

香港特別行政區政府
保安局



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The Government of the
Hong Kong Special Administrative Region
Security Bureau

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10 May 2012

Mrs Sharon Tong
Principal Council Secretary 2
Council Business Division
Legislative Council Secretariat
Legislative Council Complex
Central, Hong Kong

Dear Mrs Tong,

**Immigration (Amendment) Bill 2011
Committee Stage Amendments**

I write to enclose for Members' scrutiny the Committee Stage Amendments (CSAs) which the Government will propose (at Annex I), and consolidated version of the Bill after amendment (at Annex II).

2. As explained in the document which we provided to the Bills Committee on 27 April (Reference: CB(2)1859/11-12(02)), the majority of the amendments in the CSAs are proposed in response to Members' suggestions.

3. Other amendments in the CSAs include technical amendment of the Chinese text in response to discussions at previous meetings of the Bills Committee and views of Senior Assistant Legal Adviser, as well as other technical amendments, including amendments to the procedures of the Appeal Board to ensure procedural fairness (to amend section 9 of Schedule 1A to set out that the Director of Immigration must provide to the person who has lodged the appeal a copy of the materials which the Director provides to the Appeal Board; and to amend section 18 of Schedule 1A to set out that if the Appeal Board is satisfied that exceptional circumstances exist, it may consider evidence that was not previously before an immigration officer.)

4. Besides, the Committee has discussed certain drafting matters. After careful consideration, we consider that no amendments are needed. These include –

- (a) The use of “State” in the definition of “torture risk State” is consistent with the use of the term in the Convention Against Torture.
- (b) Section 37V clearly defines when a torture claim is “finally determined”. Reference to the definition in section 37U makes it convenient for readers to locate the provision giving such definition (i.e. section 37V); hence it should not be deleted. This is consistent with the current drafting convention.
- (c) Concerning reference to “revocation decision” in section 37V, we will propose amendment to the section to distinguish revocation decisions made by an immigration officer and those by the Appeal Board.
- (d) The use of the term “serve” (「送達」 in the Chinese text) is appropriate and consistent with other laws in Hong Kong, e.g. section 14(9) of the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448B) – After the Board of Review has made a report to the Chief Executive, “ ... (t)he board shall also serve a copy of the report on all persons who appeared ... before the board”.
- (e) The use of the term 「是非曲直」 in the Chinese text of section 18(1) of Schedule 1A is consistent with the use of the term in other laws in Hong Kong to express the same meaning.

Yours sincerely,



(Billy Woo)
for Secretary for Security

COMMITTEE STAGE AMENDMENTS

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
4(3)	In the proposed section 17I(2)(c), in the Chinese text, by deleting “時限屆滿” and substituting “失效”.
7	In the proposed section 37U(1), by deleting the definition of <i>revocation decision</i> and substituting— “ <i>revocation decision</i> (撤銷決定) means— (a) a decision made by an immigration officer under section 37ZL(1); or (b) a decision made by the Appeal Board under section 37ZLA(1);”.
7	In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (a), by adding “and in respect of which no revocation decision has been made by an immigration officer” before “; or”.
7	In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (b)(i), by adding “and no revocation decision has been made by the Appeal Board” before “; or”.
7	In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (b)(ii), by adding “by an immigration officer” after “was made”.
7	In the proposed section 37V(1), by deleting “(3) and (4)” and

substituting “(3), (4) and (5)”.

7 In the proposed section 37V(3), by adding “by an immigration officer” after “is made”.

7 In the proposed section 37V, by adding—

“(5) If a revocation decision is made by the Appeal Board in respect of a substantiated claim, the claim must be treated as finally determined on the making of that decision.”.

7 In the proposed section 37ZB(1), by deleting “may”.

7 In the proposed section 37ZB(1)(a), by adding “may” before “require”.

7 In the proposed section 37ZB(1)(a), by deleting “; or” and substituting “; and”.

7 In the proposed section 37ZB(1)(b), by adding “must” before “require”.

7 By deleting the proposed section 37ZE(4)(a) and (b) and substituting—

“(a) the decision;

(b) the reasons for the decision; and

(c) the person’s right under section 37ZP to appeal against the decision.”.

7 By deleting the proposed section 37ZG(5)(a) and (b) and substituting—

“(a) the decision;

- (b) the reasons for the decision; and
- (c) the person’s right under section 37ZP to appeal against the decision.”.

