directions given in writing under section 25(2) and purporting to be signed by the Director of Immigration shall be admitted in evidence in any proceedings on its production without further proof, and-
- (a) until the contrary is proved, it shall be presumed that the certificate was signed by the Director of Immigration and that the directions were given to the person named and on the date specified in the certificate; and
  - (b) the certificate shall be prima facie evidence of the directions.

Section:	63A	<b>Evidence by certificate</b>	E.R. 1 of 2013	25/04/2013
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Where in any proceedings a person is charged with an offence under section 38(4), 38A or 39 or with aiding, abetting, counselling or procuring, or with conspiracy to aid, abet, counsel or procure, the commission by another of an offence under section 38(1), a certificate purporting to be signed by the Director and certifying that that or any other person-

(Amended 61 of 1979 s. 8; 82 of 1993 s. 15)

- (aa) does not enjoy the right of abode in Hong Kong; (Added 31 of 1987 s. 25)
  - (ab) does not have the right to land in Hong Kong under section 2AAA; (Added 28 of 1998 s. 2(2))
  - (a) (Repealed 88 of 1997 s. 20)
  - (b) is not a person who, by virtue of section 9(1) or 10(1), may land in Hong Kong without the permission of an immigration officer or immigration assistant; and (Amended 15 of 1980 s. 10)
  - (c) has not been given permission to land in Hong Kong under section 11,
- shall be admitted in evidence on its production without further proof and-
- (i) until the contrary is proved it shall be presumed that the certificate was signed by the Director; and
  - (ii) the certificate shall be prima facie evidence of the facts contained therein.

(Added 47 of 1977 s. 2)

Section:	63B	<b>Admissibility of copies of records</b>	E.R. 1 of 2013	25/04/2013
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A document purporting to be a copy of the records or part of the records kept by the Director and purporting to be certified as a true copy thereof by the officer having custody of the records shall be admissible in evidence in criminal or civil proceedings before any court on its production without further proof and-

- (a) until the contrary is proved, the court before which such document is produced shall presume-
  - (i) that the document is certified by such officer; and
  - (ii) that the document is a true copy of the records or part of the records to which it refers; and
- (b) such document shall be prima facie evidence of all matters contained therein.

(Added 61 of 1986 s. 4)

Section:	64	<b>Burden of proving certain matters</b>	E.R. 1 of 2013	25/04/2013
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If-

- (a) in any proceedings for an offence under this Ordinance or in any other proceedings under this Ordinance; or
  - (b) in any proceedings with reference to any act done or proposed to be done under this Ordinance,
- a person claims that he-

- (i) is a Hong Kong permanent resident; (Amended 31 of 1987 s. 26)
- (ia) has been ordinarily resident in Hong Kong continuously for 7 years; (Added 122 of 1997 s. 4)
- (ib) is settled or has returned to settle in Hong Kong before 1 July 1997; (Added 122 of 1997 s. 4)
- (ic) has returned to settle in Hong Kong before 1 January 1999; (Added 122 of 1997 s. 4)
- (id) has not been absent from Hong Kong for a continuous period of not less than 36 months; (Added 122 of 1997 s. 4)
- (ie) was born in Hong Kong; (Added 122 of 1997 s. 4)
- (if) was a Hong Kong permanent resident before 1 July 1997; (Added 122 of 1997 s. 4)
- (ii) is not an alien;
- (iii)-(iv) (Repealed 78 of 1982 s. 11)
- (v) (Repealed 31 of 1987 s. 26 )
- (va) (Repealed 88 of 1997 s. 21)
- (vaa) is a Chinese citizen; (Added 122 of 1997 s. 4)
- (vb)-(vd) (Repealed 88 of 1997 s. 21)
- (ve) (Repealed 122 of 1997 s. 4)
- (vf) (Repealed 31 of 1987 s. 26)
- (vi) has been ordinarily resident in Hong Kong for 3 years or more than 3 years;
- (vii) is exempt from any provision of this Ordinance or belongs to a class or description of persons who are exempt from any provision of this Ordinance;
- (viii) is an alien to whom section 14(1) or 16(1) does not apply;
- (ix) is a person to whom section 38(1)(a) does not apply by virtue of an order under subsection (3) of that section,

the onus of proving the same shall lie, subject to section 2AA(1), on that person.

(Amended 124 of 1997 s. 9)

Section:	65	<b>Recovery of moneys due under recognizance</b>	E.R. 1 of 2013	25/04/2013
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Any sum of money due under a recognizance entered into in accordance with a requirement under section 11(8) or 36(1) or (3) shall be recovered in the District Court as a debt due to the Crown, notwithstanding that the amount is in excess of \$20000.

(Amended 52 of 1976 s. 6)

Section:	66	<b>Transitional provisions</b>	E.R. 1 of 2013	25/04/2013
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Schedule 2 shall have effect for the purposes of transition to the provisions of this Ordinance from the provisions of the following Ordinances repealed by this Ordinance, namely- (Amended 78 of 1982 s. 12)

- (a) Deportation (British Subjects) Ordinance (Cap 239 Revised Edition 1964);
- (b) Deportation of Aliens Ordinance (Cap 240 Revised Edition 1964); and
- (c) Immigration (Control and Offences) Ordinance (Cap 243 Revised Edition 1964).

(Added 64 of 1981 s. 2)

Section:	67	<b>Transitional provisions in respect of Immigration (Amendment) Ordinance 1997</b>	E.R. 1 of 2013	25/04/2013
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Schedule 3 shall have effect in connection with the abolition of the status of resident British citizen and resident United Kingdom believer under the Immigration (Amendment) Ordinance 1997 (88 of 1997).

(Added 88 of 1997 s. 22)

Schedule:	1	<b>PERMANENT RESIDENTS OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION</b>	L.N. 84 of 2002	17/05/2002
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[sections 2(1) & 59A]

## 1. Interpretation

(1) In this Schedule, unless the context otherwise requires-

"Chinese citizen" (中國公民) means a person of Chinese nationality under the Nationality Law of the People's Republic of China, as implemented in the Hong Kong Special Administrative Region pursuant to Article 18 of and Annex III to the Basic Law and interpreted in accordance with the Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region adopted at the 19th meeting of the Standing Committee of the National People's Congress at the 8th National People's Congress on 15 May 1996; (Replaced 28 of 1998 s. 2(2))

"new born infant" (初生嬰兒) means a child under the age of 12 months or a child who appears to the Director to be under the age of 12 months.

