

**THE PRACTICE AND PROCEDURAL GUIDE OF
THE ADMINISTRATIVE
NON-REFOULEMENT CLAIMS PETITION SCHEME
("Petition Guide")**

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PART 1
PRELIMINARY

1. Practice and Procedural Guide of the Administrative Non-refoulement Claims Petition Scheme (“Petition Guide”)

1.1 This Petition Guide is issued by the Chairperson of the Torture Claims Appeal Board (“**TCAB**”) who has been, in his personal capacity, delegated by the Chief Executive (the “**CE**”) of the Hong Kong Special Administrative Region (“**HKSAR**”) with the authority under the Basic Law of the HKSAR Article 48(13)¹(“**BL48(13)**”) to determine the practice and procedure of the Administrative Non-refoulement Claims Petition Scheme (the “**Petition Scheme**”). This Petition Guide sets out the rules and guidelines to be followed by the decision-makers (the “**Adjudicators**”), the petitioners, the immigration officers, legal representatives acting for the petitioners and immigration officers, and the staff members of the Non-refoulement Claims Petition Office (the “**Petition Office**”) as to how petitions are to be processed and determined under this Petition Scheme. This Petition Guide will be subject to review from time to time in the light of the operational experience and the contents herein will require elaboration and/or amendment over time or as necessitated by circumstances. This Petition Guide and any subsequent amendments made will be uploaded onto the Internet website.

1.2 The Petition Scheme is operated to review the decisions made by the immigration officers on non-refoulement claims in relation to all applicable grounds other than torture risk under Part VIIC of the Immigration Ordinance, Cap. 115 (the “**Ordinance**”). These applicable grounds include risk of violation of an absolute and non-derogable right under the Hong Kong Bill of Rights (the “**HKBOR**”) (including “right to life” under Article 2 and “right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment” (“**torture or CIDTP**”) under Article 3) as set out under section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383 (the “**HKBORO**”); and (ii) risk of persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention Relating to the Status of Refugees (the “**RC**”) and its 1967 Protocol. For the avoidance of doubt, the incumbent Members of the TCAB (as established under section 37ZQ of the Ordinance) have been, in their personal capacities, delegated with the authority under BL48(13) to hear and determine the aforesaid petitions. Nothing in this Petition Guide shall be regarded as having been derived from the statutory powers conferred upon them under the Ordinance. Conversely, nothing in this Petition Guide shall affect the statutory powers to be exercised by the TCAB Members in handling and determining torture claims pursuant to the provisions of the Ordinance.

¹ Basic Law of HKSAR Article 48(13) provides that the Chief Executive of the HKSAR shall exercise the powers and functions to handle petitions and complaints.

1.3 Under the Unified Screening Mechanism (the “USM”) which has been introduced by the HKSAR Government with effect from 3 March 2014, this Petition Scheme is to be operated in parallel with the statutory torture claims appeal mechanism to ensure that an appeal/petition filed by a claimant for non-refoulement protection will be handled in a uniform way.

1.4 Where a non-refoulement claim, made on any applicable grounds, is found substantiated by an immigration officer, the Immigration Department of the HKSAR Government (the “ImmD”) will provide non-refoulement protection to the claimant. Where a claimant is unsuccessful in obtaining non-refoulement protection after the first-tier screening by the ImmD and files an appeal/petition, he will be deemed to be appealing/petitioning against the first-tier decision on all applicable grounds. The TCAB Member/Adjudicator will review all applicable grounds and determine whether or not the appellant/petitioner shall be granted non-refoulement protection under any of these applicable grounds.

2. Interpretation

2.1 In this Petition Guide, unless otherwise stated,

- (a) “**Adjudicator**” means a Member of the TCAB who has been in his personal capacity delegated with the powers under BL48(13) to hear and determine petitions in relation to non-refoulement claims made on all applicable grounds other than torture risk. Where a petition is to be handled and determined jointly by three Adjudicators, the word “Adjudicator” in its singular form also represents a three-adjudicator panel;
- (b) “**all applicable grounds**” means all grounds set out under paragraphs 3.1 to 3.3 below;
- (c) “**any applicable grounds**” means any ground set out under paragraphs 3.1 to 3.3 below;
- (d) “**Administrative Non-refoulement Claims Petition Scheme**” (the “**Petition Scheme**”) means a petition scheme devised by the HKSAR Government under which Adjudicators are delegated with BL48(13) powers to determine petitions and the practice and procedure on handling such petitions;
- (e) “**appeal**” means an appeal made under section 37ZR or an application for a revocation decision under section 37ZM of the Ordinance;
- (f) “**BOR 2**” means Article 2 of section 8 of the HKBORO;
- (g) “**BOR 2 risk**” means risk to a person’s right to life under BOR 2;
- (h) “**BOR 3**” means Article 3 of section 8 of the HKBORO;
- (i) “**BOR 3 risk**” means risk of being subjected to torture or CIDTP under BOR 3;
- (j) “**CAT**” means the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (k) “**CFA**” means the Court of Final Appeal;

- (l) “**Chairperson**” means the Chairperson of the TCAB appointed under section 2 of Schedule 1A of the Ordinance who has been in his personal capacity delegated with the powers under BL48(13) to perform various functions in this Petition Scheme;
- (m) “**claimant**” means a person whose non-refoulement claim (not being a non-refoulement claim that has been withdrawn) – (a) is not yet finally determined; or (b) is a substantiated claim;
- (n) “**Decision**” means a decision made by the Adjudicator in determining a petition under this Petition Scheme;
- (o) “**Directions Hearing**” means a hearing ordered by the Adjudicator for the purpose of giving directions to parties in relation to a petition under this Petition Scheme;
- (p) “**Director**” means the Director of Immigration of the HKSAR Government unless otherwise specified;
- (q) “**he**” and “**his**” include the feminine gender;
- (r) “**ICCPR**” means the International Covenant on Civil and Political Rights;
- (s) “**non-refoulement claim**” means a claim for non-refoulement protection in Hong Kong;
- (t) “**Non-refoulement Claims Petition Office**” (the “**Petition Office**”) means an office established for providing administrative and secretariat support to the Adjudicators under the Petition Scheme and is operated by the same team of staff members of the TCAB secretariat;
- (u) “**non-refoulement protection**”, in relation to a claimant, means protection against expulsion, return or surrender of the claimant to a Risk State;
- (v) “**Notice of Appeal/Petition**” means the prescribed form at **Appendix A** to this Petition Guide which shall be used for lodging a petition under this Petition Scheme. Under the USM, the same prescribed form shall be used for filing a torture claim appeal under the Ordinance;
- (w) “**Ordinance**” means the Immigration Ordinance, Cap. 115, unless otherwise specified;
- (x) “**persecution risk**” means a persecution risk as explained in paragraph 6.4 of this Petition Guide;
- (y) “**petitioner**” means a claimant who is aggrieved by and has made a petition under BL48(13) against an immigration officer’s decision (i) not to re-open a non-refoulement claim; (ii) rejecting a non-refoulement claim; or (iii) revoking an immigration officer’s previous decision accepting a non-refoulement claim as substantiated, in relation to the claimant’s non-refoulement claim made on applicable grounds other than torture risk;
- (z) “**PPP**” means a procedural note entitled “Principles, Procedures and Practice Directions of the Torture Claims Appeal Board” issued by the Chairperson pursuant to his statutory power under section 16 of Schedule 1A of the Ordinance to give general directions on the practice and procedure of the TCAB in handling

- statutory torture claim appeals;
- (aa) “**removal**” means the removal of a person from Hong Kong under section 18 of the Ordinance or under a removal order or a deportation order;
 - (ab) “**Risk State**” means another country in respect of which the claimant has made a non-refoulement claim;
 - (ac) “**substantiated claim**” means a non-refoulement claim which is substantiated in the manner described in paragraphs 21.2 and 21.3 of this Petition Guide;
 - (ad) “**surrender**” means the surrender of a person to a place outside Hong Kong under the Fugitive Offenders Ordinance, Cap. 503, and “**surrender proceedings**” means proceedings instituted for such surrender;
 - (ae) “**torture claim**” means a claim for non-refoulement protection in Hong Kong on the ground of torture risk made under section 37X of the Ordinance or treated as having been made by virtue of section 37ZP(2)(b), including a torture claim reopened under section 37ZE(2) or 37ZG(3) of the Ordinance or a subsequent torture claim made under section 37ZO(2) of the Ordinance;
 - (af) “**Torture Claims Appeal Board**” (the “**TCAB**”) means an Appeal Board established under section 37ZQ of the Ordinance;
 - (ag) “**torture or CIDTP**” means torture or cruel, inhuman or degrading treatment or punishment under BOR 3;
 - (ah) “**torture risk**” means a risk of being subjected to torture as defined under section 37U(1) of the Ordinance;
 - (ai) “**UNHCR**” means the United Nations High Commissioner for Refugees;
 - (aj) “**working day**” means any day of the week excluding Sundays, public holidays, gale warning days or black rainstorm warning days as defined in section 71(2) of the Interpretation and General Clauses Ordinance, Cap. 1.

3. Background

Torture under Part VIIC of the Ordinance

3.1 The CAT has been extended to Hong Kong since 1992. Article 3(1) of the CAT requires State Parties not to expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In this regard, claims for non-refoulement protection under Article 3 of the CAT used to be handled by the ImmD under an administrative screening mechanism prior to the implementation of the statutory scheme under Part VIIC of the Ordinance².

