

## Frequently Asked Questions (“FAQs”)

The following abbreviations/short forms will be used in the FAQs below for simplicity:

- (a) “**Adjudicators**” – Members of the Torture Claims Appeal Board who have been delegated with the authority by the Chief Executive under Article 48(13) of the Basic Law of the Hong Kong Special Administrative Region to hear and determine petitions;
- (b) “**appeal**” – an appeal filed under Part VIIC of the Immigration Ordinance, Cap. 115;
- (c) “**BOR 2 claim**” – non-refoulement claim on the ground of risk to a person’s right to life under Article 2 of section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383;
- (d) “**BOR 3 claim**” – non-refoulement claim on the ground of risk of torture or cruel, inhuman or degrading treatment or punishment under Article 3 of section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383;
- (e) “**Director**” – the Director of Immigration;
- (f) “**ImmD**” – the Immigration Department;
- (g) “**Ordinance**” – the Immigration Ordinance, Cap. 115;
- (h) “**persecution claim**” – non-refoulement claim on the ground of risk of persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol;
- (i) “**petition**” – a petition filed under the Administrative Non-refoulement Claims Petition Scheme;
- (j) “**Petition Guide**” – The Practice and Procedural Guide of the Administrative Non-refoulement Claims Petition Scheme which sets out the rules and guidelines to be followed under the Petition Scheme referred to under (i) below;
- (k) “**Petition Office**” – Non-refoulement Claims Petition Office;
- (l) “**Petition Scheme**” – the Administrative Non-refoulement Claims Petition Scheme devised by the Government of Hong Kong Special Administrative Region under which Adjudicators are delegated with the powers to determine petitions and the practice and procedure on handling such petitions;
- (m) “**PPP**” – Principles, Procedures and Practice Directions of the Torture Claims Appeal Board;
- (n) “**Secretariat**” – Secretariat of the Torture Claims Appeal Board;
- (o) “**TCAB**” – Torture Claims Appeal Board.

**Q1. What is the jurisdiction of the TCAB? What kinds of appeal does it handle?**

A1. Under section 37ZR of the Ordinance, a person may appeal to the TCAB if he is aggrieved by any of the following decisions made by an immigration officer:

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

Under section 37ZM of the Ordinance, TCAB also determines an application from the ImmD for revocation of TCAB's previous decision that reversed an immigration officer's decision under section 37ZI(1)(b) of the Ordinance rejecting a torture claim.

**Q2. What is the jurisdiction of an Adjudicator under the Petition Scheme? What kinds of petition does he handle?**

A2. Under the Petition Scheme, a person may petition to the Adjudicators if he is aggrieved by any of the following decisions made by an immigration officer in relation to his non-refoulement claim including a BOR 2 claim, BOR 3 claim and a persecution claim based on applicable grounds (other than torture risk under Part VIIC of the Ordinance):

- (a) a decision not to re-open a non-refoulement claim;
- (b) a decision rejecting a non-refoulement claim; or
- (c) a revocation decision made by an immigration officer accepting a non-refoulement claim as substantiated.

The Adjudicator also determines an application from the ImmD for revocation of his previous decision that reversed an immigration officer's decision.

**Q3. I have made a non-refoulement claim with the ImmD under the Unified Screening Mechanism (“USM”) based on all applicable grounds but the Director has rejected the claim and refused to give me non-refoulement protection. Should I file an appeal or a petition?**

A3. Under the USM, a claimant who is aggrieved by ImmD’s decision on his non-refoulement claim may file his appeal/petition simultaneously. Once validly filed, he will be deemed to be appealing/petitioning against the ImmD’s decision on all applicable grounds. His appeal/petition will then be handled by the same TCAB Member/Adjudicator in one go such that he will not be required to recount his traumatic experience twice. This also ensures that a genuine claimant will be afforded timely protection if his appeal/petition can be processed together efficiently.

**Q4. How can my appeal and petition be processed together as I suppose they are dealing with different matters? Will I be given a fair process under such USM?**

A4. The existing statutory appeal procedures were formulated in accordance with the high standards of fairness required by the law. The practice and procedure of the Petition Scheme follow closely the corresponding statutory procedures to ensure that the high standards of fairness are met. Although it is under separate powers, the TCAB Members/Adjudicators are performing their role independently to determine the appeals/petitions.

**Q5. How do I file an appeal/a petition?**

A5. You must file with the TCAB/Petition Office a Notice of Appeal/Petition within 14 days after an immigration officer has given you a notice of his decision regarding your non-refoulement claim. A blank form of the Notice of Appeal/Petition will be given to you at the same time when you are notified of the aforesaid decision. It can also be downloaded from <http://www.sb.gov.hk/eng/links/tcab/index.htm>.

The completed Notice of Appeal/Petition, a copy of the immigration officer’s decision and all relevant supporting documents (if any), must be submitted to the TCAB/Petition Office located at Rooms 3007-10, 30/F, Immigration Tower, 7 Gloucester Road, Wanchai, Hong Kong by post or in person within the 14-day appeal/petition period.