7 In the proposed section 37ZG(7), in the Chinese text, by adding “有關” after “適用於”.

7 In the proposed section 37ZG(8), in the Chinese text, by adding “有關” after “如就”.

7 By deleting the proposed section 37ZI(5) and substituting—

“(5) In determining whether there are substantial grounds for the belief referred to in subsection (3), all relevant considerations are to be taken into account, including, where applicable, the following matters in relation to the conditions in the torture risk State—

- (a) whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the torture risk State; and
- (b) whether there is any region within the torture risk State in which the claimant would not be in danger of being subjected to torture.”.

7 In the proposed section 37ZL, in the heading, by deleting “**decision to accept torture claim etc.**” and substituting “**immigration officer’s decision to accept torture claim**”.

7 By deleting the proposed section 37ZL(1) and substituting—

“(1) An immigration officer may, on a ground for a revocation decision specified in section 37ZLB, revoke a decision made by an immigration officer under section 37ZI(1)(a) accepting a torture claim as substantiated.”.

7 By deleting the proposed section 37ZL(2).

7 In the proposed section 37ZL(4)(a) and (b), by deleting “(1)(a) or (b)” and substituting “(1)”.

7 By deleting the proposed section 37ZL(5).

7 By adding—

“37ZLA. Revocation of Appeal Board’s decision to reverse decision rejecting torture claim

(1) On an application made by an immigration officer, the Appeal Board may, on a ground for a revocation decision specified in section 37ZLB, revoke its decision that reversed a decision made by an immigration officer under section 37ZI(1)(b) rejecting a torture claim.

(2) Before making an application under subsection (1), an immigration officer must give the claimant written notice of the intended application, and the notice must—

(a) state the reasons for the intended application; and

(b) state that the claimant may, within 14 days after the notice is given, inform the immigration officer by written notice of the claimant’s objection to the intended application and the reasons for the objection (*objection notice*).

(3) If—

(a) the claimant has not given an objection notice in accordance with subsection (2)(b) and an immigration officer decides to make an application under subsection (1); or

(b) after having considered the claimant’s objection notice, an immigration officer decides to make an application under

subsection (1),

the immigration officer must make the application by filing with the Appeal Board a notice of application in a form specified by the Chairperson of the Appeal Board.

- (4) As soon as practicable after filing a notice of application, the immigration officer must serve on the claimant a copy of the notice of application.

37ZLB. Grounds for revocation decision

A ground specified in any of the following paragraphs is a ground for a revocation decision mentioned in section 37ZL(1) or 37ZLA(1)—

- (a) any information or documentary 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) information was not disclosed to an immigration officer or (on an appeal) the Appeal Board and the undisclosed information would undermine, to a material extent, the merits of the claim;
- (c) the torture risk giving rise to the claim has ceased to exist due to changes in circumstances of the claimant or the torture risk State.”.

7

By deleting the proposed section 37ZO(2) and substituting—

- “(2) The function of the Appeal Board is to hear and determine—
 - (a) an appeal made under section 37ZP; and
 - (b) an application for a revocation decision under section 37ZLA.”.

- 7 By adding before the proposed section 37ZP(a)—
- “(aa) section 37ZE(4) or 37ZG(5) (decision not to re-open a torture claim);”.
- 7 In the proposed section 37ZP(b), by adding “made by an immigration officer” after “decision”.
- 7 In the proposed section 37ZT(2), in the Chinese text, by deleting “經” and substituting “在以下時間”.
- 7 In the proposed section 37ZW, in the Chinese text, by deleting “為施行本條例，任何人不得只憑藉其酷刑聲請，而視為在該人留在香港的任何期間屬通常居於香港” and substituting “就本條例而言，任何人在只憑藉其酷刑聲請而留在香港的任何期間內，不得被視為通常居於香港”.
- 7 By adding—
- “37ZX. Transitional and Savings Provisions**
- Schedule 4 provides for the transitional and savings arrangements that apply on, or relate to, the commencement of the Immigration (Amendment) Ordinance 2012 (of 2012).”.
- 12 In the proposed Schedule 1A, by deleting “[ss. 37U, 37ZL” and substituting “[ss. 37U”.
- 12 In the proposed Schedule 1A, in section 1(1), by adding—
- “*appeal* () means—**
- (a) an appeal made under section 37ZP; or
- (b) an application for a revocation decision under section 37ZLA;”.