Absolute and non-derogable rights under the HKBORO

3.2 In December 2012, the CFA ruled in *Ubamaka v the Secretary for Security* [2013] 2 HKC 75 (“*Ubamaka*”), *inter alia* that if there are substantial grounds for believing that

² The statutory scheme has been in place since 3 December 2012 with the commencement of the Immigration (Amendment) Ordinance 2012.

there is a personal and substantial risk of an absolute and non-derogable right under the HKBOR as set out under section 8 of the HKBORO³ of a person not having the right to enter and remain in Hong Kong being violated by the receiving country should the person be sent there, it constitutes a ground for restraining the HKSAR Government from proceeding to remove/deport that person to that country⁴. Accordingly, under USM, ImmD would assess whether a claimant, if removed from Hong Kong, would face a personal and substantial risk of his absolute and non-derogable rights under the HKBOR being violated at another country (e.g. right to life under BOR 2 and right not be subjected to torture or CIDTP under BOR 3).

Persecution risks with reference to the Refugee Convention

3.3 The RC and its 1967 Protocol have never been applied to Hong Kong. The HKSAR Government has a long-established policy of not granting asylum or determining refugee status. In March 2013, the CFA ruled, in *C & Ors v the Director of Immigration and Another* [2013] 4 HKC 563 (“*C & Ors*”), that in exercising the powers to execute the removal or deportation of a person to a State of putative persecution, the ImmD has to assess independently whether a person has established a well-founded fear of persecution.

The Screening Procedures

3.4 The administrative screening mechanism for torture claims was subjected to reviews from time to time having regard to relevant changes in law and procedures. In *Secretary for Security v Sakthevel Prabakar* [2004] 7 HKCFAR 187, the CFA held that high standards of fairness must be demanded in the determination of torture claims as such determination is plainly one of the momentous importance to the individual concerned given that to him his life and limb could be in jeopardy and his fundamental human right not to be subjected to torture is involved. In *FB v Director of Immigration and Secretary for Security* [2009] 2 HKLRD 346, the Court of First Instance, when considering the fairness of the procedures of the then administrative scheme for torture claims, identified a number of shortcomings in the then prevailing administrative procedures. In late December 2009, an enhanced administrative screening mechanism with improvements made to the relevant procedures to ensure high standards of fairness was put in place.

3.5 In July 2012, the Immigration (Amendment) Ordinance 2012 was enacted to underpin the enhanced administrative mechanism by way of legislation, introducing a new Part VIIC into the Ordinance setting out the procedures by which torture claims are to be handled. Part VIIC of the Ordinance provides for a statutory process for determining torture claims made by persons in Hong Kong including the establishment of a statutory appeal board, i.e. the TCAB⁵ to hear appeals against refusal decisions and related matters. The

³ The right in question in *Ubamaka* was the right not to be subjected to torture or CIDTP.

⁴ See paras. 136 and 137 read together with para. 160 of *Ubamaka*.

⁵ Under section 37ZQ(2) of the Ordinance, the function of the TCAB is to hear and determine: (a) an appeal made under section 37ZR (i.e. in respect of an immigration officer’s decision not to re-open a

statutory scheme came into operation on 3 December 2012⁶.

3.6 In view of the CFA's judgments in *Ubamaka* and *C & Ors*, the ImmD will withhold removing or deporting any person to another country where the person has made a claim on ground of a risk of violation of his absolute and non-derogable rights under the HKBOR (e.g. right to life under BOR 2 and right not to be subjected to torture or CIDTP under BOR 3), and/or a persecution risk until his claim(s) have been finally determined in a manner that satisfies high standards of fairness. Where any of these claims, including a torture claim under the Ordinance, is substantiated, the ImmD will provide non-refoulement protection to the claimant.

3.7 The HKSAR Government has introduced administrative procedures to expand the statutory torture claims screening mechanism into a USM. Under the USM, the CE has delegated his powers under BL48(13) to Members of the TCAB to hear and determine petitions in relation to claims made on all applicable grounds other than torture risk⁷. Appeals/petitions against ImmD's refusal decisions on non-refoulement claims can therefore be handled in one go by qualified persons independently in a fair and effective manner. On 7 February 2014, the HKSAR Government announced publicly the launch of the USM with effect from 3 March 2014.

3.8 As part of the comprehensive review of the strategy of handling non-refoulement claims, the HKSAR Government has, by reference to the operational experience of USM, reviewed the provisions of the Immigration Ordinance in respect of the screening procedures and other related matters. With the Immigration (Amendment) Bill 2020, the Immigration Ordinance has been amended to enhance the statutory backing for screening by ImmD, prevent any unnecessary delay, improve the procedures and functions of TCAB to enhance its efficiency and effectiveness in handling appeals, etc. The Immigration (Amendment) Ordinance 2021 was enacted on 1 August 2021.

4. The Statutory Appeal Mechanism and the Administrative Petition Mechanism

4.1 As stated in paragraph 1.3 above, the statutory appeal mechanism and the administrative petition mechanism will operate in parallel to review non-refoulement claims under a unified procedural framework that fulfills high standards of fairness. The

torture claim, rejecting a torture claim or revoking a decision made by an immigration officer to accept a claim as substantiated); and (b) an application for a revocation decision under section 37ZM (i.e. revocation of TCAB's decision to reverse an immigration officer's decision rejecting a torture claim).

⁶ As the statutory scheme is for determining claims made under the CAT, it is defined in Part VIIC of the Ordinance that the CAT refers to the one adopted by the General Assembly of the United Nations as applied to Hong Kong. See section 37U(1) of the Ordinance.

⁷ In relation to non-refoulement claims made on all applicable grounds other than torture risk, TCAB Members (in their capacity as Adjudicators) have been delegated with the powers under BL48(13) to determine petitions made by an aggrieved person against an immigration officer's decision (i) not to reopen a non-refoulement claim; (ii) rejecting a non-refoulement claim; or (iii) revoking an immigration officer's previous decision to accept a claim as substantiated. They are also empowered to revoke their own previous decisions upon an application by an immigration officer.

practice and procedures (including the various time limits) specified in this Petition Guide will therefore closely mirror those specified in the Ordinance where applicable. A note in square bracket (e.g. [*cf. s.37xx*]) has been inserted at the end of the relevant paragraphs to denote the corresponding section(s) in the Ordinance for ease of cross-reference.

4.2 Whilst both the statutory appeal mechanism and administrative petition mechanism will be operated in parallel, nothing in this Petition Guide shall affect the validity of the PPP.

5. Scope of Review in relation to Persecution Risk in the Petition Proceedings

5.1 The RC and its 1967 Protocol do not apply to the HKSAR. Insofar as petition on the ground of persecution risk is concerned, any Decisions must be confined to a determination as to whether the petitioner has a well-founded fear of being persecuted in the manner as explained in paragraph 6.4 below. The Adjudicators have no power to determine the refugee status of anyone. The Adjudicators or the Petition Office will not disclose the Decisions or any information relating to the petition proceedings to the UNHCR. It would be for the ImmD, being a party to the petition, to consider passing any relevant information to the UNHCR if the petitioner's non-refoulement claim has been substantiated on the ground of, inter alia, persecution risk.

PART 2 PRACTICE AND PROCEDURE

6. Grounds of Petition under the Petition Scheme

Absolute and non-derogable rights under HKBOR (including “right to life” under BOR 2 and “right not be subjected to torture or CIDTP” under BOR 3)

6.1 The respective precise scopes of the “right to life” under BOR 2 and “torture or CIDTP” under BOR 3 are not defined under the HKBORO (or ICCPR, which the HKBORO implements). In *Ubamaka*⁸, the CFA ruled that a claimant who invokes the protection of BOR 3 must meet two main requirements that (a) the ill-treatment (physical and/or mental suffering) he would face if expelled attains what has been called “a minimum level of severity” and (b) he faces a genuine and substantial risk of being subjected to such ill-treatment. The threshold is very high, and it generally involves actual bodily injury or intense physical or mental suffering. As to the degree of risk which the claimant must establish, the CFA ruled in *Ubamaka*⁹ that the claimant must show substantial or strong grounds for believing that if returned (to a Risk State), he faces a “genuine risk” of being subjected to torture or CIDTP. References should be made to relevant jurisprudence (case law and other reference materials) from time to time.

6.2 Following *Ubamaka* and with reference to the international jurisprudence, a claimant should not be removed from Hong Kong if there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by BOR 2 in the Risk State as a result of the claimant’s deportation or removal there. This is a highly fact-sensitive issue based on the information to be provided by the claimant in support of his non-refoulement claim. References should likewise be made to relevant jurisprudence (case law and other reference materials) from time to time.

6.3 Not all the rights under the HKBOR are absolute and non-derogable entailing non-refoulement protection on the part of the HKSAR Government¹⁰. Non-refoulement protection will be provided to claimants who on substantial grounds will be subject to real and personal risks on any applicable ground.

“Persecution” with reference to the non-refoulement principle under Article 33 of the RC

6.4 Drawing reference from relevant instruments and case law¹¹, a person can be considered as having a persecution risk for the purpose of his non-refoulement claim if -

⁸ See paras. 172 and 173 of *Ubamaka*.

⁹ See para. 174 of *Ubamaka*.

¹⁰ See para. 135 of *Ubamaka*.

¹¹ See para. 63 of *C & Ors*.

- (a) he, owing to well-founded fear of being persecuted on account of one or more of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality¹² and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; and
- (b) his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion¹³ should he be expelled or returned to the frontiers of a Risk State.