**Q6. What should I do if I have missed the appeal/petition deadline?**

A6. If the Notice of Appeal/Petition is filed after the expiry of the 14-day period, you must apply for late filing by stating your reasons in Section 5 of the Notice of Appeal/Petition. You must also submit any documentary evidence in support of the reasons provided. The TCAB/Petition Office will inform you, by written notice, of the result of your application for late filing as soon as practicable.

**Q7. Can I still make further enquiries after I have submitted the Notice of Appeal/Petition?**

A7. You may call us at 3106 3749 or the telephone number for enquiry on the letters/notices issued by the TCAB/Petition Office, or visit our office at Rooms 3007-10, 30/F, Immigration Tower, 7 Gloucester Road, Wanchai, Hong Kong during office hours.

**Q8. If I have changed my contact number, residential / correspondence address or legal representative after I have submitted the Notice of Appeal/Petition, what should I do?**

A8. The TCAB/Petition Office will contact the appellant/petitioner by phone and send written communications to his last known address of the appellant/petitioner or that of his legal representative. Therefore, you must notify us in writing of any changes of contact number, residential/correspondence address and/or legal representative as soon as possible.

**Q9. If I have attended a medical examination arranged by an immigration officer in relation to my non-refoulement claim, do I need to disclose my medical report to the TCAB Members/Adjudicators?**

A9. Yes. In accordance with section 37ZC(3) of the Ordinance and paragraph 16.3 of the Petition Guide, a claimant must disclose to the TCAB Member/Adjudicator the medical report of any examination arranged for him in relation to his non-refoulement claim.

**Q10. How many TCAB Members/Adjudicators will determine my appeal/petition?**

A10. Under section 6 of Schedule 1A to the Ordinance and paragraphs 11.9 and 11.10 of the Petition Guide, an appeal/a petition may be determined by either 1 or 3 TCAB Members/Adjudicators having regard to the particular circumstances of the appeal/petition.

**Q11. Will a hearing be held to determine my appeal/petition? Can I ask the TCAB/Petition Office to arrange a hearing for me on my request?**

A11. Under section 12 of Schedule 1A to the Ordinance and paragraph 15.1 of the Petition Guide, the TCAB Member/Adjudicator may determine an appeal/a petition without a hearing if, having regard to the material before him and the nature of the issues raised, the TCAB Member/Adjudicator is satisfied that the appeal/petition can be justly determined without a hearing.

**Q12. If the TCAB Member/Adjudicator decides to hold a hearing for my appeal/petition, when will I be informed of the details of the hearing?**

A12. The Secretariat/Petition Office will inform you in writing of the date, time and place of the hearing at least 28 days in advance.

**Q13. Is the hearing to be held in private?**

A13. Yes. Under section 10 of Schedule 1A to the Ordinance and paragraph 11.8 of the Petition Guide, a hearing is to be held in private unless the TCAB Member/Adjudicator directs that it be held in public.

**Q14. Will interpretation service be provided to me during a hearing?**

A14. Interpretation service will be provided upon request. If the appellant/petitioner or his witness(es) require an interpreter, he must specify the language/dialect required in Part (B) of Section 4 of the Notice of Appeal/Petition.

**Q15. What should an appellant/a petitioner bring to attend a hearing?**

A15. An appellant/a petitioner should bring appropriate identity document(s) for verification of his identity by the Secretariat/Petition Office, and the hearing bundle (which will be provided to him by the ImmD before the hearing).

**Q16. Can my legal representative attend the hearing with me?**

A16. If the TCAB Member/Adjudicator decides that a hearing will be held, the appellant/petitioner's legal representative can attend the hearing with him, provided that the details of his legal representative have been given in Section 3 of the Notice of Appeal/Petition.

**Q17. Can an appellant/a petitioner bring any witness(es) to a hearing?**

A17. Part (A) of Section 4 of the Notice of Appeal/Petition should be completed to provide details of the witness(es) if an appellant/a petitioner wishes to bring him/them to a hearing. Each witness is required to submit a witness statement which should be attached to the completed Notice of Appeal/Petition. The TCAB Member/Adjudicator will decide whether or not to allow the witness(es) to attend the hearing. The appellant/petitioner will be informed of the decision before the hearing.

If a witness is allowed to attend the hearing, it is the appellant/petitioner's duty to inform him about the details of the hearing. The appellant/petitioner should remind him to bring along necessary identity document(s) for verification of his identity.

**Q18. Who will attend a hearing apart from me and my legal representative?**

A18. No unauthorised person other than the TCAB Member/Adjudicator, staff members of the Secretariat/Petition Office, the representatives of the Director, the witness(es) of either parties, custody officers escorting the appellant/petitioner if he is in custody, and the interpreter(s) will be allowed to be present at a hearing.