- 12 In the proposed Schedule 1A, in section 2(5), by deleting “under section 37ZP”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 2(5), by deleting “訴。” and substituting “訴，”.
- 12 In the proposed Schedule 1A, in section 8(1), by adding “filed under section 37ZQ(1)” after “notice of appeal”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 8(1), by deleting “在第(2)款的規限下” and substituting “除第(2)款另有規定外”.
- 12 In the proposed Schedule 1A, in section 8(2), by adding “under section 37ZQ(1)” after “notice of appeal”.
- 12 In the proposed Schedule 1A, by renumbering section 9 as section 9(1).
- 12 In the proposed Schedule 1A, in section 9(1), by adding “and the person who has lodged the appeal” after “provide to the Appeal Board”.
- 12 In the proposed Schedule 1A, in section 9(1)(a)(ii), by deleting “or”.
- 12 In the proposed Schedule 1A, in section 9(1)(b), by adding “of an immigration officer under section 37ZL(1)” after “revocation decision”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section

9(1)(b)(ii), by adding “該” after “考慮”.

12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(iii), by adding “該” after “接納”.

12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(iv), by adding “該” after “撤銷”.

12 In the proposed Schedule 1A, in section 9(1)(b)(v), by deleting the full stop and substituting a semicolon.

12 In the proposed Schedule 1A, in section 9(1), by adding—

“(c) if the decision being appealed against is a decision under section 37ZE(4) not to re-open a torture claim withdrawn by the person who made the claim—

(i) a copy of any completed torture claim form relating to the torture claim;

(ii) a copy of the written record of any interview of the person conducted by an immigration officer in considering the torture claim;

(iii) a copy of the person’s notice withdrawing the claim; and

(iv) a copy of any evidence in writing provided by the person under section 37ZE(2); or

(d) if the decision being appealed against is a decision under section 37ZG(5) not to re-open a torture claim treated as withdrawn on a person’s failure to return a completed torture claim form—

(i) a copy of the written notice under section 37ZG(2) informing the person that the claim is treated as withdrawn; and

(ii) a copy of any evidence in writing provided by the person under section 37ZG(3).”.

- 12 In the proposed Schedule 1A, in section 9, by adding—
- “(2) The Director must, as soon as practicable after filing with the Appeal Board a notice of application for a revocation decision under section 37ZLA(3), provide to the Appeal Board and the claimant—
- (a) a copy of the completed torture claim form relating to the torture 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;
 - (c) a copy of the written notice under section 37ZJ(1) informing the claimant of an immigration officer’s decision rejecting the torture claim;
 - (d) a copy of the written decision given under section 21(2) of this Schedule reversing an immigration officer’s decision rejecting the torture claim;
 - (e) a copy of the written notice under section 37ZLA(2) informing the claimant of an intended application for a revocation decision to be made by the Board under section 37ZLA(1); and
 - (f) a copy of the claimant’s objection notice (if any) referred to in section 37ZLA(2)(b).”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 14(1), by deleting everything after “送達” and before “的副本” and substituting “載有處長將會在聆訊中倚據的所有文件的文件冊(包括將會作出的陳述)，且須將該文件冊”.
- 12 In the proposed Schedule 1A, in section 18, in the heading, by adding “**in an appeal under section 37ZP**” after “**Board**”.
- 12 In the proposed Schedule 1A, in section 18(1), by adding “under

section 37ZP” after “an appeal”.

12 In the proposed Schedule 1A, in section 18(2)(a), by deleting “or”.

12 In the proposed Schedule 1A, in the Chinese text, in section 18(2)(b), by deleting “按理並不可” and substituting “並非可在合理情況下”.

12 In the proposed Schedule 1A, in section 18(2)(b), by deleting “made.” and substituting “made; or”.

12 In the proposed Schedule 1A, in section 18(2), by adding —
“(c) the Board is satisfied that exceptional circumstances exist that justify the consideration of the evidence.”.

12 In the proposed Schedule 1A, by deleting section 18(3).

12 In the proposed Schedule 1A, by adding —

“19A. Evidence considered by Appeal Board in an application for revocation decision

In an application for a revocation decision under section 37ZLA, the Appeal Board—

- (a) has the power to review the merits of the case; and
- (b) may consider any evidence that the Board considers relevant.

19B. Evidence on oath etc.