6.5 Protection against risk to persecution is not absolute. In a suitable case, the ImmD may insist on *refoulement*¹⁴. Some considerations that may be taken into account include -

- (a) there are serious reasons for considering that the person has ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) the person has been convicted of a particularly serious crime in the HKSAR and/or there are serious reasons for considering that the person has been convicted of a particularly serious crime or has committed a serious non-political crime elsewhere;
- (c) there are reasonable grounds to believe that the person is a danger to the security of the HKSAR; or
- (d) the person is not eligible to be recognised as a refugee or for non-*refoulement* protection, as opined by the UNHCR or any other competent authority, because the person falls within the exceptions to international protection, including (but not limited to) applicable exceptions set out in the RC or other applicable exceptions in law.

7. Claiming Non-*refoulement* Protection in Hong Kong

7.1 A person who is outside the country of his nationality and in Hong Kong may claim for non-*refoulement* protection only if -

- (a) the person is subject or liable to removal from Hong Kong and, apart from a

¹² In case of a person who has more than one nationality, the term “country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reasons based on a well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

¹³ Article 33(1) of RC provides that “no Contracting State shall expel or return (‘*refouler*’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. Drawing on the above provision, the expression “life or freedom” may be considered as a shorthand for the risks that are similar to those that give rise to refugee status under the terms of Article 1 of RC.

¹⁴ Para. 42 of *C & Ors*.

Risk State, he does not have a right of abode or right to land in, or right to return to, any other state in which he would be entitled to non-refoulement protection; or

- (b) the person whose surrender is requested in surrender proceedings.
[*cf. s.37W (1) & (2)*]

8. Notice of Appeal/Petition and Duties of Petitioner

8.1 An unsuccessful claimant who is aggrieved by an immigration officer's decision (in relation to any applicable ground) (i) not to re-open a non-refoulement claim; (ii) rejecting a non-refoulement claim; or (iii) revoking an immigration officer's previous decision accepting a non-refoulement claim as substantiated, may file a petition under this Petition Scheme. His appeal under Part VIIC of the Ordinance will be processed and determined together. He must file his petition within 14 days after notice of the decision is given to him. In this regard, late filing of the petition may be allowed by the Adjudicator if he is satisfied that the person filing the petition had exercised all due diligence to file the petition within the period specified but failed to file the petition within the period because of circumstances beyond the person's control. [*cf. ss.37ZS (1) & 37ZT (3)*]

8.2 Under this Petition Scheme, all petitions must be filed by a Notice of Appeal/Petition which is the same Notice of Appeal specified by the TCAB under s.37ZS(2)(a) of the Ordinance. Under this Petition Guide and for the purpose of this Petition Scheme, the designated form to be used for filing a petition is the Notice of Appeal/Petition. [*cf. s.37ZS (2)*]

8.3 The Notice of Appeal/Petition must be duly completed, signed and accompanied by a copy of the ImmD's notice of the decision being petitioned against. No action may be taken in relation to a petition that is not filed using the Notice Appeal/Petition or is not duly completed and signed. On receiving such a petition, the Petition Office must, by written notice, inform the person filing the petition of the non-compliance and that no further action will be taken in relation to the petition. [*cf. s.37ZS(2)(ab), s.37ZS(2)(b), s.37ZS(3) and s.37ZS(4)*]

8.4 For the purpose of making a non-refoulement claim under this Petition Scheme, the burden of proof is on the petitioner to establish that he shall be afforded non-refoulement protection on any applicable grounds, were he to be expelled, returned or surrendered to the Risk State. It is the duty of the petitioner to substantiate his non-refoulement claim, and to this end, he must, upon filing of his petition, provide to the Adjudicator all information relevant to the claim and make prompt and full disclosure of all material facts in support of the claim, including any documents supporting those facts. He is also required to comply with the requirements, procedures and conditions (including any time limits) prescribed by this Petition Guide or required or specified by the Adjudicator. [*cf. s.37ZA (1)*]

8.5 In considering a non-refoulement claim, the Adjudicator may take into account the petitioner's behaviour referred to in paragraph 17 below as damaging his credibility. This also applies to the petitioner's behaviour during the first-tier screening. Petitioners should note that a failure, without reasonable excuse, to put forth the grounds in support of a petition (including any supporting documents) in the Notice of Appeal/Petition when filing a petition, or a failure, without reasonable excuse, to comply with any requirements, procedures and conditions (including any time limits) prescribed by this Petition Guide, or required or specified by the Adjudicator, may be taken as a behavior damaging the petitioner's credibility. Notwithstanding that, being a petitioner with credibility damaged does not necessarily imply that the petition will be rejected upon finding of these behaviours.

8.6 The petitioner must also provide to the Petition Office both his residential address in Hong Kong and the correspondence address (if different from the residential address), and must notify the Petition Office in writing of any change as soon as practicable after the change. To facilitate communication with petitioners, by way of practice, petitioners should provide their contact telephone numbers and to notify the Petition Office of any subsequent change as soon as practicable. [*cf. s.37ZA (2)*]

8.7 Under this Petition Scheme, the service of notice or other document (howsoever described) by the Director, an immigration officer or the Petition Office in relation to the petition proceedings will follow the same rules as set out in section 37ZV of the Ordinance. [*cf. s.37ZV*]

8.8 As soon as practicable after receiving a Notice of Appeal/Petition, the Petition Office must serve a copy of the notice on the Director. [*cf. s.8(1) of Schedule 1A*]

8.9 Upon receipt of the Notice of Appeal/Petition from the Petition Office, the Director must, as soon as practicable, provide to the Petition Office and the petitioner (i) a copy of the completed non-refoulement claim form¹⁵; and (ii) a copy of the written record of any interview of the petitioner conducted by an immigration officer in considering the non-refoulement claim. [*cf. s.9(1)(a) of Schedule 1A*]

8.10 It is only when the Adjudicator has decided to allow the late filing of a Notice of Appeal/Petition that the Petition Office must serve a copy of the notice on the Director, and in that event the notice must be served as soon as practicable. [*cf. s.8(2) of Schedule 1A*]

9. Late Filing of Notice of Appeal/Petition

9.1 If a Notice of Appeal/Petition is filed after the expiry of the 14-day period, it must include an application for late filing of the notice and a statement of the reasons for

¹⁵ Under the USM, the non-refoulement claim form will be the torture claim form specified by the Director in accordance with s.37Y(4) of the Ordinance.

failing to file the notice within that period; and must be accompanied by all available evidence relied on in support of the reasons. [*cf. s.37ZT (1)*]

9.2 The Adjudicator must decide, as a preliminary decision without a hearing, whether the Adjudicator allows the late filing of the Notice of Appeal/Petition, and in doing so, the Adjudicator may only take account of the statement of reasons stated in the application for late filing of the Notice of Appeal/Petition and the evidence relied on in support of the reasons. [*cf. s.37ZT (2)*]

9.3 The Adjudicator may allow the late filing of the notice if the person filing the notice provides sufficient evidence in writing to satisfy the Adjudicator that the person had exercised all due diligence to file the notice within the period specified but failed to file the notice within the period because of circumstances beyond the person's control. [*cf. s.37ZT (3)*]

9.4 The fact that a person attempted to file one or more petitions that is not using the Notice of Appeal/Petition, or to file one or more notices that is not duly completed and signed, whether within the period specified or otherwise, must not be taken as evidence that the person had exercised all due diligence to file a Notice of Appeal/Petition within the period. [*cf. s.37ZT (4)*]

9.5 If the Adjudicator allows the late filing of the Notice of Appeal/Petition, the Adjudicator must, by written notice to the person filing the notice, inform the person of the Adjudicator's decision. [*cf. s.37ZT (5)*]

9.6 If the Adjudicator does not allow the late filing of the Notice of Appeal/Petition, the Adjudicator must, by written notice to the person filing the notice, inform the person that the Adjudicator refuses the notice as it is filed out of time and give reasons for the refusal. [*cf. s.37ZT(6)*]

10. Practice and Procedure of the Petition Scheme

10.1 Under his delegated powers, the Chairperson may give directions, generally or in a particular case, on the practice and procedure in hearing and determining petitions. Subject to the above, Adjudicators may determine their own procedure in the hearing of a petition. [*cf. ss.16 & 17 of Schedule 1A*]

10.2 The Chairperson may also decide the order in which petitions and matters are to be heard or determined generally or in any particular circumstances as appropriate. [*cf. s.7 of Schedule 1A*]

10.3 Upon receipt of the Notice of Appeal/Petition, the Adjudicator will decide whether or not to hold a hearing to determine the petition having regard to the material

before him and the nature of the issues raised.

10.4 A Directions Hearing may be ordered by the Adjudicator for the purpose of giving directions or determining any matters incidental to or in respect of the petition. The Adjudicator may subsequently set aside, vary or give further directions after the Directions Hearing as he thinks fit.

10.5 The Petition Office must arrange for a Directions Hearing if so instructed by the Adjudicator. The Petition Office must inform the parties of the arrangements made.

10.6 All parties must appear either in person (with or without a legal representative) or by a legal representative at the Directions Hearing. If a party does not appear in person or by a legal representative at that hearing, and has not previously given any sufficient reason for being absent, the Adjudicator may make such orders or directions as he thinks fit including those adverse to the interests of the party being absent. The absent party may be treated as having forfeited his right to be heard in the Directions Hearing.

11. Hearings

11.1 The Adjudicator may on paper or hold an oral hearing to make his own findings of fact and come to his own Decision. In this regard, the general principles pertaining to the holding of oral hearings as a question of procedural fairness and high standards of fairness as mentioned in paragraphs 11.2 to 11.6 below are applicable. The purpose of holding an oral hearing is not only to assist the Adjudicator in his decision-making, but also to reflect the petitioner's legitimate interest in being able to participate in a Decision with important implications for him, where he has something useful to contribute.

11.2 The standards of fairness are not immutable. They may change with the passage of time. In other words, the requirements of fairness are flexible and are closely conditioned by the legal and administrative context. Where life and limb are in jeopardy and the petitioner's fundamental human right not to be subjected to torture is involved, high standards of fairness must be observed by the Adjudicator when making the Decision.