(2) The relationship of parent and child is taken to exist as follows-

- (a) of a parent and child, between a person and a child born to such person in or out of wedlock; (Replaced L.N. 192 of 1999)
- (b) (Repealed L.N. 192 of 1999)
- (c) of a parent and adopted child, between a parent and a child adopted only in Hong Kong under an order made by a Court in Hong Kong under the Adoption Ordinance (Cap 290).

(3) For an abandoned new born infant found within Hong Kong,-

- (a) a new born infant, who appears to the Director to be of Chinese descent, is taken, in the absence of evidence to the contrary, to be the legitimate child of a Chinese citizen who was a permanent resident of the Hong Kong Special Administrative Region at the time of birth of the child;
- (b) a new born infant, who appears to the Director to be not of Chinese descent, is taken, in the absence of evidence to the contrary, to be the legitimate child of a parent not of Chinese nationality who had the right of abode in Hong Kong under paragraph 2(d) at the time of birth of the child.

(4) For the purposes of calculating the continuous period of 7 years in which a person has ordinarily resided in Hong Kong, the period is reckoned to include a continuous period of 7 years-

- (a) for a person under paragraph 2(b), at any time before or after the establishment of the Hong Kong Special Administrative Region; and
- (b) for a person under paragraph 2(d), before or after the establishment of the Hong Kong Special Administrative Region but immediately before the date when the person applies to the Director for the status of a permanent resident of the Hong Kong Special Administrative Region.

(5) A person is settled in Hong Kong if-

- (a) he is ordinarily resident in Hong Kong; and
- (b) he is not subject to any limit of stay in Hong Kong.

## 2. Permanent resident of the Hong Kong Special Administrative Region

A person who is within one of the following categories is a permanent resident of the Hong Kong Special Administrative Region-

- (a) A Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region. (Replaced L.N. 192 of 1999. Amended L.N. 84 of 2002)

- (b) A Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than 7 years before or after the establishment of the Hong Kong Special Administrative Region.
- (c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b). (Replaced L.N. 192 of 1999)
- (d) A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region.
- (e) A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the Hong Kong Special Administrative Region in category (d) before or after the establishment of the Hong Kong Special Administrative Region if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong.
- (f) A person other than those residents in categories (a) to (e), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

### **3. Establishing permanent residence under paragraph 2(d)**

- (1) For the purposes of paragraph 2(d), the person is required-
  - (a) to furnish information that the Director reasonably requires to satisfy him that the person has taken Hong Kong as his place of permanent residence. The information may include the following-
    - (i) whether he has habitual residence in Hong Kong;
    - (ii) whether the principal members of his family (spouse and minor children) are in Hong Kong;
    - (iii) whether he has a reasonable means of income to support himself and his family;
    - (iv) whether he has paid his taxes in accordance with the law;
  - (b) to make a declaration in the form the Director stipulates that he has taken Hong Kong as his place of permanent residence; the declaration for a person under the age of 21 years must be made by one of his parents or by a legal guardian; and
  - (c) to be settled in Hong Kong at the time of the declaration.
- (2) A person claiming to have the status of a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(d) does not have the status of a permanent resident in the Hong Kong Special Administrative Region until he has applied to the Director and the application has been approved by the Director.
- (3) For the purposes of paragraph 2(d), a person is taken to have entered Hong Kong on a valid travel document-
  - (a) if he entered Hong Kong before 1 July 1997 with an expired travel document or with a travel document that was not a valid travel document but was permitted to remain by an immigration officer or an immigration assistant; or
  - (b) if he was born in Hong Kong and was permitted to remain in Hong Kong by an immigration officer or an immigration assistant.

### **4. Establishing permanent residence under paragraph 2(e)**

- (1) For the purposes of paragraph 2(e), the person on attaining the age of 21 years ceases to be a permanent resident of the Hong Kong Special Administrative Region and may apply to the Director for the status of a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(d) at any time.
- (2) Section 2AAA applies in relation to a person who ceases to have the status of a permanent resident of the Hong Kong Special Administrative Region under this paragraph. (Amended 28 of 1998 s. 2(2))

### **5. Establishing permanent residence under paragraph 2(f)**

- (1) For the purposes of paragraph 2(f), the person is required-
  - (a) to furnish information that the Director may reasonably require to determine whether that person had the right of abode only in Hong Kong immediately before the establishment of the Hong Kong Special Administrative Region; and

(b) to make a declaration that he had the right of abode only in Hong Kong immediately before the establishment of the Hong Kong Special Administrative Region; the declaration for a person under the age of 21 years must be made by one of his parents or by a legal guardian.

(2) If the person claims that he had no right of abode in a place that the Director reasonably believes that he had, the onus of proving that he did not have the right of abode in the place lies on the person.

(3) A person under 21 years of age born in Hong Kong on or after 1 July 1997 to a parent who is a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(f) at the time of the birth of the person is taken to have the status of a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(f) if, but for this subparagraph, the person has no right of abode in any place including Hong Kong.

(4) The person on attaining the age of 21 years ceases to be a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(f) and may apply to the Director for the status of a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(d) at any time.

(5) Section 2AAA applies in relation to a person who ceases to have the status of a permanent resident of the Hong Kong Special Administrative Region under this paragraph. (Amended 28 of 1998 s. 2(2))

## 6. Transitional

(1) A person who is not of Chinese nationality and who was a permanent resident of Hong Kong before 1 July 1997 is taken to be a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(d) and exempt from the requirements under paragraph 3 if-

- (a) he was settled in Hong Kong immediately before 1 July 1997;
- (b) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong within the period of 18 months commencing on 1 July 1997; or
- (c) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong after the period of 18 months commencing on 1 July 1997 but only if he has not been absent from Hong Kong for a continuous period of not less than 36 months.

(2) A person who is a Chinese citizen and was a Hong Kong permanent resident immediately before 1 July 1997 under this Ordinance as then in force shall, as from 1 July 1997, be a permanent resident of the Hong Kong Special Administrative Region as long as he remains a Chinese citizen. (Replaced 28 of 1998 s. 2(2))

## 7. Loss of the status as a permanent resident

A permanent resident of the Hong Kong Special Administrative Region loses the status of such resident only if- (Amended 28 of 1998 s. 2(2))

- (a) being a person falling within the category in paragraph 2(d) or (e) has been absent from Hong Kong for a continuous period of not less than 36 months since he ceased to have ordinarily resided in Hong Kong; or
- (b) being a person falling within the category in paragraph 2(f), has been absent from Hong Kong for a continuous period of not less than 36 months after he obtained the right of abode in any place other than Hong Kong and has ceased to have ordinarily resided in Hong Kong.