For the purposes of sections 18 and 19A of this Schedule, the Appeal Board may—

- (a) administer oaths and affirmations;
- (b) receive and consider any material by way of oral evidence (on oath or otherwise) or written statements or documents (by affidavit or otherwise).”.

- 12 In the proposed Schedule 1A, in section 21, by adding—
- “(1A) On an application for a revocation decision under section 37ZLA, the Appeal Board may allow or refuse the application.”.
- 13 In the proposed Schedule 4, by deleting “**Schedule 4**” and substituting—
- “Schedule 4** [s. 37ZX]”.
- 13 In the proposed Schedule 4, in the Chinese text, by deleting section 2(4)(a) and substituting—
- “(a) 須視為符合以下說明的酷刑聲請：該酷刑聲請遭根據第37ZI(1)(b)條作出的決定駁回，而該決定獲上訴委員會確認；及”.
- 13 In the proposed Schedule 4, in the Chinese text, in section 7, by deleting “就視為根據本附表提出及繼續的酷刑聲請” and substituting “就根據本附表視為酷刑聲請並得以繼續”.
- 13 In the proposed Schedule 4, in Table of Transitional Provisions, in item 10, by deleting “37ZL” and substituting “37ZLA”.
- 14 In the proposed Form No. 8, by deleting “36(1A)” (wherever appearing) and substituting “36(1)”.

37U. Interpretation of Part VIIC

revocation decision (撤銷決定) means—

- (a) a decision made by an immigration officer under section 37ZL(1); or
- (b) a decision made by the Appeal Board under section 37ZLA(1).

substantiated claim (已確立聲請) means a torture claim—

- (a) that is accepted as substantiated under section 37ZI(1)(a) and in respect of which no revocation decision has been made by an immigration officer; or
- (b) in respect of which—
 - (i) a decision rejecting the claim under section 37ZI(1)(b) was made but reversed on appeal to the Appeal Board and no revocation decision has been made by the Appeal Board; or
 - (ii) a revocation decision was made by an immigration officer but reversed on appeal to the Appeal Board;

37V. When torture claim is finally determined

- (1) Subject to subsections (2), (3), ~~and (4)~~ and (5), a torture claim is finally determined once a decision on the claim is made by an immigration officer under section 37ZI.
- (2) For a torture claim rejected by a decision under section 37ZI(1)(b), the claim is finally determined—
 - (a) when the period within which an appeal may be lodged against the decision has expired (if an appeal against the decision has not been lodged within that period); or
 - (b) when the appeal has been disposed of (if an appeal has been lodged against the decision).
- (3) If a revocation decision is made by an immigration officer in respect of a substantiated claim, the claim must, on and from the making of that decision, be treated as not yet finally determined.
- (4) For a torture claim covered by subsection (3), the claim is finally determined—
 - (a) when the period within which an appeal may be lodged against the revocation decision has expired (if an appeal against the revocation decision has not been lodged within that period); or
 - (b) when the appeal has been disposed of (if an appeal has been lodged against the revocation decision).
- (5) If a revocation decision is made by the Appeal Board in respect of a substantiated claim, the claim must be treated as finally determined on the making of that decision.

37ZB. Power to require information etc.

- (1) After a completed torture claim form is returned by a claimant, an immigration officer ~~may~~—
 - (a) may require the claimant to provide the immigration officer with any information or documentary evidence related to the claimant's torture claim that the immigration officer specifies; ~~or~~and
 - (b) must require the claimant to attend an interview to provide information and answer questions relating to the claimant's torture claim.
- (2) Information or documentary evidence required to be provided to an immigration officer under subsection (1)(a) must be provided within the time specified by the immigration officer.

37ZE. Withdrawal of torture claim by claimant

- (1) A claimant may, before a torture claim is decided under section 37ZI, withdraw the claim by notifying an immigration officer in writing.
- (2) Subject to section 37ZF(3), a torture claim that has been withdrawn under subsection (1) 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—
 - (i) could not reasonably have been foreseen by the person when the person gave the notification under subsection (1); and
 - (ii) 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.
- (3) If an immigration officer decides to re-open a person's torture claim under subsection (2), the immigration officer must, by written notice, inform the person of the decision.
- (4) If an immigration officer decides not to re-open the person's torture claim, the immigration officer must, by written notice, inform the person of—
 - (a) the decision; ~~and~~
 - (b) the reasons for the decision; and
 - (c) the person's right under section 37ZP to appeal against the decision.
- (5) If a torture claim is re-opened under subsection (2), subject to subsections (6) and (7), processing of the claim is to continue in accordance with this Part as if the claim had not been withdrawn.
- (6) If the period for returning a completed torture claim form in respect of a torture claim under section 37Y(2) has not expired at the time the claim is withdrawn under subsection (1), section

37Y(2) applies to the claim as if for paragraph (a) of that section there were substituted—

“(a) within the period of 28 days after the notice under section 37ZE(3) is given to the claimant; or”.