11.3 An opportunity to make worthwhile or effective representations is an important requirement of fairness in most if not all situations. It does not, however, follow that there must be an oral hearing before a Decision is made. There is no absolute right to an oral hearing. The question of whether an oral hearing should be afforded must depend on the standards of fairness required, the nature of the decision-making process in question, the procedural history of the matter including whether there has been an oral hearing before, the interest at stake, and the issues involved, and how the presence or absence of an oral hearing would affect the quality of the opportunity to make worthwhile or effective representations.

11.4 While the presence of material factual disputes which cannot be decided on paper is very often a good and sufficient reason in itself for holding an oral hearing, the converse is not necessarily true. There is an inherent limit to what was written, as opposed to what oral representations can achieve such that in appropriate cases, the applicable standards of fairness would require the holding of an oral hearing even when all facts are agreed. The question of whether an oral hearing should be held is whether an oral hearing may well contribute to achieving a just Decision.

11.5 The Adjudicator would consider all relevant matters before deciding whether to hold an oral hearing. Each case would turn on its own facts, and it is neither desirable nor possible to set out exhaustively what are the relevant considerations. Nonetheless, in most if not all cases, there are matters as mentioned in sub-paragraph (a) to (c) below, which may overlap, which the Adjudicator should bear in mind -

- (a) The interest at stake and the potential consequence of the Decision:
 - (i) What is involved is the fundamental human right of the claimant to be free from torture. That is an absolute human right, which admits of no exception. The potential consequence of the Decision is grave. Where life and limb are potentially at risk, the high standards of fairness is required in the first place, this must be a weighty consideration favouring the holding of an oral hearing.
 - (ii) Depending on the facts, it may be appropriate for the Adjudicator to draw the petitioner's attention to matters that obviously require clarification or elaboration so that they can be addressed by the petitioner. On the other hand, there is no duty to keep on probing or inquiring where the objective circumstances make it reasonably clear that the petitioner and those representing him are aware of what he has to show and has already produced or mentioned all that he wants to show. The exercise of determining whether a petition is valid is one of joint endeavour. A very practical result of all these requirements based on the high standards of fairness involved is that if any of these requirements cannot be fully satisfied without an oral hearing – and the petitioner should be given the benefit of any doubt, an oral hearing should be held.
- (b) The petitioner should be given an opportunity to be heard orally (or further in writing) where the Adjudicator considers there is anything, including in the petitioner's evidence or submission, which is material to the determination of the petition and which the high standards of fairness so requires. It is for the Adjudicator, in the exercise of his discretion, to take the most effective and fairest way to approach the concern in question. The following examples are strong pointers towards an oral hearing or (where appropriate) further written

representations:

- (i) If there is any point, factual or legal, on which the Adjudicator is not sure, then an oral hearing or further submissions from the petitioner would help.
 - (ii) The Adjudicator is of the view that certain factual or legal point which is relevant to the determination has not been dealt with adequately or at all in the petition. An obvious situation is where the Adjudicator is aware of an important authority on a material point which has been omitted or touched on superficially only in the Notice of Appeal/Petition.
 - (iii) The material placed before the Adjudicator calls for some further probing, questioning or inquiry. This is particularly so if the absence of such further probing, questioning or inquiry would lead to the Adjudicator drawing an inference adverse to the petitioner.
 - (iv) Where the issue concerns the drawing of inference, the application of common sense, the giving of weight, or the assessment of risk, that is, matters involving essentially evaluation and judgement, oral arguments may well be a better means of representation than written submissions.
- (c) In deciding how to exercise his discretion to order an oral hearing, the Adjudicator should consider whether there is any advantage in holding an oral hearing as opposed to merely deciding the petition on paper (whether based on the original petition documents or based on the petition documents plus further written representations submitted at the request of the Adjudicator). By nature, written submissions do not afford the flexibility of oral presentations. They deprive the petitioner the chance to mould his arguments. Sometimes, an oral hearing is preferable to written representations simply because of the nature of the issues or arguments involved. Some arguments are best to be dealt with orally.

11.6 An oral hearing need not be lengthy. All that is required is a reasonable opportunity to be heard. The fact that at the first tier, there was already an interview by an immigration officer with the petitioner (in the presence of his legal representative) is a relevant consideration to take into account. What has or what has not been covered at the interview, or in the Director's subsequent notice of decision, should also be seriously considered.

11.7 The proceedings before the Adjudicator may be conducted in the English or Chinese language, or both, as the Adjudicator considers appropriate. [*cf. s.11(1) of Schedule 1A*]

11.8 Despite paragraph 11.7 above -

- (a) the Adjudicator may direct a petitioner to address the Adjudicator in a language that the Adjudicator reasonably considers the petitioner is able to understand and communicate in;
- (b) the Adjudicator may direct a witness in proceedings before the Adjudicator to testify in a language that the Adjudicator reasonably considers the witness is able to understand and communicate in; and
- (c) a legal representative in proceedings before the Adjudicator may use the English or Chinese language, or both. [*cf. s.11(2) of Schedule 1A*]

11.9 If the Adjudicator decides to hold a hearing, subject to 11.10, the Petition Office 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. [*cf. s.13 of Schedule 1A*]

11.10 Despite 11.9 above, the Adjudicator may give less than 28 days' notice to the parties if it considers appropriate to do so in a particular case, but in any event the notice period must not be less than 7 days. To avoid doubt, this paragraph does not apply to

- (a) a hearing that is rescheduled under paragraph 11.18 below; or
- (b) a further hearing of a petition. [*cf. s.13(2) and (3) of Schedule 1A*]

11.11 The hearing is to be held in private unless the Adjudicator directs that it be held in public. [*cf. s.10 of Schedule 1A*]

11.12 Save for the circumstances set out in paragraph 11.13 below, the Chairperson or a Deputy Chairperson who is delegated by the Chairperson with the power and function of selecting Adjudicators to hear and determine a petition will select a single Adjudicator to hear and determine a petition. [*cf. s.5A and s.6(1) of Schedule 1A*]

11.13 Having regard to the circumstances of a particular petition, the Chairperson or a Deputy Chairperson who is delegated by the Chairperson with the power and function of selecting Adjudicators to hear and determine a petition may select 3 Adjudicators to hear and determine the petition. [*cf. s.5A and s.6(2) of Schedule 1A*]

11.14 The Petition Office will inform both the Director and the petitioner or his representative of the date, time and place of the hearing by way of a notice of hearing. Both parties are required to notify the Petition Office in writing at least 5 working days before the date of the hearing if there are any changes of legal representative(s) and/or witness(es).

11.15 The Director need not attend a hearing unless required to do so by a notice of hearing. If, having regard to the particular circumstances of a petition, the Adjudicator considers that the Director's attendance at the hearing of the petition is necessary, the Adjudicator may, by the notice of hearing, require the Director to attend the hearing. The Director may also attend a hearing on the Director's own initiative. If the Director intends to attend a hearing on the Director's own initiative, the Director must notify the Adjudicator and the petitioner in writing as soon as practicable of the intention. [*cf. s.13A of Schedule 1A*]

11.16 If a petitioner does not attend a hearing in person, irrespective of whether the petitioner is represented at the hearing by a legal representative, the Adjudicator may hear the petition in the absence of the petitioner. If the petitioner wishes the Adjudicator to fix another hearing date for the petition, the petitioner must, within 3 working days after the date of the hearing, submit a written request to the Adjudicator to fix another hearing date. The request must contain a written explanation of the petitioner's absence from the hearing together with all available evidence supporting the explanation. [*cf. s.15(1) to (3) of Schedule 1A*]

11.17 The Adjudicator must proceed to determine the petition by making a decision under paragraph 22 below if -

- (a) no request is made under paragraph 11.16 above; and
- (b) where a request is made under paragraph 11.16 above, the Adjudicator is not satisfied, on the basis of the written explanation and supporting evidence submitted with the request, that the petitioner -
 - (i) had exercised all due diligence to attend the hearing; but
 - (ii) was absent from the hearing because of circumstances beyond the petitioner's control. [*cf. s.15(4) of Schedule 1A*]

11.18 The Adjudicator may fix another date, time and place for hearing the petition if the Adjudicator is satisfied, on the basis of the written explanation and supporting evidence submitted with the request, that the petitioner -

- (a) had exercised all due diligence to attend the hearing; but
- (b) was absent from the hearing because of circumstances beyond the petitioner's control.
[*cf. s.15(5) of Schedule 1A*]

12. Matters to be Attended to Before a Hearing

12.1 If the petitioner is legally represented, his legal representative and the Director's representative should confer and consider as early as possible in advance of the hearing

what agreement can be reached on the scope of the issues. It is in the interests of all parties and in the wider public interest to ensure that the hearing proceeds as fairly, quickly and efficiently as possible. The representatives should assist the Adjudicator by producing a list of agreed issues.

12.2 Any further statement of the petitioner to be adduced for the purposes of the hearing before the Adjudicator should be directed at the remaining live issues, and not be a repetition of what has already been said in earlier statements.

12.3 Skeleton arguments/submissions should be prepared and be directed at the live issues in the petitioner's case.

12.4 The Director must, as soon as practicable after receiving a notice of hearing, serve on the Adjudicator, with a copy to the petitioner, a bundle of all documents relating to the non-refoulement claim concerned. [*cf. s.14(1) of Schedule 1A*]

12.5 The Adjudicator may require a party to file and serve on the Adjudicator, with a copy to the other party -

- (a) statements of evidence that will be called at the hearing together with other information or evidence relating to the petition that the Adjudicator considers necessary; and
 - (b) a list of witnesses whom the party wishes to call to give evidence.
- [*cf. s.14(2) of Schedule 1A*]

12.6 The statements, information, evidence and list referred to in paragraph 12.5 above must be served no later than 5 working days prior to the date of the hearing.

