

Notice on Detention Policy
Section 32 of the Immigration Ordinance (Cap. 115)

Detention must be justified with sufficient reasons and for a period which is reasonable in all circumstances. Reasonable alternatives will be considered before detention is authorized. No one shall be subject to arbitrary detention. The power to detain must only be used for the specific purpose for which it is authorized and its exercise must be justified on proper grounds. Each case is to be considered on its own facts and merits. Detention will be kept under regular review and will be reviewed when there is a material change of circumstances. The factors listed below are factors which the Director of Immigration (“Director”) / Secretary for Security (“Secretary”) will generally take into account in determining whether a person should be detained or released, and are not meant to be exhaustive (in that each case will be considered on its individual merits and there may be other facts and circumstances relevant to any particular individual case) or in any order of priority / weight. The mere presence of a particular factor does not automatically lead to detention or release. The factors will be considered in the context of all the circumstances of the case. The Director / Secretary will give due consideration to any representation made against detention.

In determining whether a person should be released or detained, the Director / Secretary will take into consideration all the relevant circumstances of the case, including: (i) whether the person’s removal is going to be possible within a reasonable time; (ii) whether that person poses, or is likely to pose, a threat or security risk to the community; (iii) whether there is any risk of that person’s absconding and / or (re)offending; (iv) whether that person’s identity is resolved or satisfied to be genuine; (v) whether that person has close connection or fixed abode in Hong Kong; and (vi) whether there are other circumstances in favour of release.

It should also be noted that the detention of a person pending removal from Hong Kong shall not be unlawful by reason of the period of the detention if that period is reasonable having regard to all the circumstances that justify its length, including circumstances stipulated in Section 32(4A) of the Immigration Ordinance, Cap. 115, Laws of Hong Kong¹.

Within the above criteria, the following matters are or may be relevant:

For detention

- ✦ The detainee's removal from Hong Kong is imminent and / or immediate repatriation is being arranged for his / her departure.
- ✦ The detainee is willing to leave and arrangement is underway to remove him.
- ✦ There is no sufficient reason to believe that the detainee's case cannot be finalized in the near future.
- ✦ There is no outstanding claim in respect of the detainee impeding removal.
- ✦ There are no outstanding legal proceedings e.g. petition / appeal / judicial review in respect of the detainee impeding removal.
- ✦ If there is an outstanding claim / legal proceeding, there is no sufficient reason to believe that the claim / legal proceeding could not be completed within a reasonable period of time.
- ✦ The detainee poses, or is likely to pose, a threat or security risk to the community.
- ✦ The detainee has conviction(s) associated with crime(s) of serious or violent nature.
- ✦ The detainee has records of violent behaviour during detention / imprisonment.
- ✦ The detainee has previously absconded or escaped from custody.

¹ The circumstances stipulated in Section 32(4A) of the Immigration Ordinance, Cap. 115, Laws of Hong Kong include:

- (a) whether the number of other persons pending removal from Hong Kong is such that it is reasonable to take the time it is taking, or has taken, to remove the person;
- (b) whether the manpower and financial resources allocated for the removal of persons from Hong Kong under this Ordinance are such that it is reasonable to take the time it is taking, or has taken, to remove the person;
- (c) the extent to which it is possible to make arrangements to effect the person's removal;
- (d) whether the person's removal is directly or indirectly prevented or delayed by any action or lack of action of the person, including the person not obtaining, or not providing assistance to obtain, any authorization from the relevant authorities of a place outside Hong Kong that is required for the person's entry to that place;
- (e) the time required for the issue of the authorization referred to in paragraph (d);
- (f) whether the person poses, or is likely to pose, a threat or security risk to the community; and
- (g) factors that directly or indirectly prevent or delay the person's removal that are not within the control of the Director.