- (7) If a completed torture claim form in respect of the torture claim is not returned in accordance with section 37Y(2) as read with subsection (6), the claim is to be treated as withdrawn under section 37ZG(1)—
 - (a) on the expiry of the 28-day period; or
 - (b) if a further period is allowed under section 37Y(3), on the expiry of the further period.

37ZG. Deemed withdrawal of torture claim on failure to return completed torture claim form

- (1) A torture claim must be treated as withdrawn if the person who made the claim fails to return a completed torture claim form as required under section 37Y(2).
- (2) An immigration officer must give the person who made the claim a written notice stating that—
 - (a) the torture claim is treated as withdrawn under subsection (1); and
 - (b) the person may apply to re-open the claim under subsection (3).
- (3) A torture claim treated as withdrawn under subsection (1) may be re-opened if the person who made the claim provides sufficient evidence in writing to satisfy an immigration officer that due to circumstances beyond the person’s control, the person had not been able to return a completed torture claim form as required under section 37Y(2).
- (4) If an immigration officer decides to re-open a person’s torture claim under subsection (3), the immigration officer must, by written notice, inform the person—
 - (a) of the decision; and
 - (b) that the person is required to return a completed torture claim form in respect of the claim to an immigration officer at an address specified in the form within 14 days after the notice is given.
- (5) If an immigration officer decides not to re-open the person’s torture claim, the immigration officer must, by written notice, inform the person of—
 - (a) the decision; ~~and~~
 - (b) the reasons for the decision; ~~and~~
 - (c) the person’s right under section 37ZP to appeal against the decision.
- (6) If a torture claim is re-opened under subsection (3), subject to subsections (7) and (8), processing of the claim is to continue in accordance with this Part as if the claim had not been withdrawn.
- (7) Section 37Y(2) applies to the torture claim as if for paragraph (a) of that section there were substituted—

- “(a) within the period of 14 days after the notice under section 37ZG(4) is given to the claimant; or”.
- (8) If a completed torture claim form in respect of the torture claim is not returned in accordance with section 37Y(2) as read with subsection (7), the claim is to be treated as withdrawn under subsection (1)—
- (a) on the expiry of the 14-day period; or
 - (b) if a further period is allowed under section 37Y(3), on the expiry of the further period.

37ZI. Decision on torture claim

- (1) Unless a torture claim is withdrawn, an immigration officer is to decide whether to—
 - (a) accept the claim as substantiated; or
 - (b) reject the claim.
- (2) A decision may be made under subsection (1) even if the claimant fails to attend an interview scheduled by an immigration officer under section 37ZB(1)(b) or otherwise fails to proceed with the claim in accordance with this Part.
- (3) A torture claim must be accepted as substantiated if there are substantial grounds for believing that the claimant would be in danger of being subjected to torture if the claimant were removed or surrendered to a torture risk State.
- (4) A torture claim must be rejected in the absence of the substantial grounds for belief referred to in subsection (3).
- ~~(5) Without limiting subsection (4), if a claimant would be in danger of being subjected to torture in a particular region in the torture risk State but would not be in danger of being subjected to torture in another region in that State, then, in so far as removal of the claimant to that other region is concerned, it must be taken that the claimant would not be in danger of being subjected to torture in that State and the torture claim must be rejected accordingly.~~
- (5) In determining whether there are substantial grounds for the belief referred to in subsection (3), all relevant considerations are to be taken into account, including, where applicable, the following matters in relation to the conditions in the torture risk State—
 - (a) whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the torture risk State; and
 - (b) whether there is any region within the torture risk State in which the claimant would not be in danger of being subjected to torture.

37ZL. Revocation of immigration officer's decision to accept torture claim-etc.