(Schedule 1 replaced 122 of 1997 s. 5)

Schedule:	1A	Torture Claims Appeal Board	L.N. 147 of 2012	03/12/2012
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[sections 37U & 37ZU & Sch. 4]

## 1. Interpretation

(1) In this Schedule—

*appeal* (上訴) means—

- (a) an appeal made under section 37ZR; or
- (b) an application for a revocation decision under section 37ZM;

*member* (委員) means a member of the Torture Claims Appeal Board established by section 37ZQ.

(2) An expression used in this Schedule has the same meaning as is given to it in section 37U.

- (3) In this Schedule, a reference to Part VIIC includes this Schedule and any subsidiary legislation made under section 37ZW.

## **2. Appointment of members**

- (1) The Appeal Board comprises the following members appointed by the Chief Executive—
- (a) a Chairperson;
  - (b) at least one Deputy Chairperson; and
  - (c) a panel of persons whom the Chief Executive considers suitable for selection under section 6 of this Schedule for hearing and determining an appeal.
- (2) The Chief Executive may appoint a person as a member if—
- (a) the person was formerly a judge or magistrate;
  - (b) the person is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or a common law jurisdiction having unlimited jurisdiction either in civil or criminal matters, and has so practised for a period of or periods totalling not less than 5 years; or
  - (c) the person, in the opinion of the Chief Executive, is suitably qualified to be a member.
- (3) Each appointment is for a term of not more than 3 years and a member may be re-appointed at the end of a term.
- (4) An appointment of a member is to be published in the Gazette.
- (5) If a person ceases to be a member at a time when the person is involved in the hearing or determination of an appeal, the person may continue to be involved in the appeal as if the person were a member until the appeal is disposed of.
- (6) A member may be paid remuneration and allowances at any rates determined by the Chief Executive.

## **3. Resignation and revocation of appointment**

- (1) A member may resign by notice in writing to the Chief Executive.
- (2) The Chief Executive may by notice in writing revoke the appointment of a member on the ground of—
- (a) neglect of duty, misconduct or bankruptcy;
  - (b) physical or mental incapacity that precludes the member from carrying out the member's functions;
  - or
  - (c) any other sufficient cause.

## **4. Role of Chairperson**

In addition to the Chairperson's other functions, the Chairperson is responsible for making any arrangements that are practicable to ensure that members discharge their functions in an orderly and expeditious manner.

## **5. Deputy Chairperson to act in place of Chairperson**

- (1) If the Chairperson is unable to act as Chairperson for any period by reason of illness, absence from Hong Kong or any other cause, a Deputy Chairperson is to act in the place of the Chairperson for that period.
- (2) If 2 or more persons are appointed as Deputy Chairpersons, the Chairperson may designate any one of them to act on behalf of the Chairperson during the period mentioned in subsection (1).

## **6. Composition of Appeal Board for purposes of appeal**

- (1) For hearing and determining an appeal, the Appeal Board is to consist of 1 member (who may or may not be the Chairperson) selected by the Chairperson for this purpose, except as provided in subsection (2).
- (2) Having regard to the circumstances of a particular appeal, the Chairperson may select 3 members to hear and determine the appeal.
- (3) The members selected under subsection (2) must include either the Chairperson or a Deputy Chairperson, and for the purposes of the appeal, the presiding member is to be—
- (a) the Chairperson; or

- (b) the Deputy Chairperson or (if more than 1 Deputy Chairperson is selected) such Deputy Chairperson as the Chairperson may decide.
- (4) A member who has a direct or indirect interest in an appeal must not take part in the hearing and determination of the appeal.

## **7. Order in which appeals are to be heard**

- (1) The Chairperson may decide the order in which appeals and matters are to be heard or determined generally or in any particular circumstances.
- (2) No decision on an appeal or matter is to be called into question on the basis that the appeal or matter ought to have been heard or determined earlier or later than any other appeal or matter, or category of appeals or matters.

## **8. Notice of Appeal be served on Director**

- (1) Subject to subsection (2), the Appeal Board must, as soon as practicable after receiving a notice of appeal filed under section 37ZS(1), serve a copy of the notice on the Director.
- (2) If a notice of appeal under section 37ZS(1) is filed out of time, the Appeal Board is required to serve a copy of the notice on the Director only if it decides to allow late filing of the notice under section 37ZT(3), and in that event, the Board must serve the notice on the Director as soon as practicable after the decision is made.

## **9. Director to provide facts**

- (1) The Director must, as soon as practicable after receiving a copy of a notice of appeal served under section 8 of this Schedule, provide to the Appeal Board and the person who has lodged the appeal—
  - (a) if the decision being appealed against is a decision under section 37ZI(1)(b) rejecting a torture claim—
    - (i) a copy of the completed torture claim form relating to the torture claim in respect of which the decision was made; and
    - (ii) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the torture claim;
  - (b) if the decision being appealed against is a revocation decision of an immigration officer under section 37ZL(1)—
    - (i) a copy of the completed torture claim form relating to the torture claim in respect of which the decision was made;
    - (ii) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the torture claim;
    - (iii) a copy of the notice of the decision under section 37ZI(1)(a) accepting the torture claim as substantiated;
    - (iv) a copy of the notice of proposed revocation of the torture claim given under section 37ZL(2); and
    - (v) a copy of the claimant's objection notice (if any) referred to in section 37ZL(3)(b);
  - (c) if the decision being appealed against is a decision under section 37ZE(4) not to re-open a torture claim withdrawn by the person who made the claim—
    - (i) a copy of any completed torture claim form relating to the torture claim;
    - (ii) a copy of the written record of any interview of the person conducted by an immigration officer in considering the torture claim;
    - (iii) a copy of the person's notice withdrawing the claim; and
    - (iv) a copy of any evidence in writing provided by the person under section 37ZE(2); or
  - (d) if the decision being appealed against is a decision under section 37ZG(5) not to re-open a torture claim treated as withdrawn on a person's failure to return a completed torture claim form—
    - (i) a copy of the written notice under section 37ZG(2) informing the person that the claim is treated as withdrawn; and
    - (ii) a copy of any evidence in writing provided by the person under section 37ZG(3).
- (2) The Director must, as soon as practicable after filing with the Appeal Board a notice of application for a revocation decision under section 37ZM(3), provide to the Appeal Board and the claimant—