12.7 The hearing bundle should include all the statements, information, evidence and list relied upon by the Director and the petitioner. As the Director must send copies of the hearing bundle to the Petition Office and the petitioner no later than 5 working days prior to the date of the hearing, in order to comply with aforesaid requirement, it is the petitioner's responsibility to ensure that all the statements, information, evidence and list¹⁶ that he relies upon are sent to the Director in sufficient time for inclusion in the hearing bundle.

12.8 The following comments are of general application-

- (a) all relevant documents must be presented in logical order and be legible;
- (b) where the document is not in English or Chinese, a typed English or Chinese translation of the document signed by the translator certifying that the translation

¹⁶ It will only be necessary to insert the relevant parts of any document relied upon, together with the internet link.

- is accurate, must be inserted in the hearing bundle next to the copy of the original document;
- (c) skeleton arguments or written submission must be brief, and all live issues should be arranged or set out in numerical order. All relevant pages of the hearing bundle relating to the live issues should be identified;
 - (d) the relevant part of any document should be identified by reference to page and paragraph number, and/or by highlighting;
 - (e) materials placed in the hearing bundle must not be unnecessary, repetitive or outdated. Materials that have no relevance to the case must not be placed in the hearing bundle. It is an unnecessary waste of resources to include irrelevant materials. Materials not identified by page number/paragraph number/highlighting as having some relevance to the case will be disregarded by the Adjudicator. If necessary, the parties may be asked to justify the inclusion of materials at the hearing;
 - (f) the country of origin information (the “**COI**”) is generally understood as “any information that should help to answer questions about the situation in the country of nationality or former habitual residence of a person seeking asylum or another form of international protection”. Parties must ensure that only the part or parts of the COI that is relevant to their case is placed in the hearing bundle, with the relevant parts identified by page number/paragraph number/highlighting. 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 Adjudicator and the other side to peruse the full document;
 - (g) as the petitioner may need to refer to some of the documents in the hearing bundle when he is giving evidence, it is the responsibility of his legal representative to ensure that he is given a separate copy of those documents for his own use; and
 - (h) the Adjudicator may bring to the attention of the Director and/or the Duty Lawyer Service that unnecessary wastage of resources has been incurred by the inclusion of irrelevant materials in the hearing bundle.

13. Observers

13.1 No persons other than the petitioner, the representative of the Director and their respective legal representatives may be present at a hearing except that -

- (a) custody officers escorting a petitioner in custody may be present during the hearing but will not be allowed to take part in the proceedings;
- (b) staff members of the Petition Office may be present during the hearing to assist the Adjudicator in administrative matters but will not be allowed to take part in the proceedings;
- (c) persons who have been given permission by the Adjudicator may be present at the hearing but will not be allowed to take part in the proceedings;

- (d) interpreters arranged by the Duty Lawyer Service may be present at the hearing as and when requested by the Adjudicator.

14. Adjournments

14.1 The Adjudicator has full discretion to decide whether to grant an adjournment or not. If there is an application to adjourn a hearing, full reasons for the application must be given. After hearing the parties, the Adjudicator must decide whether it is in the interests of justice to grant the adjournment. If the adjournment is granted, the Adjudicator will give directions as to the date, time and place of the adjourned hearing, together with any other appropriate directions.

14.2 If an adjournment is sought by a petitioner on medical grounds, a medical certificate/report must be presented to the Adjudicator as soon as practicable as the basis for an adjournment. If the Adjudicator allows the adjournment of a hearing, details of the date, time and place of the adjourned hearing will be given, together with any other appropriate directions.

14.3 If a petitioner wishes to rely upon his medical condition for the purposes of adjourning a hearing, he must adduce sufficient/satisfactory evidence by way of a medical certificate/report issued by a medical practitioner.

15. Determination of Petition Without a Hearing

15.1 After having taken into consideration the general principles and considerations stated in paragraphs 11.1 to 11.6 above, the Adjudicator may determine a petition without a hearing if, having regard to the material before him and the nature of the issues raised, the Adjudicator is satisfied that the petition can be justly determined without a hearing. [*cf. s.12 of Schedule 1A*]

16. Medical Examination

16.1 If the physical or mental condition of the petitioner is in dispute and is relevant to the consideration of a non-refoulement claim -

- (a) upon a petition, the Adjudicator may require the petitioner 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 petitioner, arrange for a medical examination of the petitioner to be conducted by a medical practitioner. [*cf. s.37ZC (1)*].

The petitioner must give any consent that is necessary to enable a medical examination to be arranged or conducted. [*cf. s.37ZC (1A)*] Once the immigration officer has made the arrangements, he must notify the petitioner in writing of the date, time and place where the medical examination will take place.

16.2 If a medical examination is arranged, the petitioner must undergo the examination at the date, time and place specified by the immigration officer and notified to the petitioner in writing. [*cf. s.37ZC (2)*]

16.3 The petitioner must disclose to the immigration officer and (on a petition) the Adjudicator the full medical report of any examination arranged for the petitioner within 3 working days after a request for the disclosure is made by the immigration officer or the Adjudicator. [*cf. s.37ZC (3)*]

16.4 If the petitioner fails to comply with any of the requirements in paragraphs 16.1 to 16.3 above, and fails to provide sufficient evidence in writing to satisfy the Adjudicator that he –

- (a) had exercised all due diligence to comply with the requirement(s) concerned; but
- (b) failed to comply with the requirement(s) concerned because of circumstances beyond his control,

the Adjudicator may decide not to take into account the disputed physical or mental condition of the petitioner. [*cf. s.37ZC (4)*]

17. Credibility of Petitioner

17.1 In considering a non-refoulement claim, the Adjudicator may take into account, as damaging the petitioner's credibility, the following behaviour of the petitioner -

- (a) any behaviour that the Adjudicator 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 petitioner's claim;
- (b) a failure to take advantage of a reasonable opportunity to claim non-refoulement protection in respect of a Risk State while in a place outside Hong Kong to which the ICCPR and/or RC apply (other than a Risk State);
- (c) if the petitioner 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 petitioner 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 petitioner 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 petitioner'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 the Ordinance, unless -
 - (i) the petitioner 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.

[*cf. s.37ZD (1)*]

17.2 Furthermore, without limiting paragraph 17.1(a) above, any behaviour described in any of the following paragraphs is behaviour within the meaning of paragraph 17.1(a) above -

- (a) the production of a false document as proof of the petitioner's identity;
- (b) a failure, without reasonable excuse, to produce a document as proof of the petitioner'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 petitioner's travel to Hong Kong;
- (d) a failure, without reasonable excuse, to provide the information or evidence required by an immigration officer;
- (e) a failure, without reasonable excuse, to -
 - (i) attend an interview as required by an immigration officer; or
 - (ii) provide information or answer any question put by an immigration officer at such an interview;
- (f) a failure, without reasonable excuse, to make a full disclosure of the material facts in support of the non-refoulement claim, including any document supporting those facts, before the date of the first interview that the petitioner is required by an immigration officer to attend;
- (g) a failure, without reasonable excuse, to -

- (i) give consent as required by paragraph 16.1 above;
 - (ii) undergo a medical examination as required by paragraph 16.2 above; or
 - (iii) disclose to an immigration officer or the Adjudicator the full medical report of the examination as required by paragraph 16.3 above;
- (h) a failure, without reasonable excuse, to comply with any requirement or procedure or condition (including any time limit) -
- (i) prescribed by this Petition Guide; or
 - (ii) required or specified by an immigration officer or the Adjudicator.
- [*cf. s.37ZD (2)*]

17.3 Notwithstanding paragraphs 17.1 and 17.2 above, the Adjudicator may take into account any other behaviour of the petitioner as damaging the petitioner's credibility. [*cf. s.37ZD (3)*]

17.4 Whether or not a petitioner's credibility in a claim has been damaged would depend on an overall assessment of all the relevant circumstances of the case.

18. Evidence Considered by the Adjudicator

18.1 When the Adjudicator reviews the merits of a case in a petition, he may consider the same evidence that was before an immigration officer or evidence that was not before an immigration officer. [*cf. s.18(1) of Schedule 1A*]

18.2 The Adjudicator may consider evidence that was not before an immigration officer if -

- (a) the evidence relates to matters that have occurred after the decision being petitioned against was made; or
 - (b) the evidence relates to matters that occurred before the decision being petitioned against was made, and the petitioner provides sufficient evidence in writing to satisfy the Adjudicator that the petitioner
 - (i) had exercised all due diligence to provide the evidence to an immigration officer before the decision was made; but
 - (ii) failed to provide the evidence to an immigration officer before the decision was made because of circumstances beyond the petitioner's control.
- [*cf. s.18(2) of Schedule 1A*]

18.3 In an application from an immigration officer to the Adjudicator for a revocation

decision (i.e. ImmD's application to the Adjudicator for revoking the Adjudicator's previous Decision which reversed the ImmD's first-tier decision), the Adjudicator has the power to review the merits of the case and may consider any evidence that he considers relevant. [*cf. s.20 of Schedule 1A*]

19. Notice of New Evidence

19.1 A petitioner who wishes to present any evidence that was not before an immigration officer (see paragraph 18.2 above) must within 7 days after filing a Notice of Appeal/Petition -

- (a) file with the Adjudicator a written notice to that effect; and
- (b) serve a copy of the notice on the Director.
[*cf. s.19(1) of Schedule 1A*]

