

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.

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 previously absconded or escaped from custody.
- ✦ 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.

Security Bureau

Immigration Department

The Government of the Hong Kong Special Administrative Region