- (a) a copy of the completed torture claim form relating to the torture claim in respect of which the application is made;
- (b) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the torture claim;
- (c) a copy of the written notice under section 37ZJ(1) informing the claimant of an immigration officer's decision rejecting the torture claim;
- (d) a copy of the written decision given under section 23(3) of this Schedule reversing an immigration officer's decision rejecting the torture claim;
- (e) a copy of the written notice under section 37ZM(2) informing the claimant of an intended application for a revocation decision to be made by the Board; and
- (f) a copy of the claimant's objection notice (if any) referred to in section 37ZM(2)(b).

#### **10. Hearing to be in private**

A hearing is to be held in private unless the Appeal Board directs that it be held in public.

#### **11. Language of proceedings**

- (1) The proceedings before the Appeal Board may be conducted in the English or Chinese language, or both, as the Board considers appropriate.
- (2) Despite subsection (1)—
  - (a) a party to proceedings before the Appeal Board may address the Board in any language;
  - (b) a witness in proceedings before the Appeal Board may testify in any language; and
  - (c) a legal representative in proceedings before the Appeal Board may use the English or Chinese language, or both.

#### **12. Determination of appeal without a hearing**

The Appeal Board may determine an appeal without a hearing if, having regard to the material before it and the nature of the issues raised, the Board is satisfied that the appeal can be justly determined without a hearing.

#### **13. Notice of hearing**

If the Appeal Board decides to hold a hearing, the Board must, not less than 28 days before the date of hearing, serve on the parties notice of the date, time and place of the hearing.

#### **14. Documents to be served on Appeal Board before hearing**

- (1) The Director must, as soon as practicable after receiving a notice served under section 13 of this Schedule, serve on the Appeal Board, with a copy to the other party, a bundle of all the documents that will be relied on by the Director at the hearing, including submissions to be made.
- (2) The Appeal Board may require a party to file and serve on the Board, with a copy to the other party—
  - (a) statements of evidence that will be called at the hearing; and
  - (b) a list of witnesses whom the party wishes to call to give evidence.

#### **15. Hearing in a party's absence**

- (1) If a party to an appeal fails to attend a hearing, either in person or by a legal representative, the Appeal Board, on proof that the party has been served a notice of the hearing under section 13 of this Schedule, may proceed to hear the appeal in the absence of the party and, subject to subsections (2) and (3), determine the appeal.
- (2) Before proceeding to determine an appeal after hearing the appeal in the absence of a party, the Appeal Board must—
  - (a) give the party written notice of the Board's intention to do so; and

- (b) state that the party may submit to the Board, within 7 days after the notice is given, a written explanation of the party's failure to attend the hearing together with any documentary evidence supporting the explanation.
- (3) If the Appeal Board—
  - (a) has not received the party's written explanation together with supporting documentary evidence (if any) within the period specified in subsection (2)(b); or
  - (b) is not satisfied with the party's written explanation or supporting documentary evidence, the Board may determine the appeal by making a decision under section 23(1) of this Schedule despite the party's absence at the hearing.
- (4) If the Appeal Board is satisfied, on the basis of the party's written explanation and supporting documentary evidence (if any) submitted under subsection (2)(b), that the failure to attend was due to reasonable cause, the Board may fix a date, time and place for hearing the appeal.

**16. Chairperson may give directions**

The Chairperson may give directions, generally or in a particular case, on the practice and procedure of the Appeal Board in hearing and determining an appeal, so long as the direction is consistent with Part VIIC.

**17. Appeal Board may determine own procedure**

Subject to Part VIIC and any direction of the Chairperson, the Appeal Board may determine its own procedure in hearing an appeal.

**18. Evidence considered by Appeal Board in an appeal under section 37ZR**

- (1) In an appeal under section 37ZR, the Appeal Board has the power to review the merits of the case, and accordingly it may consider—
  - (a) the same evidence that was before an immigration officer; and
  - (b) if subsection (2) applies, evidence that was not before an immigration officer.
- (2) The Appeal Board may consider evidence that was not before an immigration officer if—
  - (a) the evidence relates to matters that have occurred after the decision being appealed against was made;
  - (b) the evidence was not reasonably available before the decision being appealed against was made; or
  - (c) the Board is satisfied that exceptional circumstances exist that justify the consideration of the evidence.

**19. Notice of new evidence**

- (1) A party to an appeal who wishes to present any evidence under section 18(2) of this Schedule at a hearing must—
  - (a) file with the Appeal Board a written notice to that effect; and
  - (b) serve a copy of the notice on the other party.
- (2) The notice must—
  - (a) indicate the nature of the evidence; and
  - (b) explain why the evidence was not before an immigration officer before the decision being appealed against was made.

**20. Evidence considered by Appeal Board in an application for revocation decision**

In an application for a revocation decision under section 37ZM, the Appeal Board—
 

- (a) has the power to review the merits of the case; and
- (b) may consider any evidence that the Board considers relevant.

**21. Evidence on oath etc.**

For the purposes of sections 18 and 20 of this Schedule, the Appeal Board may—

- (a) administer oaths and affirmations;
- (b) receive and consider any material by way of oral evidence (on oath or otherwise) or written statements or documents (by affidavit or otherwise).

## 22. Witnesses etc.

- (1) The Appeal Board may, on an application by a party to an appeal, or on its own motion, direct a person—
  - (a) to attend as a witness at the hearing of the appeal at the time and place the Board specifies; and
  - (b) at the hearing to answer any questions, to give evidence on oath or otherwise or to produce any document in that person's possession, custody or power that may relate to any issue in the appeal.
- (2) Despite subsection (1), a person must not be compelled to give any evidence or produce any document that the person could not be compelled to give or produce in proceedings in a court of law.
- (3) Subsection (2) does not entitle a person to refuse to give any evidence or to produce any document on the ground only that the evidence or document would not be admissible in a court of law and that accordingly the person could not be compelled to give or produce it.