19.2 The written notice must -

- (a) indicate the nature of the evidence; and
- (b) explain how the evidence supports the petition.
[*cf. s.19(2) of Schedule 1A*]

19.3 If the evidence falls within the description in paragraph 18.2(b) above, the written notice must also -

- (a) state the circumstances leading to the failure referred to in that paragraph;
- (b) explain how, and to what extent, the circumstances led to the failure;
- (c) state the steps that the petitioner had taken with a view to providing the evidence to an immigration officer before the decision being petitioned against was made and, in particular, the steps taken to deal with the circumstances; and
- (d) be accompanied by all available evidence relied on in support of the petitioner's case. [*cf. s.19(3) of Schedule 1A*]

19.4 A written notice filed after the expiry of the period specified in paragraph 19.1 above may not be accepted by the Adjudicator unless the petitioner provides sufficient evidence in writing to satisfy the Adjudicator that the petitioner -

- (a) had exercised all due diligence to file the notice before the expiry of the period; but
- (b) failed to file the notice before the expiry of the period because of circumstances beyond the petitioner's control. [*cf. s.19(4) of*

20. Witnesses

20.1 The Adjudicator may, on an application by a party to a petition, or on his own motion, direct a person to attend as a witness at the hearing of the petition at the time and place the Adjudicator specifies, and answer any questions, give evidence, or produce any document in the person's possession, custody or power that may relate to any issue in the petition. [*cf. s.22(1) of Schedule 1A*]

21. Substantiated Non-refoulement Claims made on Applicable Grounds

21.1 In determining whether a claim is substantiated and hence non-refoulement protection is to be granted to the petitioner, the Adjudicator must, having regard to the individual circumstances of each case, take into account all relevant considerations, including relevant country information and whether there is any region within the Risk State(s) in which the petitioner would not be subjected to a risk under any applicable grounds (other than torture risk under the Ordinance). [*cf. s.37ZI (5)*]

21.2 A non-refoulement claim must be accepted as substantiated if there are substantial grounds for believing that there is a genuine and personal risk that an absolute and non-derogable right under the HKBOR (including BOR 2 and BOR 3) of the petitioner would be violated at the Risk State if the petitioner were removed or surrendered there.

21.3 A non-refoulement claim should be accepted as substantiated on the ground of persecution risk if the petitioner has a well-founded fear of being persecuted in the manner explained in paragraph 6.4 above if the petitioner were removed or surrendered to the Risk State, and he does not fall within any exceptions to persecution non-refoulement protection taking into account relevant considerations including those set out in paragraph 6.5 above.

21.4 A non-refoulement claim should otherwise be rejected if none of the applicable grounds is substantiated.

22. Decision of the Adjudicator

22.1 On a petition against an immigration officer's decision (i) not to re-open a non-refoulement claim; (ii) rejecting a non-refoulement claim; or (iii) revoking an immigration officer's previous decision accepting a non-refoulement claim as substantiated, the Adjudicator may confirm or reverse that decision. [*cf. s.23(1) of Schedule 1A*]

22.2 On an application from an immigration officer to the Adjudicator for a revocation decision (i.e. ImmD's application to the Adjudicator for revoking the Adjudicator's previous Decision which reversed the ImmD's first-tier decision), the

Adjudicator may allow or refuse the application. [*cf. s.23(2) of Schedule 1A*]

22.3 The Adjudicator must give his Decision with reasons in writing. [*cf. s.23(3) of Schedule 1A*]

22.4 The Adjudicator's Decision is final. [*cf. s.23(4) of Schedule 1A*]

22.5 The Decision will be sent by post to the petitioner's usual or last known residential or correspondence address provided by the petitioner to the Director or the Petition Office, or the place where the petitioner is held in custody, detained or imprisoned, or his legal representative's place of business or correspondence address if he is legally represented. Where considered appropriate by the Adjudicator, the Decision may also be served on the petitioner personally. A copy of the Decision will be sent to the Director. [*cf. s.37ZV*]

23. Petition against ImmD's Refusal Decision not to Re-open a Withdrawn Claim

23.1 A non-refoulement claim that has been withdrawn by a claimant (by the claimant's written notification to an immigration officer) 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 could not reasonably have been foreseen by him when he gave the withdrawal notification and 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. [*cf. s.37ZE(2)*]

23.2 If the immigration officer decides not to re-open the claim, he must, in writing, inform the person of his decision, the reason for his decision and the person's right to file a petition against the refusal decision. If the person is aggrieved by the refusal decision, he must file a Notice of Appeal/Petition within 14 days after notice of the decision is given to him unless late filing of the notice is allowed by the Adjudicator. [*cf. ss.37ZE (4) & 37ZR(a)*]

23.3 Upon receipt of a copy of the Notice of Appeal/Petition from the Petition Office, the Director must, as soon as practicable, provide to the Petition Office and the petitioner (i) a copy of any completed non-refoulement claim form relating to the non-refoulement claim; (ii) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the non-refoulement claim; (iii) a copy of the claimant's notice withdrawing the claim; and (iv) a copy of any evidence in writing provided by the claimant referred to in paragraph 23.1 above. [*cf. s.9(1)(c) of Schedule 1A*]

24. Petition against ImmD's Refusal Decision not to Re-open a Claim that has been deemed Withdrawn on Failure to Return Non-refoulement Claim Form

24.1 A non-refoulement claim will be treated as withdrawn if the person who made the claim fails to return the completed non-refoulement claim form within the prescribed 28-day period or any further period as may be allowed by an immigration officer. A non-refoulement claim treated as withdrawn on such circumstances may be re-opened if the person who made the claim provides sufficient evidence in writing to satisfy the immigration officer that he had exercised all due diligence to return a completed non-refoulement claim form but failed to return it because of circumstances beyond the person's control. [*cf. s.37ZG (1) &(3)*]

24.2 If the immigration officer decides not to re-open the claim, he must, in writing, inform the person of his decision, the reason for his decision and the person's right to file a petition against the refusal decision. If the person is aggrieved by the refusal decision, he must file a Notice of Appeal/Petition within 14 days after notice of the decision is given to him unless late filing of the notice is allowed by the Adjudicator. [*cf. ss.37ZG (5) & 37ZR(a)*]

24.3 Upon receipt of a copy of the Notice of Appeal/Petition from the Petition Office, the Director must, as soon as practicable, provide to the Petition Office and the petitioner (i) a copy of the written notice informing the claimant that the claim is treated as withdrawn; and (ii) a copy of any evidence in writing provided by the claimant referred to in paragraph 24.1 above. [*cf. s.9(1)(d) of Schedule 1A*]

25. Deemed Withdrawal of a Non-refoulement Claim on the Claimant/Petitioner's Departure

25.1 A non-refoulement claim (whether a claim pending final determination or a substantiated claim) made by a claimant/petitioner who is subject or liable to removal must be treated as withdrawn if he (for whatever reason) leaves Hong Kong. A non-refoulement claim that is treated as withdrawn under such circumstances must not be re-opened. [*cf. s.37ZF (1) & (2)*]

25.2 If a person leaves Hong Kong after he has given notice of withdrawal of his non-refoulement claim, the claim must be treated as having been withdrawn and must not be re-opened. [*cf. ss.37ZE (1) & 37ZF (3)*]

26. Withdrawal of a Non-refoulement Claim Petition

26.1 A petition that has been made under this Petition Scheme may be withdrawn by the petitioner at any time before the Adjudicator determines the petition by his filing of a written notice with the Petition Office. The Petition Office will, upon receipt of the written notice, inform the petitioner in writing that the petition has been withdrawn and that his

non-refoulement claim is finally determined and no further action will be taken on his case under the Petition Scheme. A petition against a decision is withdrawn once a notice to withdraw the petition is received by the Petition Office and no further Notice of Appeal/Petition may be filed in relation to the decision. For the avoidance of doubt, where a petition is withdrawn (including by the petitioner's written notice and/or by his departure from Hong Kong), it is treated as withdrawn in its entirety on all the applicable grounds under the USM. [*cf. s.37ZTA*]

27. Revocation

27.1 A non-refoulement claim which has been accepted as substantiated by an immigration officer or by an Adjudicator may be revoked by an immigration officer or an Adjudicator respectively under specified circumstances. [*cf. s.37ZL & 37ZM*]

27.2 The grounds for revocation are -

- (a) any information or 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) the information was not disclosed to an immigration officer or (on a petition) the Adjudicator and the undisclosed information would undermine, to a material extent, the merits of the claim;
- (c) the risk on which the non-refoulement protection claim was substantiated has ceased to exist; and/or
- (d) having regard to the prevailing circumstances, the claim should not be accepted as substantiated.

[*cf. s.37ZN*]

For claims that are substantiated on the ground of persecution risk alone -

- (a) the person should not have been granted protection in the first place because the person falls within an exception to protection upon taking into account all relevant considerations including those set out in paragraph 6.5 above; and/or
- (b) after the non-refoulement claim has been substantiated on the ground of persecution risk, such an exception has become applicable to him.

Revocation by an immigration officer

27.3 If an immigration officer considers that the grounds referred to in paragraph 27.2 above exist for revoking a decision made by ImmD that substantiated a non-refoulement claim, the immigration officer must give written notice to the claimant. In his written notice, the immigration officer must state the reasons why he proposes to revoke the decision; and that the claimant may, within 14 days after the notice of proposed revocation is given, make

his objections in an objection notice. The immigration officer may proceed to make a revocation decision -

- (a) if the claimant fails to give an objection notice; or
- (b) after having considered the claimant's objection notice.