- ✦ The detainee has a record of jumping bail.
- ✦ The detainee had failed to comply with the terms / conditions of recognizance.
- ✦ The detainee failed to attend appointment(s) / scheduled interviews without reasonable excuse, in response to call-up by the immigration offices / sections e.g. investigation sections / Extension Section.
- ✦ The detainee is a returning removee / deportee.
- ✦ The detainee is re-arrested during recognizance.
- ✦ The detainee has a series of previous convictions of criminal and / or immigration offences or re-committed the same offence in respect of his / her previous arrest.
- ✦ The detainee has not produced satisfactory evidence or any proof of identity and there are no relevant documents to establish his / her identity / nationality.
- ✦ There is doubt on the detainee's true identity (e.g. false / forged / different identities travel documents).
- ✦ The detainee is non-cooperative or has failed to give satisfactory or reliable answers to an immigration officer's enquiries / investigation on his / her identity.
- ✦ The detainee has directly or indirectly prevented or delayed his / her removal by any action or lack of action.
- ✦ The detainee does not have fixed abode or close connection (e.g. family or friends) in Hong Kong to make it likely that he / she will be easily located.
- ✦ The detainee is likely to engage in unlawful employment or business if released from detention.
- ✦ The detainee has expressed that he / she is not able to take care of himself / herself if released from detention.
- ✦ The detainee is required to give evidence in a trial of any offence / facilitate inquiries into an offence or suspected offence.

Against detention

- ✦ The detainee is a person under the age of 18.
- ✦ The detainee is an elderly requiring close supervision / medical care.
- ✦ The detainee is a pregnant woman and there is no clear prospect of imminent removal.

- ✦ The detainee is in serious medical / mentally ill-health condition.
- ✦ The detainee is physically disabled requiring constant nursing care.
- ✦ There is satisfactory evidence that the detainee has been tortured.

Interviewing officer's
signature

Detainee's signature

Interpreter's signature

Interviewing officer's
name

Detainee's name

Interpreter's name

Place

Time

Date

羈留政策通告 《入境條例》(香港法例第 115 章)第 32 條

在所有情況下，羈留的決定必須基於充分的理由及羈留的時間必須合理。在考慮是否有其他合理的選擇後，才授權作出羈留。任何人士不得無理被羈留。羈留權力只可在有合理理由下用於獲授權的指定目的。每一個案會就其事實和情況作出考慮。羈留個案會定期覆檢，及當個案的情況有具體的轉變時予以覆檢。入境事務處處長(下稱“處長”) / 保安局局長(下稱“局長”)一般會就下述所列因素作出考慮該人應否被羈留或釋放，但下述因素並非詳盡無遺(即按每一個案的個別情況予以考慮，並視乎有否其他相關的事實和情況可供考慮)，各項因素亦非既有任何優先次序或比重。每宗個案不會因某項個別因素而自動導致被羈留或釋放，各項有關因素均會因應個案的所有情況予以考慮。處長 / 局長會就任何反對羈留的陳述作出適當考慮。

在考慮羈留個別人士或准許該人士以擔保代替羈留，處長 / 局長會就個別個案的所有有關情況作出考慮，當中包括(一) 是否可在合理時間內遣送有關人士離境；(二) 有關人士是否對(或相當可能對)社會造成威脅或安全風險；(三) 有關人士是否有機會潛逃及 / 或干犯 / 再次干犯罪行；(四) 有關人士的身分是否已獲確定或獲信納為真實；(五) 有關人士是否在香港有密切的聯繫或固定的住處；和(六) 是否有其他情況有利於釋放有關人士。

就被羈留以等候遣離香港的人，在顧及包括《香港法例》第 115 章《入境條例》第 32(4A)條所列¹，令該項羈留為期的長短屬有理可據的所有情況下，該項羈留的為期屬合理，則該項羈留並不因為其為期的長短而屬不合法。