## 23. Appeal Board's decision

- (1) On an appeal against a decision referred to in section 37ZR, the Appeal Board may confirm or reverse the decision.
- (2) On an application for a revocation decision under section 37ZM, the Appeal Board may allow or refuse the application.
- (3) The Appeal Board must give its decision with reasons in writing.
- (4) The Appeal Board's decision is final.

## 24. Record of proceedings

The Appeal Board must keep a record or summary of proceedings and of its decisions in such form as the Chairperson may determine.

## 25. Correction of errors

The Appeal Board may correct a decision made by it to the extent necessary to rectify an error of translation or transcription or a clerical error.

## 26. Privileges and immunities of members and witnesses

- (1) In the performance of their functions under Part VIIC, the Chairperson, Deputy Chairperson and other members of the Appeal Board have the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.
- (2) A person appearing at a hearing before the Appeal Board as a witness, a party to the appeal or a legal representative of a party to the appeal is entitled to the same privileges and immunities to which the person would be entitled in civil proceedings in the Court of First Instance.

(Schedule 1A added 23 of 2012 s. 12)

Schedule:	2	<b>TRANSITIONAL PROVISIONS</b>		30/06/1997
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[section 66]

### 1. In this Schedule-

"commencement date" (生效日期) means 1 April 1972;

"Deportation (British Subjects) Ordinance" (《遞解(英籍人士)條例》), "Deportation of Aliens Ordinance" (《遞

解外國人條例》), and "Immigration (Control and Offences) Ordinance" (《入境(管制及罪行)條例》) mean respectively-

- (a) the repealed Deportation (British Subjects) Ordinance;
- (b) the repealed Deportation of Aliens Ordinance; and
- (c) the repealed Immigration (Control and Offences) Ordinance;

"Immigrants Control Ordinance" (《入境者管制條例》) means the Immigrants Control Ordinance (Cap 243 Revised Edition 1950) repealed by the repealed Immigration (Control and Offences) Ordinance;

"Police Supervision Ordinance" (《警方監管條例》) means the Police Supervision Ordinance (Cap 224, Revised Edition 1972) repealed by the Police Supervision (Repeal) Ordinance 1983 (55 of 1983); (Added 55 of 1983 s. 3)

"repealed" (廢除), except in relation to the Immigrants Control Ordinance and the Police Supervision Ordinance, means repealed by this Ordinance. (Replaced 55 of 1983 s. 3)

## **2. Section 4(1)(a)**

Section 4(1)(a) shall have effect as if it included a reference to a person who arrived in Hong Kong before the commencement date, being a person who immediately before the commencement date was being examined or further examined under section 11 of the Immigration (Control and Offences) Ordinance or was about to be so examined or further examined; and the provisions of this Ordinance shall apply to any such person accordingly.

## **3. Section 5(4)(a) & (5)(a)**

The references in section 5(4)(a) and 5(5)(a) to an entry permit and a re-entry permit include references to an entry permit and a re-entry permit issued under the Immigration (Control and Offences) Ordinance.

## **4. Section 9(1)(b)**

Section 9(1)(b) shall have effect as if the references to a person having been refused permission to land in Hong Kong and having been given permission to land in Hong Kong included references to having been refused permission to enter Hong Kong under the Immigration (Control and Offences) Ordinance or the repealed Immigrants Control Ordinance and to having been given permission to enter Hong Kong under either of those Ordinances.

## **5. Section 10(2)**

Section 10(2) shall have effect as if it included a reference to a serviceman who ceased to be such before the commencement date, being a serviceman who had not made an application under section 38 of the Immigration (Control and Offences) Ordinance before that date or whose application had not been determined under the said Ordinance before that date.

## **6. Section 11(2)**

Any conditions imposed in respect of a person who entered Hong Kong before the commencement date under section 15 of the Immigration (Control and Offences) Ordinance and in force immediately before that date (whether the same were imposed at the time of entry or subsequent thereto) shall, subject to section 8(2), continue in force and have effect as if they were conditions of stay imposed under section 11(2) of this Ordinance; and the provisions of this Ordinance shall apply accordingly.

## **7. Section 14(1)**

Section 14(1) shall have effect as if it included a reference to an alien who is in Hong Kong on the commencement date, being an alien who had become liable before that date to comply with section 25(1) of the Immigration (Control and Offences) Ordinance but had not complied therewith.

## **8. Section 16**

Section 16 shall have effect as if the references to particulars furnished in an arrival card and to particulars furnished in the prescribed form pursuant to section 14(1) include respectively references to corresponding particulars furnished to the Director or to the former immigration officer or to the former Registrar of Aliens in accordance with the Immigration (Control and Offences) Ordinance or the repealed Immigrants Control Ordinance or a requirement made under either of those Ordinances.

#### **9. Sections 18, 24 & 32(1)**

Sections 18, 24 and 32(1) shall apply to a person, not being a person who has the right to land in Hong Kong by virtue of section 8(1), who before the commencement date has been refused permission to enter Hong Kong under the Immigration (Control and Offences) Ordinance as they apply to a person who is refused permission to land under this Ordinance.

#### **10. Section 18(1)(b)**

Section 18(1)(b) shall have effect, except in the case of a person who has the right to land in Hong Kong by virtue of section 8(1), as if it included a reference to a condition imposed under section 15 of the Immigration (Control and Offences) Ordinance and in force immediately before the commencement date, being a condition making the same requirement as the condition of stay referred to in the said section 18(1)(b); and the provisions of this Ordinance shall apply accordingly.

#### **11. Section 19(1)(b)(ii)**

Section 19(1)(b)(ii) shall have effect as if it included a reference to a person who has contravened section 3(1)(a)(ii) or (b) of the Immigration (Control and Offences) Ordinance or any condition imposed under section 15 of the said Ordinance and in force immediately before the commencement date (whether such condition was imposed at the time of entry or subsequent thereto), but in whose case an order has not been made under section 43(4) of the said Ordinance; and the provisions of this Ordinance shall apply accordingly.

#### **12. Section 19**

Any order made in respect of a person under section 43(4) of the Immigration (Control and Offences) Ordinance, not being a person who has the right to land in Hong Kong by virtue of section 8(1), shall, if in force immediately before the commencement date, continue in force and have effect for all purposes of this Ordinance as if it were a removal order made in respect of that person under section 19 of this Ordinance.

