



GUIDANCE TO AN ARRESTED PERSON ON ARREST AND DETENTION

You have been arrested. This document contains useful information to help you understand the legal authority for your arrest and detention.

ARREST

Members of the Immigration Service may exercise the following legal authorities to make arrest:

- Section 17D(1) of the Immigration Ordinance (Cap. 115) - a member of the Immigration Service may arrest without warrant any person who fails to produce for inspection on demand proof of his identity.
- Section 56(1A)(b) of the Immigration Ordinance (Cap. 115) - a member of the Immigration Service may arrest any person if he has reason to suspect that such person has committed an offence under the Immigration Ordinance, or has landed in Hong Kong unlawfully and has not been authorized by the Director of Immigration to remain.
- Section 12(2) of the Immigration Service Ordinance (Cap. 331) - a member of the Immigration Service may arrest without warrant any person whom he may reasonably suspect of being guilty of an offence under the Immigration Service Ordinance or of an offence specified under Schedule 2 to the Immigration Service Ordinance if the offence is one for which a person may, on conviction, be sentenced to a term of imprisonment; or if it appears to the member that service of a summons in respect of the offence is impracticable.

2. Members of the Immigration Service will only make arrests in accordance with the law which are necessary for the purpose of the maintenance of law and order.

3. If you are arrested by a member of the Immigration Service, you will be informed that you are under arrest and the reasons for your arrest.

DETENTION

4. The relevant law governing detention by a member of the Immigration Service following arrest is set out in section 13A of the Immigration Service Ordinance.

5. Following arrest, you may be brought to an office of the Immigration Service. You may be detained at the office or at a designated place, if any member of the Immigration Service of or above the rank of Chief Immigration Officer considers it necessary for the purposes of inquiries. If the investigation into your case cannot be completed immediately, you may be released unconditionally or on bail to appear at a specified office of the Immigration Service at the date/time stated in the Immigration Bail Form. You will not be kept in custody longer than necessary for such investigation. If after the investigation there is sufficient evidence against you, you will be charged and either (i) be released on bail to appear before a Magistrate, or (ii) be detained and brought before a Magistrate generally within 48 hours after your arrest, unless you are sooner released or is otherwise detained, removed or deported under the Immigration Ordinance.

6. The general principle on detention is that you will be released on bail by entering into a recognizance with or without sureties for a reasonable sum, or on cash bail for a specified amount, as soon as possible following your arrest unless the offence is of a serious nature or it is reasonably considered that you should be detained pending your appearance before a Magistrate. Any such detention must be justified on reasonable grounds having regard to the circumstances of your case. In this regard, you will normally be released on bail except:

- (a) where the offence is of a serious nature;
- (b) where you have been arrested on a warrant which does not allow bail;
- (c) where you may abscond;
- (d) where you may repeat the offence;
- (e) where you may interfere with witnesses, impede the investigation or attempt to obstruct the course of justice;
- (f) where you should be detained in your own interests to protect you from acts committed by yourself or others; or
- (g) where you cannot produce a reasonable amount of bail money in circumstances where entering into recognizance with or without sureties is not appropriate.