**Q19. If I want to change my legal representative and/or witness(es) before a hearing, what should I do?**

A19. You must notify the Secretariat/Petition Office details of the change of legal representative and/or witness in writing at least 5 working days before the date of the hearing.

**Q20. During a hearing, can I present any new evidence that was not before an immigration officer?**

A20. At the hearing of an appeal/a petition, the appellant/petitioner may be allowed to adduce new evidence that was not put before the immigration officer if the conditions stipulated in sections 18 and 19 of Schedule 1A to the Ordinance and paragraphs 18 and 19 of the Petition Guide have been satisfied.

**Q21. I understand that I have to provide the ImmD with all the documents and submissions I wish to rely on during the hearing for the ImmD to prepare a hearing bundle. When should I pass my documents and submissions to the ImmD? If I want to rely on some country of origin information (“COI”) I obtained from the internet, do I have to provide a copy of the entire document for inclusion into the hearing bundle?**

A21. According to paragraph 9.7 of the PPP and paragraph 12.7 of the Petition Guide, the ImmD must send copies of the hearing bundle to the TCAB/Petition Office and the appellant/petitioner no later than 5 working days prior to the date of the hearing. It is the appellant/petitioner’s responsibility to ensure his documents are sent to the ImmD in sufficient time for inclusion in the hearing bundle.

Both parties to the appeal/petition must ensure that only the part or parts of the COI that is relevant to their case is placed in the hearing bundle. It is not necessary to put the whole COI in the hearing bundle. Provision of the internet link to the COI in question will enable the TCAB Member/Adjudicator and the other side to peruse the full document.

**Q22. What are the procedures for a hearing?**

A22. After a short introduction by the TCAB Member/Adjudicator –

- (a) the TCAB Member/Adjudicator will ask an appellant/a petitioner to confirm that he understands the interpreter;
- (b) he will briefly explain the proceedings to the appellant/petitioner;
- (c) the appellant/petitioner will be informed that he may choose whether to give oral evidence. If he chooses to give oral evidence, the appellant/petitioner will be asked to affirm or take his oath;
- (d) after giving his evidence in chief, the appellant/petitioner may be subjected to cross-examination by the Director's representative (if attended), and re-examined by his own representative;
- (e) if the appellant/petitioner calls a witness, the same procedure of oath/affirmation, evidence in chief, cross-examination and re-examination will apply;
- (f) the Director's representative (if attended) will then present his evidence;
- (g) the Director's representative (if attended) will make his closing speech, then the appellant/petitioner's representative will make his closing speech; and
- (h) the TCAB Member/Adjudicator's Decision may be given after the hearing or handed down in written form at a later date.

The TCAB Member/Adjudicator may make necessary changes to any of the above procedural steps if it thinks fit.

**Q23. What will happen if I fail to attend a hearing?**

A23. The TCAB Member/Adjudicator may proceed to hear and determine the appeal/petition in the absence of a party to an appeal/a petition. The procedures as stated in sections 15(1) to (4) of Schedule 1A to the Ordinance and paragraphs 11.14 to 11.16 of the Petition Guide will have to be followed.

**Q24. Do I need to attend a hearing in case of inclement weather?**

A24. If a No. 8 or higher Tropical Cyclone Warning Signal or the Black Rainstorm Warning Signal issued by the Hong Kong Observatory is in force within two hours before the commencement of a hearing, the hearing will be postponed. Notwithstanding the above, in the event that the Government has announced to the public that, due to certain extreme conditions (the “extreme condition”), employees should be advised to stay in their places or safe locations for another two hours (or longer if extended) after the No. 8 or higher Tropical Cyclone Warning Signal has been lowered to No. 3 (or below) or cancelled, the TCAB/Petition Office will follow the advice accordingly. If the “extreme condition” is in force within two hours before the commencement of the scheduled hearing, the hearing will be postponed. The Secretariat/Petition Office will notify all parties of the date and time of the re-scheduled hearing as soon as possible. For details of the hearing arrangements under inclement weather conditions, please refer to the Practice Direction No. 3 of the PPP and Procedural Note No. 3 of the Petition Guide.

**Q25. How will I be informed of the Decision of the TCAB Member/ Adjudicator in respect of my appeal/petition?**

A25. The TCAB Member/Adjudicator’s Decision will be given in writing. It will be served on the appellant/petitioner –

- (a) by post to the usual or last known place of abode or business of the appellant/petitioner;
- (b) by leaving at the usual or last known place of abode or business of the appellant/petitioner;
- (c) by post to or leaving at the place of business or correspondence address of the legal representative; or
- (d) where appropriate, it may be served on the appellant/petitioner personally.

**Q26. If the TCAB Member/Adjudicator has made a Decision which is not in my favour, can I make further appeal against such a decision?**

A26. Under section 23(4) of Schedule 1A to the Ordinance and paragraph 22.4 of the Petition Guide, the TCAB Member/Adjudicator’s Decision is final.