#### **13. Section 20(1)**

Any deportation order made against a person under the Deportation (British Subjects) Ordinance or the Deportation of Aliens Ordinance and in force immediately before the commencement date shall continue in force and have effect for all purposes of this Ordinance as if it were a deportation order made under section 20(1) of this Ordinance.

#### **14. Sections 19(4) & 20(7)**

Sections 19(4) and 20(7) shall have effect as if-

- (a) the reference to permission to land in Hong Kong included a reference to permission to enter Hong Kong given under the Immigration (Control and Offences) Ordinance;
- (b) the reference to authority to remain in Hong Kong included a reference to a permit of the Director granted under the Immigration (Control and Offences) Ordinance.

#### **15. Sections 24(2), 25(3) & 33**

A person, not being a person who has the right to land in Hong Kong by virtue of section 8(1), who immediately

before the commencement date was on board a ship or aircraft, having been placed thereon with a view to his removal from Hong Kong in accordance with the Immigration (Control and Offences) Ordinance, the Deportation (British Subjects) Ordinance or the Deportation of Aliens Ordinance or any order or requirement made or issued thereunder, shall be deemed to have been placed thereon under section 24(2) or section 25(3), as the case may be, and it shall be presumed that an immigration officer, immigration assistant or police officer has made a requirement under section 33 of this Ordinance; and the provisions of this Ordinance shall apply accordingly.

#### **16. Section 26**

Any person detained immediately before the commencement date under section 13(1)(a) of the Immigration (Control and Offences) Ordinance may, if any member of the Immigration Service of or above the rank of chief immigration officer or a police officer of or above the rank of assistant commissioner of police is satisfied as to the matters referred to in section 26(a), be detained on the authority of such member or police officer for a total period of seven days, taking account of the period for which such person had been detained before the commencement of this Ordinance.

#### **17. Section 29(2)**

A person detained immediately before the commencement date-

- (a) following his arrest on a warrant issued under section 5(3) of the Deportation (British Subjects) Ordinance; or
- (b) in accordance with the direction of a judge, court or magistrate given under section 7 of that Ordinance,

may continue to be detained as if a detention warrant had been issued in respect of him on the commencement date under section 29(2); and the provisions of this Ordinance shall apply accordingly.

#### **18. Section 29(2)**

A person detained immediately before the commencement date under the authority of a warrant issued under section 4 or 5 of the Deportation of Aliens Ordinance may continue to be detained as if a detention warrant had been issued in respect of him on the commencement date under section 29(2); and the provisions of this Ordinance shall apply accordingly.

#### **19. Section 32(3) & (3A)**

A person detained immediately before the commencement date under section 9(2) of the Deportation (British Subjects) Ordinance or section 8(2) of the Deportation of Aliens Ordinance may continue to be detained as if his detention had been authorized by the Secretary for Security under section 32(3) or by the Director of Immigration or Deputy Director of Immigration under section 32(3A) of this Ordinance, whichever is appropriate in the particular case.

#### **20. Section 32(3) & (3A)**

A person detained immediately before the commencement date under section 43(4) of the Immigration (Control and Offences) Ordinance may, unless he is a person who has the right to land in Hong Kong by virtue of section 8(1), continue to be detained as if his detention had been authorized by the Secretary for Security under section 32(3) or by the Director of Immigration or Deputy Director of Immigration under section 32(3A) of this Ordinance, whichever is appropriate in the particular case.

#### **21. Section 33**

Section 33 shall apply to a person, not being a person who has the right to land in Hong Kong by virtue of section 8(1), who before the commencement date has been refused permission to enter Hong Kong under the Immigration (Control and Offences) Ordinance as it applies to a person who has been refused permission to land in Hong Kong under this Ordinance; and it shall be presumed that an immigration officer, immigration assistant or police

officer has made a requirement under the said section 33.

**22. Section 38(1)(b)**

The reference in section 38(1)(b) to the authority of the Director includes a reference to a permit of the Director granted under the Immigration (Control and Offences) Ordinance.

**23. Section 42(2)(a)**

The reference in section 42(2)(a) to a travel document, entry permit, re-entry permit, certificate of identity, document of identity or Vietnamese refugee card or other document issued, kept or made under or for the purposes of Part II, III or IV of this Ordinance includes a reference to a travel document, entry permit, re-entry permit or other document issued, kept or made under or for the purposes of the Immigration (Control and Offences) Ordinance.

**24. Section 42(2)(b) & (c)(i)**

The references in section 42(2)(b) to a travel document, entry permit, re-entry permit, certificate of identity, document of identity, Vietnamese refugee card or other document and the references in section 42(2)(c)(i) to a travel document, entry permit, re-entry permit, certificate of identity, document of identity or Vietnamese refugee card include references to a travel document, entry permit or re-entry permit issued under the Immigration (Control and Offences) Ordinance.

**25. Section 47(1) & (2)**

Section 47(1) and (2) shall have effect as if they included, respectively, a reference to a ship not exceeding two hundred and fifty gross tons, and a vehicle, which has been used in the contravention or attempted contravention of any of the provisions of the Immigration (Control and Offences) Ordinance (whether or not any person has been convicted of such contravention or attempted contravention), being a ship or vehicle in respect of which notice of seizure has not been served before the commencement date under section 46(2) of the said Ordinance; and the provisions of this Ordinance shall apply accordingly.

**26. Section 55(2)**

Any condition imposed under section 17(3) of the Deportation of Aliens Ordinance and in force immediately before the commencement date shall, if it has not been complied with, be deemed to be a requirement under section 55(2) of this Ordinance; and any recognizance entered into in accordance with an order under the said section 17(3) and in force immediately before the commencement date shall be deemed to be a recognizance entered into in accordance with a requirement under section 55(2) of this Ordinance and shall continue in force for the remainder of the period for which it would have continued in force in accordance with the order under the said section 17(3).

**27. Section 56(1)(e) & (1A)(b)**

References in section 56(1)(e) and (1A)(b) to an offence under this Ordinance include references to an offence under the Immigration (Control and Offences) Ordinance.

**28. Police Supervision Ordinance-s. 3(1) & (2)**

Any police supervision order made under section 3(1) or (2) of the repealed Police Supervision Ordinance (Cap 224 Revised Edition 1972) and in force immediately before the commencement of this Ordinance shall continue in force and have effect for all purposes of the Police Supervision Ordinance as if it were made under section 3(1) or (2) of that Ordinance as amended.