¹ 《香港法例》第 115 章《入境條例》第 32(4A)條所列的情況包括：

- (a) 其他在等候遣離香港的人的數目，是否令為將該人遣離而正在或已經耗用的時間屬合理；
- (b) 調撥用於根據本條例將人遣離香港的人力及財政資源，是否令為將該人遣離而正在或已經耗用的時間屬合理；
- (c) 安排將該人遣離的可能程度；
- (d) 將該人遣離，有否(不論直接或間接)受該人的作為或不作為所阻礙或拖延，包括該人沒有取得(或沒有提供協助以取得)由香港境外地方的有關當局發出的、讓該人進入該地方所需的批准；
- (e) 發出(d)段提述的批准所需的時間；
- (f) 該人是否對(或相當可能對)社會造成威脅或安全風險；及
- (g) 直接或間接阻礙或拖延將該人遣離的、處長無法控制的因素。

在上述情況下，以下因素是或可能有關：

可考慮羈留的因素

- 羈留人士即將被遣離香港和 / 或已被安排即時遣返。
- 羈留人士願意離開香港，並正獲安排遣送離港。
- 沒有充分的理由顯示羈留人士的個案未能於短期內完成。
- 羈留人士沒有尚待解決的聲稱阻礙他 / 她被遣離。
- 羈留人士沒有未完成的法律程序(如呈請 / 上訴 / 司法覆核)阻礙他 / 她被遣離。
- 若羈留人士的聲稱 / 法律程序尚未完成，沒有充分理由令人信納該聲稱 / 法律程序不能在合理的時間內解決。
- 羈留人士對(或相當可能對)社會造成威脅或安全風險。
- 羈留人士以往或現時因涉及嚴重或暴力罪行而被定罪。
- 羈留人士在羈留 / 監禁期間有暴力行為的記錄。
- 羈留人士曾潛逃或從羈押中逃走。
- 羈留人士有棄保潛逃的紀錄。
- 羈留人士未能遵守擔保條款 / 條件。
- 羈留人士在沒有合理理由下，不出席由入境事務處的組別 / 辦事處（如調查組 / 延期逗留組）安排的預約 / 預定的會面。
- 羈留人士是一名曾被遣送離境 / 遞解離境的人士。
- 羈留人士在擔保期間再次被逮捕。
- 羈留人士多次涉及刑事及 / 或違反入境法例罪行而被定罪，或被捕後再次干犯同一罪行。
- 羈留人士未能出示令人信納的證據或任何身分證明文件，而且沒有任何相關文件可證明他 / 她的身分 / 國籍。
- 羈留人士的真正身分有可疑(如持有虛假 / 偽造 / 不同身分的旅行證

件)。

- ✦ 羈留人士採取不合作態度，或未能在入境事務主任查問 / 調查他 / 她的身分時，提供令人確納或可靠的答覆。
- ✦ 羈留人士的作為或不作為直接或間接阻礙或拖延他 / 她的遣離。
- ✦ 羈留人士在香港沒有固定的住處或密切的聯繫(如家人或朋友)，以便易於與他 / 她聯絡。
- ✦ 若羈留人士獲准擔保外出，他 / 她有可能非法受僱工作或參與業務。
- ✦ 羈留人士曾表示若獲准擔保後，他 / 她未能照顧自己的生活。
- ✦ 羈留人士須於審訊中作證 / 協助對任何罪行或涉嫌罪行進行研訊。

可考慮不予羈留的因素

- ✦ 羈留人士未滿十八歲。
- ✦ 羈留人士是一名長者，需要密切的看護 / 醫療的照顧。
- ✦ 羈留人士是懷孕的婦女，並且沒有明確即時被遣離香港的可能性。
- ✦ 羈留人士正處於嚴重醫療 / 精神不健康的情況。
- ✦ 羈留人士是傷殘人士，需要持續的看護。
- ✦ 有充分的證據顯示羈留人士曾被酷刑對待。

會見人員的簽署

羈留人士的簽署

傳譯員的簽署

會見人員的姓名

羈留人士的姓名

傳譯員的姓名

地點

時間

日期