If the immigration officer makes a revocation decision, he must inform the claimant of that decision in a written notice, giving his reasons for that decision, and informing the claimant of his right to petition against the revocation decision under BL48(13). If the claimant is aggrieved by the decision, he must file a Notice of Appeal/Petition within 14 days after notice of the decision is given to him unless late filing of the notice is allowed by the Adjudicator. [*cf. ss.37ZL & 37ZR(c)*]

27.4 Upon receipt of a copy of the Notice of Appeal/Petition from the Petition Office, the Director must, as soon as practicable, provide to the Petition Office and the petitioner (i) a copy of the relevant completed non-refoulement claim form; (ii) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the non-refoulement claim; (iii) a copy of the notice of the decision accepting the non-refoulement claim as substantiated; (iv) a copy of the notice of proposed revocation of the non-refoulement claim; and (v) a copy of the claimant's objection notice (if any). [*cf. s.9(1)(b) of Schedule 1A*]

Revocation by the Adjudicator

27.5 If an Adjudicator has made a Decision that reversed the decision of an immigration officer, an immigration officer may apply to the Adjudicator to revoke that Decision on the basis of any of the grounds specified in paragraph 27.2 above.

However, before the immigration officer applies to the Adjudicator to exercise the latter's power of revocation, the immigration officer must give the claimant written notice of his intended application. In his written notice, the immigration officer must state the reasons for the intended application, and he must allow 14 days for the claimant to make his objections in an objection notice. The immigration officer will consider the representations made in the objection notice (if any) by the claimant together with all relevant information before deciding whether or not to make a revocation application to the Adjudicator. He may proceed to make an application to the Adjudicator if the claimant fails to give an objection notice; or after having considered the claimant's objection notice. In his application to the Adjudicator, the immigration officer must use the application form at **Appendix B** of this Petition Guide¹⁷, which will be referred to as the "Notice of Application for Revocation of the Decision of the Torture Claims Appeal Board/Adjudicator". [*cf. s.37ZM*]

¹⁷ The same form will be used for making an application to TCAB to revoke TCAB's previous decision that reversed the immigration officer's decision rejecting a torture claim based on a torture risk.

27.6 A copy of the notice of application must also be served on the claimant as soon as practicable after the submission of the notice of application to the Petition Office. The Director must, as soon as practicable after filing the notice of application, provide to the Petition Office and the claimant: (i) a copy of the relevant completed non-refoulement claim form; (ii) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the non-refoulement claim; (iii) a copy of the written notice informing the claimant of an immigration officer's decision rejecting the non-refoulement claim; (iv) a copy of the Decision; (v) a copy of the written notice informing the claimant of an intended application to the Adjudicator for a revocation decision; (vi) a copy of the claimant's objection notice (if any). [*cf. s.9(2) of Schedule 1A*]

28. Record of Proceedings

28.1 The Petition Office must keep a record or summary of proceedings and of the Decisions in such form as the Chairperson may determine. [*cf. s.24 of Schedule 1A*]

28.2 All hearings will be audio recorded. The master copy of the record of hearing will be kept by the Petition Office for record purposes.

29. Correction of Errors

29.1 The Petition Office may correct a Decision made by the Adjudicator to the extent necessary to rectify an error of translation or transcription or a clerical error. [*cf. s.25 of Schedule 1A*]

30. Miscellaneous

Special Needs of Petitioners

30.1 Petitioners are required to indicate their special needs, if any, in Section 1(K) of the Notice of Appeal/Petition. The Adjudicator and the Petition Office will take steps to accommodate such special needs as far as practicable.

Petitioners in Custody

30.2 As a general rule, a petitioner should attend the hearing. If a petitioner is in custody, the Director's representative must inform the Adjudicator and the Adjudicator may request the Director, the Commissioner of Correctional Services and/or other relevant authorities to bring the Petitioner to the hearing.

Confidentiality

30.3 Unless the petitioner himself gives an express consent for such disclosure, the

Adjudicator and the Petition Office must treat information provided by a petitioner in the course of a petition as confidential. The Adjudicator can only use such information for arriving at a Decision. The Adjudicator or the Petition Office must not release any information indicating that the petitioner has made a non-refoulement claim to a third party.

30.4 Notwithstanding paragraph 30.3 above, the Petition Office may disclose a petitioner's information to other HKSAR government departments/bureaux, agencies, international organisations or other bodies if such information is necessary for immigration or nationality purposes, or to enable them to carry out their functions, or to secure entry facilities for repatriation should the petition fail.

Typhoons and Rainstorm Warnings

30.5 If tropical cyclone warning signal No. 8 or above or the black rainstorm warning as issued by the Hong Kong Observatory is in force within two hours prior to the commencement of a hearing, the hearing will be postponed to a date and time to be fixed by the Adjudicator. The Petition Office will notify the parties of the details of the adjourned hearing as soon as practicable.

Documents Served by Post

30.6 In relation to documents served by post by the petitioner, the computation of time in s.37ZV(3) of the Ordinance applies with appropriate modifications/adaptations.

PART 3
PROCEDURAL NOTE

PROCEDURAL NOTE No. 1
WORK AND HEARING ARRANGEMENTS
UNDER INCLEMENT WEATHER CONDITIONS

1.1 The work arrangements of the Petition Office under inclement weather conditions will be as follows:

- (a) When a No. 8 or higher Tropical Cyclone Warning Signal or a Black Rainstorm Warning Signal has been issued **before office hours**:
 - (i) If the signal is lowered to No. 3 (or below) or cancelled at or before 6:45 a.m., the Petition Office will open as usual in the morning;
 - (ii) If the signal is lowered to No. 3 (or below) or cancelled after 6:45 a.m. and not less than 2 hours before the end of office hours, the Petition Office will open within 2 hours after the signal is lowered or cancelled;
 - (iii) Notwithstanding paragraphs (i) and (ii) 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 Petition Office will follow the advice accordingly. If the “extreme condition” is cancelled not less than 2 hours before the end of office hours, the Petition Office will open within 2 hours after the “extreme condition” is cancelled.
- (b) If a No. 8 or higher Tropical Cyclone Warning Signal is issued **during office hours**, the Petition Office will close immediately. If the signal is lowered to No. 3 (or below), or an “extreme condition” in force is cancelled, whichever is the later, not less than 2 hours before the end of office hours, the Petition Office will re-open within 2 hours after the signal or the “extreme condition” is lowered or cancelled.
- (c) In any event, the Petition Office will remain closed if a No. 8 or higher Tropical Cyclone Warning Signal is lowered to No. 3 (or below), or a Black Rainstorm Warning Signal or the “extreme condition” is lowered or cancelled, whichever is the later, less than 2 hours before the end of office hours.

1.2 The hearing arrangements under inclement weather conditions will be as follows:

- (a) If a No. 8 or higher Tropical Cyclone Warning Signal is issued **during a hearing**, the hearing will stop immediately. If appropriate, the Adjudicator will give directions for the resumed hearing of the petition.
- (b) When a No. 8 or higher Tropical Cyclone Warning Signal is lowered to No. 3 (or below), or a Black Rainstorm Warning Signal or an “extreme condition” in force is lowered or cancelled, whichever is the later, **at or before 8:00 a.m.**, the hearing of the petition will commence as scheduled.

- (c) When a No. 8 or higher Tropical Cyclone Warning Signal is lowered to No. 3 (or below), or a Black Rainstorm Warning Signal or the “extreme condition” in force is lowered or cancelled, whichever is the later, **at or before 12:30 p.m.**,
- (i) the hearing of the petition scheduled for the morning session only will be adjourned and postponed to a date and time to be fixed by the Adjudicator;
 - (ii) the hearing of the petition scheduled for the afternoon session only will commence as scheduled; or
 - (iii) the hearing of the petition scheduled for the whole day will be postponed to commence at 2:30 p.m..
- (d) When a No. 8 or higher Tropical Cyclone Warning Signal is lowered to No. 3 (or below), or a Black Rainstorm Warning Signal or the “extreme condition” in force is lowered or cancelled, whichever is the later, **after 12:30 p.m.**, the hearing will remain adjourned for the whole day. The hearing will be postponed to a date and time to be fixed by the Adjudicator.

PROCEDURAL NOTE No. 1

Notice of Appeal/Petition Non-refoulement Claim

(**Important:** Insofar as a non-refoulement claim includes a torture claim as defined by Part VIIC of the Immigration Ordinance, Cap. 115, Laws of Hong Kong (“the Ordinance”), this form serves as a notice of appeal specified by the Chairperson of the Torture Claims Appeal Board pursuant to section 37ZS of the Ordinance. This form also serves as a notice of petition pursuant to paragraph 8.2 of the Practice and Procedural Guide of the Administrative Non-refoulement Claims Petition Scheme. An appeal/petition which is filed with the Torture Claims Appeal Board/Non-refoulement Claims Petition Office must use this form or it will not be accepted as a valid notice of appeal/petition.)

You must read the following instructions carefully before completing this Notice of Appeal/Petition (“this Notice”):

- You must lodge your appeal/petition within 14 days after notice of the decision of an immigration officer is given to you. If this Notice is filed after the expiry of the 14-day period, you must apply for late filing and include a statement of the reasons in Section 5 of this Notice, which must be accompanied and supported by all available evidence. The Torture Claims Appeal Board (“the Board”)/Adjudicator of the Non-refoulement Claims Petition Office (“the Petition Office”) will decide and inform you whether or not it will allow the late filing of this Notice.
- This Notice should be completed in English (block letters) or Chinese.
- You must attach a copy of the Director’s decision you are appealing or petitioning against.
- You must fill in ALL sections. Write ‘N/A’ if any part is not applicable. Where there is a check box , put a check (✓) in it to show your answer.
- It is important that you include ALL information you wish the Board/Adjudicator to consider in this Notice as you may not be allowed to submit further information subsequently unless with the permission of the Board/Adjudicator.
- If you need more space to fill in your information, you should do so on additional sheet(s) of paper by indicating clearly the section to which the information refers.
- Pursuant to section 42(1)(a) of the Ordinance, any person who makes or causes to be made to the Board any statement or representation which he knows to be false or does not believe to be true shall be guilty of an offence.