(Schedule 2 added 64 of 1981 s. 2. Amended 78 of 1982 s. 13; 55 of 1983 s. 3)

Schedule:	3	<b>TRANSITIONAL PROVISIONS IN RESPECT OF IMMIGRATION (AMENDMENT) ORDINANCE 1997</b>		30/06/1997
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[section 67]

1. (1) In this Schedule-

"resident British citizen" (居港英國公民) means a British citizen who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years either as a British citizen or partly as a United Kingdom believer and partly as a British citizen;

"resident United Kingdom believer" (居港聯合王國本土人) means a United Kingdom believer who was at any time before 1 January 1983 ordinarily resident in Hong Kong for a continuous period of not less than 7 years;

"United Kingdom believer" (聯合王國本土人) means a person who, immediately before 1 January 1983, was a citizen of the United Kingdom and Colonies by reason of his birth, adoption, naturalization or registration in the United Kingdom or was the wife or child of any such person.

(2) If in-

(a) any proceedings under this Ordinance; or

(b) any proceedings with reference to any act done or omitted or proposed to be done under this Ordinance,

a person claims that he is a resident British citizen or resident United Kingdom believer, the onus of proving the same shall lie on that person.

2. Any deportation order-

(a) made under section 20(2) or (4) of this Ordinance as in force immediately before the commencement date\* of the Immigration (Amendment) Ordinance 1997 (88 of 1997); and

(b) which is in force immediately before the commencement date\* of the Immigration (Amendment) Ordinance 1997 (88 of 1997),

shall continue in force and have effect for all purposes of this Ordinance as if it were a deportation order made under section 20(1) of this Ordinance.

3. (1) Any person who, immediately before the commencement date\* of the Immigration (Amendment) Ordinance 1997 (88 of 1997), was-

(a) a resident British citizen or resident United Kingdom believer; and

(b) in Hong Kong,

shall be deemed to have been given permission to land in Hong Kong under section 11(1) of this Ordinance without any condition of stay.

(2) For the avoidance of doubt, it is hereby declared that section 11(10) of this Ordinance applies in relation to a permission to land deemed under subparagraph (1) to have been given.

(Schedule 3 added 88 of 1997 s. 23)

**Note:**

\* Commencement date: 30 June 1997.

Schedule:	4	<b>Transitional and Savings Provisions in respect of Immigration (Amendment) Ordinance 2012 (Torture Claims)</b>	L.N. 147 of 2012	03/12/2012
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[section 37ZZ]

## 1. Interpretation

(1) In this Schedule—

**adjudicator** (審裁員) means an adjudicator appointed under the administrative scheme for determining petitions;

**administrative scheme** (行政機制) means the administrative measures for determining non-refoulement claims

implemented by the Director between 24 December 2009 and the commencement date;

**\*commencement date** (生效日期) means the date of commencement of the Immigration (Amendment) Ordinance 2012 (23 of 2012);

**established claim** (已確認聲請) means a non-refoulement claim in respect of which—

- (a) (for a claim determined under the administrative scheme) an immigration officer or an adjudicator; or
  - (b) (for a claim determined before 24 December 2009) the Director,
- has determined that there are substantial grounds for believing that the person making the claim would be in danger of being subjected to torture if the person were removed to the State to which the claim relates;

**non-refoulement claim** (免遣返聲請) means a claim for protection under Article 3 of the Convention—

- (a) made under the administrative scheme;
- (b) made before 24 December 2009 and in respect of which the Director has informed, in writing, the person making the claim that screening of claims for such protection has been resumed on 24 December 2009; or
- (c) determined as an established claim by the Director before 24 December 2009;

**petition** (呈請) means a petition made to the Chief Executive against a determination made by an immigration officer that a non-refoulement claim is a rejected claim;

**questionnaire** (問卷) means a form entitled “Questionnaire for Persons who have made claims under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” issued by the Immigration Department, which is required to be completed and returned to the Immigration Department by a person making a nonrefoulement claim;

**rejected claim** (遭駁回聲請) means a non-refoulement claim in respect of which an immigration officer has determined that there are no substantial grounds for believing that the person making the claim would be in danger of being subjected to torture if the person were removed to the State to which the claim relates;

**Table** (列表) means the Table of Transitional Provisions included in this Schedule;

**transitional provision** (過渡性條文) means any provision appearing under Part A, or under Part B, in column 3 of the Table.

- (2) In this Schedule, a reference to Part VIIC includes Schedule 1A and any subsidiary legislation made under section 37ZW.
- (3) An expression used in this Schedule has the same meaning as in Part VIIC.
- (4) To avoid doubt, nothing in this Schedule is to be construed as giving validity to anything done otherwise than in the lawful exercise of a power or performance of a duty.

## 2. Non-refoulement claims and application of Part VIIC

- (1) On and after the commencement date, a non-refoulement claim is taken to be a torture claim and, subject to subsections (2), (3) and (4), the claim may continue and Part VIIC applies in relation to the claim for all purposes.
- (2) For the purposes of subsection (1), on the commencement date, the transitional provision set out in Part A and (if any) Part B opposite to a non-refoulement claim described in column 2 of the Table takes effect in relation to the claim, and subject to subsection (3), the claim (which, as at the commencement date, has become a torture claim described in Part A of the transitional provision) may continue accordingly in accordance with Part VIIC on and after the commencement date.
- (3) If a non-refoulement claim was pending determination or was an established claim when the person making the claim left Hong Kong before the commencement date, then, on and after the commencement date, the claim—
  - (a) is taken to be a torture claim that has been withdrawn under section 37ZF; and
  - (b) may not continue.
- (4) If a determination rejecting a non-refoulement claim is upheld on a petition before the commencement date, then, on and after the commencement date, the rejected claim—
  - (a) is taken to be a torture claim rejected by a decision under section 37ZI(1)(b) that has been confirmed by the Appeal Board; and
  - (b) may not continue.

- (5) Without limiting subsection (1), a provision of Part VIIC that—
- (a) restricts re-opening of a torture claim withdrawn under section 37ZE or 37ZG; or
  - (b) provides for a revocation decision,
- applies in relation to a non-refoulement claim that may continue as a torture claim under subsection (2), and is to continue to apply in relation to the claim even after the claim has been finally determined or withdrawn in accordance with Part VIIC.

### **3. Non-refoulement claim taken as previous torture claim**

If a person seeks to make a torture claim under Part VIIC on or after the commencement date, then, for the purpose of determining whether the person may make the torture claim under that Part, a non-refoulement claim made by the person is taken to be a torture claim previously made by the person (regardless of whether the non-refoulement claim may continue under section 2(2) of this Schedule).

### **4. Persons making non-refoulement claims**

Without limiting section 2(1) of this Schedule, in applying the definition of *claimant* in section 37U(1) to a person who has made a non-refoulement claim, the definition is to be read with this Schedule and construed accordingly.

### **5. Petition being heard or determined by adjudicator**

- (1) If a petition is being heard or determined by an adjudicator immediately before the commencement date, then, on and after the commencement date, the petition may continue to be heard and determined by the person who was the adjudicator as if—
- (a) the petition were an appeal—
    - (i) made against a decision under section 37ZI(1)(b) rejecting a torture claim; and
    - (ii) pending determination by the Appeal Board; and
  - (b) the person—
    - (i) if appointed under section 2 of Schedule 1A as a member of the Appeal Board, were selected under section 6(1) of that Schedule to hear and determine the appeal; or
    - (ii) were a person referred to in section 2(5) of Schedule 1A until the petition (taken as an appeal) is disposed of.
- (2) Without limiting section 2(1) of this Schedule but subject to subsection (1), Part VIIC and the practice and procedure of the Appeal Board that apply to an appeal lodged under that Part apply in relation to the petition (taken as an appeal) on and after the commencement date.

### **6. Things done under the administrative scheme**

On and after the commencement date, anything that has been done under the administrative scheme in the hearing and determination of a non-refoulement claim (including anything that has been done in relation to a petition), in so far as such a thing may be done under Part VIIC in respect of a torture claim (including anything that may be done in respect of an appeal), is taken to have been done under that Part.

### **7. Taking of fingerprints etc.**

In relation to a non-refoulement claim taken to be a torture claim and continuing under this Schedule, an immigration officer or an immigration assistant may—

- (a) take the fingerprints and photograph of the person making the claim; and
- (b) require the person to attend for that purpose at the place and time the immigration officer or immigration assistant specifies.

## **Table of Transitional Provisions**

Item	Stage at which non-refoulement claim is being processed, or has ceased to be processed, immediately before commencement date	Transitional provision (referred to in section 2(2) of this Schedule) that takes effect on commencement date
1.	Non-refoulement claim in respect of which the person is yet to be requested by the Director to complete and return a questionnaire in support of the claim	Part A  The non-refoulement claim is taken to be a torture claim made under section 37X
2.	Non-refoulement claim that has been withdrawn by the person making the claim by notice to the Director	Part A  The non-refoulement claim is taken to be a torture claim withdrawn under section 37ZE(1) and, without limiting section 2(1) of this Schedule, section 37ZE applies accordingly
3.	Non-refoulement claim in respect of which the person making the claim has failed to complete and return a questionnaire in support of the claim within the period specified by the Director	Part A  The non-refoulement claim is taken to be a torture claim treated as withdrawn under section 37ZG(1) and, without limiting section 2(1) of this Schedule, section 37ZG applies accordingly  Part B  The questionnaire is taken to be a torture claim form
4.	Non-refoulement claim in respect of which— (a) the person making the claim is to complete and return to the Director a questionnaire in support of the claim; and (b) the period specified by the Director for returning the completed questionnaire ( <i>specified period</i> ) has not expired	Part A  The non-refoulement claim is taken to be a torture claim in respect of which a torture claim form is yet to be returned under section 37Y(2)  Part B  (a) The questionnaire is taken to be a torture claim form; and (b) the unexpired portion of the specified period is taken to be the unexpired portion of the period within which the torture claim form is to be returned under section 37Y(2)
5.	Non-refoulement claim— (a) in respect of which a questionnaire has been completed and returned to the Director before the commencement date; and (b) pending determination by an immigration officer	Part A  The non-refoulement claim is taken to be a torture claim— (a) in respect of which a completed torture claim form has been returned to an immigration officer under section 37Y(2); and (b) pending decision by an immigration officer under section 37ZI  Part B

		The completed questionnaire is taken to be the completed torture claim form in respect of the claim
6.	Non-refoulement claim is determined by an immigration officer as an established claim and, by virtue of the determination, the person making the claim has not been removed from Hong Kong	Part A  The established claim is taken to be a substantiated claim within the meaning of paragraph (a) of the definition of <i>substantiated claim</i> in section 37U(1) and, without limiting section 2(1) of this Schedule, section 37ZL applies accordingly
7.	Non-refoulement claim is determined by an immigration officer as a rejected claim and— (a) the period specified by the Director for a petition to be made against the determination ( <i>petition period</i> ) has not expired; and (b) such a petition has not been made	Part A  The non-refoulement claim is taken to be a torture claim in respect of which a decision under section 37ZI(1)(b) rejecting the claim has been made  Part B  The unexpired portion of the petition period is taken to be the unexpired portion of the period under section 37ZS for lodging a notice of appeal against the decision
8.	Non-refoulement claim is determined by an immigration officer as a rejected claim and— (a) the period specified by the Director for a petition to be made against the determination ( <i>petition period</i> ) has expired; and (b) such a petition has not been made	Part A  The non-refoulement claim is taken to be a torture claim in respect of which a decision under section 37ZI(1)(b) rejecting the claim has been made  Part B  The petition period is taken to be the period under section 37ZS for lodging a notice of appeal against the decision and, without limiting section 2(1) of this Schedule, section 37ZT applies accordingly
9.	Non-refoulement claim that is a rejected claim in respect of which a petition is made and is pending determination by an adjudicator	Part A  Non-refoulement claim is taken to be a torture claim pending determination by the Appeal Board as if the petition were an appeal made to the Board against a decision under section 37ZI(1)(b) rejecting the claim
10.	Non-refoulement claim has been determined by an adjudicator as an established claim and, by virtue of the determination, the person making the claim has not been removed from Hong Kong	Part A  The established claim is taken to be a substantiated claim within the meaning of paragraph (b) of the definition of <i>substantiated claim</i> in section 37U(1) and, without limiting section 2(1) of this Schedule, section 37ZM applies accordingly

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**Note:**

**\* Commencement date: 3 December 2012.**