- Please keep a copy of the completed Notice for your own use. Duly complete and sign this Notice, and send the ORIGINAL of this Notice together with (i) a copy of the notice of the decision of the immigration officer being appealed/petitioned against; and (ii) other supporting documents (if any), by post or by hand to the following address:

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

No action will be taken on an unsigned or not duly completed Notice.

- Applications to adduce new evidence must be made within 7 days after filing the notice of appeal/petition (or after late filing is allowed) by filing with the Board/Adjudicator a written notice to that effect; and serve a copy of the notice on the Director of Immigration. Otherwise, the Board/Adjudicator may not accept the application to adduce the new evidence.
- If a hearing is required, the Board/Petition Office will inform you of the details of the hearing in writing. However, if the Board/Adjudicator is satisfied that your appeal/petition can be justly determined without a hearing having regard to the material before it and the nature of the issues raised, the Board/Adjudicator will determine the appeal/petition without a hearing. If the Board/Adjudicator decides to determine your appeal/petition without a hearing, no further notice will be given to you before the determination, unless the Board/Adjudicator directs otherwise.
- The Board/Petition Office will send written communications to your last known address or that of your legal representative. It is therefore important that you keep the Board/Petition Office updated on any such changes and notify the Board/Petition Office in writing of any changes of telephone number, residential and/or correspondence address or legal representative.
- The Board/Adjudicator may confirm or reverse the decision of the immigration officer and will give reasons in writing after the appeal/petition has been determined. The Decision of the Board/Adjudicator is final.
- Your appeal/petition may be withdrawn by you at any time before the Board/Adjudicator determines the appeal/petition by filing of a written notice with the Board/the Petition Office. The Secretariat will, upon receipt of the written notice, inform you in writing that the appeal/petition has been withdrawn and that your non-refoulement claim is finally determined and no further action will be taken on your appeal/petition. Pursuant to section 37ZTA(2) of the Ordinance and paragraph 26 of

the Practice and Procedural Guide of the Administrative Non-refoulement Claims Petition Scheme, an appeal/petition against a decision is withdrawn once a notice to withdraw the appeal/petition is received by the Board/the Petition Office and no further notice of appeal/petition may be filed in relation to the decision. For the avoidance of doubt, where an appeal/petition is withdrawn (including by the appellant/petitioner's written notice and/or by his departure from Hong Kong), it is treated as withdrawn in its entirety on all the applicable grounds under the Unified Screening Mechanism.

- The information provided in this Notice and in the proceedings of the appeal/petition will be used for arriving at a Decision upon your appeal/petition and will not be disclosed to any government or country in respect of which you make a non-refoulement claim on any applicable grounds, including risk of torture under Part VIIC of the Ordinance; risk of violation of your absolute and non-derogable rights under the Hong Kong Bill of Rights (e.g. right to life under Article 2 and right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment under Article 3) as set out under section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383; or 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, unless you give an express consent to such disclosure. Notwithstanding the aforesaid, the information may be disclosed to other government departments/bureaux of the Hong Kong Special Administrative Region, agencies, international organisations or other bodies if such information is necessary for immigration or nationality purposes, or to enable them to carry out their functions, or to secure entry facilities for repatriation should the appeal/petition fail.

Section 1: Personal Information

(A) Surname or Family Name: _____

(B) Given Name: _____

(C) Date of Birth: _____ / _____ / _____
Day Month Year

(D) Gender: Male Female

(E) Nationality or Citizenship:
(If more than one, state all) _____

(F) Language(s) Spoken: _____

(G) Day Time Contact Telephone
Number: _____

(H) Residential Address: _____

Correspondence Address
(if different from above): _____

(I) Non-refoulement Claim Reference
Number with the Immigration
Department: _____

(J) Are you accompanied by any members of your family in this appeal/petition?

Yes

No

If yes, please provide details:

Name	Relationship	Date of Birth

(K) Do you have any special needs (e.g. a signer or an interpreter of the preferred gender)?

Yes

(Please specify:

_____)

No

Section 2: Appeal/Petition

(A) I appeal/petition against the decision of the immigration officer as contained in the attached notice of decision.

Note: This Notice must be accompanied by a copy of the notice of the decision being appealed/petitioned against before the appeal/petition can be further processed.

(B) Grounds of Appeal/Petition:

You must set out ALL grounds of your appeal/petition. Please give reasons in support of these grounds – that is, why you disagree with the decision of the immigration officer being appealed/petitioned against. Where appropriate, please refer to the specific paragraphs of the immigration officer’s written decision and/or country of origin information materials relied upon. Give as many details as possible. Use additional sheets of paper if necessary.

Section 3: Details of Legal Representative

(A) Do you have a legal representative to assist/represent you in lodging this appeal/petition?

Yes

No (Go to Section 4)

(B) Name of the Representative: _____

(C) Name of the Representative's
Legal Firm (if applicable): _____

(D) Telephone Number: _____

(E) Correspondence Address: _____

(F) Email Address: _____

(G) Fax Number: _____

Section 4: Hearing (if required by the Board/Adjudicator)

If the Board/Adjudicator decides that a hearing will be held to determine your appeal/petition, a hearing will be arranged. The hearing will be held in private unless the Board/Adjudicator directs otherwise. A notice of hearing setting out the date, time and place will be served on you normally not less than 28 days before the date of hearing. Despite the above, the Board/Adjudicator may give less than 28 days' notice if it considers appropriate to do so in a particular case, but in any event the notice period must not be less than 7 days. To avoid doubt, this does not apply to a hearing that is rescheduled due to your absence from hearing or a further hearing of an appeal/petition.

(A) If a hearing is arranged, will you have any witness(es)?

Yes

No

If yes, please list details of all witnesses attending the hearing and ask each of them to prepare a witness statement (the witness statement should include the witness' full name, address and contact telephone number(s) and set out facts only, not opinions or legal submissions, and should be submitted together with this Notice).

Name of Witness	Relationship	A short description of the evidence to be given

(B) Do you or your witness(es) require an interpreter?

Yes (Please specify the language/dialect requested: _____)

No

Note: The Board/Petition Office may direct the Appellant/Petitioner and witnesses, if any, to address the Board/Petition Office in a language that the Board/Petition Office reasonably considers the Appellant/Petitioner and witnesses are able to understand and communicate in.

Section 5: Application for Late Filing of Notice of Appeal/Petition

A person who wishes to appeal/petition against the decision of the immigration officer must file this Notice within 14 days after notice of such decision is given to the person. If you are filing this Notice after the expiry of the aforesaid 14-day period, you **must include below a statement of the reasons for late filing**. You must also submit all available evidence in support of such reasons.

Section 6: Declaration by Appellant/Petitioner

I declare that:

- I verily believe that the information I have supplied on or with this Notice is complete, correct and up-to-date in every detail.
- I understand that the Board/Adjudicator may determine an appeal/petition without a hearing if, having regard to the material before it and the nature of the issues raised, the Board/Adjudicator is satisfied that the appeal/petition can be justly determined without a hearing.
- I undertake to promptly inform the Board/Petition Office of any changes of my telephone number, residential and/or correspondence address and legal representative while my appeal/petition is being processed.

Appellant/Petitioner's Signature: _____

Appellant/Petitioner's Name: _____

Date: _____

**Notice of Application for
Revocation of the Decision of the
Torture Claims Appeal Board/Adjudicator**

(Important: Insofar as a non-refoulement claim includes a torture claim as defined by Part VIIC of the Immigration Ordinance, Cap.115, Laws of Hong Kong (the “Ordinance”), this form serves as a notice of application specified by the Chairperson of the Torture Claims Appeal Board pursuant to section 37ZM of the Ordinance. This form also serves as a notice of application for revocation of the decision of the Adjudicator of the Non-refoulement Claims Petition Office pursuant to paragraph 27.5 of the Practice and Procedural Guide of the Administrative Non-refoulement Claims Petition Scheme.)

To: Torture Claims Appeal Board (“TCAB”)/
Non-refoulement Claims Petition Office (“NCPO”)

TCAB/NCPO File Ref.:

I, on behalf of the Director of Immigration, write to apply for a revocation of the TCAB/Adjudicator’s decision that reversed a decision made by an immigration officer rejecting a torture claim made under Part VIIC of the Ordinance and/or a non-refoulement claim made on other applicable grounds in respect of the following claimant:

Name of Claimant : _____
Nationality : _____ Sex : _____
Date of Birth : _____ Age : _____
ImmD File Ref. : _____

2. The ground(s) of revocation decision *is / are as follows:

3. I provide the TCAB/Adjudicator with the following documents:
- *(a) a copy of the completed torture claim form/non-refoulement claim form relating to the torture claim and/or the non-refoulement 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 and/or the non-refoulement claim;
 - *(c) a copy of the written notice informing the claimant of an immigration officer's decision rejecting the torture claim and/or the non-refoulement claim;
 - *(d) a copy of the written decision reversing an immigration officer's decision rejecting the torture claim and/or the non-refoulement claim;
 - *(e) a copy of the written notice informing the claimant of an intended application for a revocation decision to be made by the TCAB/Adjudicator; and
 - *(f) a copy of the claimant's objection notice (if any).

()
Immigration Officer
for Director of Immigration

Encls.

* Delete where inappropriate