- (1) An immigration officer may, on a ground for a revocation decision specified in ~~subsection (2)~~section 37ZLB, revoke—

- ~~— (a) a decision made by an immigration officer under section 37ZI(1)(a) accepting a torture claim as substantiated; or~~
- ~~— (b) a decision made by the Appeal Board under section 21(1) of Schedule 1A reversing a decision made by an immigration officer under section 37ZI(1)(b) rejecting a torture claim.~~
- ~~— (2) Any of the following paragraphs is a ground mentioned in subsection (1) —~~
 - ~~— (a) any information or documentary 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) information was not disclosed to an immigration officer or (on an appeal) the Appeal Board and the undisclosed information would undermine, to a material extent, the merits of the claim;~~
 - ~~— (c) the torture risk giving rise to the claim has ceased to exist due to changes in circumstances of the claimant or the torture risk State.~~
- (3) An immigration officer must give the claimant written notice of a proposed revocation, and the notice must—
 - (a) state the reasons for the proposed revocation; and
 - (b) state that the claimant may, within 14 days after the notice is given, inform the immigration officer by written notice of the claimant’s objection to the proposed revocation and the reasons for the objection (*objection notice*).
- (4) If—
 - (a) the claimant has not given an objection notice in accordance with subsection (3)(b) and an immigration officer decides to make a revocation decision under subsection (1)~~(a) or (b)~~; or
 - (b) after having considered the claimant’s objection notice, an immigration officer decides to make a revocation decision under subsection (1)~~(a) or (b)~~,
 the immigration officer must give the claimant written notice of the revocation decision, reasons for the revocation decision and the claimant’s right under section 37ZP to appeal against the revocation decision.
- ~~— (5) A revocation decision takes effect once an immigration officer has given the claimant a written notice under subsection (4).~~

(New)

37ZLA. Revocation of Appeal Board’s decision to reverse decision rejecting torture claim

- ~~— (1) On an application made by an immigration officer, the Appeal Board may, on a ground for a revocation decision specified in section 37ZLB, revoke its decision that reversed a decision made by an immigration officer under section 37ZI(1)(b) rejecting a torture claim.~~

- (2) Before making an application under subsection (1), an immigration officer must give the claimant written notice of the intended application, and the notice must—
- (a) state the reasons for the intended application; and
 - (b) state that the claimant may, within 14 days after the notice is given, inform the immigration officer by written notice of the claimant’s objection to the intended application and the reasons for the objection (*objection notice*).
- (3) If—
- (a) the claimant has not given an objection notice in accordance with subsection (2)(b) and an immigration officer decides to make an application under subsection (1); or
 - (b) after having considered the claimant’s objection notice, an immigration officer decides to make an application under subsection (1),
the immigration officer must make the application by filing with the Appeal Board a notice of application in a form specified by the Chairperson of the Appeal Board.
- (4) As soon as practicable after the filing of a notice of application, an immigration officer must serve on the claimant a copy of the notice of application.

(New)

37ZLB. Grounds for revocation decision

A ground specified in any of the following paragraphs is a ground for a revocation decision mentioned in section 37ZL(1) or 37ZLA(1)—

- (a) any information or documentary 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) information was not disclosed to an immigration officer or (on an appeal) the Appeal Board and the undisclosed information would undermine, to a material extent, the merits of the claim;
- (c) the torture risk giving rise to the claim has ceased to exist due to changes in circumstances of the claimant or the torture risk State.

37ZO. Appeal Board established

- (1) A board to be known as the “Torture Claims Appeal Board” is established.
- (2) The function of the Appeal Board is to hear and determine—
 - (a) an appeal made under section 37ZP; and
 - (b) an application for a revocation decision under section 37ZLA.

37ZP. Appeal

A person aggrieved by a decision of an immigration officer may appeal to the Appeal Board if the decision is made in respect of the person under—

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

(New)

37ZX. Transitional and Savings Provisions

Schedule 4 provides for the transitional and savings arrangements that apply on, or relate to, the commencement of the Immigration (Amendment) Ordinance 2012 (of 2012).

12. **Schedule 1A - Torture Claims Appeal Board**

“Schedule 1A [ss. 37U, ~~37ZL~~
& 37ZS & Sc
h. 4]

Torture Claims Appeal Board

1. Interpretation

(1) In this Schedule—

appeal () means—

(a) an appeal made under section 37ZP; or

(b) an application for a revocation decision under section 37ZLA.

member (委員) means a member of the Torture Claims Appeal Board established by section 37ZO.

(2) An expression used in this Schedule has the same meaning as is given to it in section 37U.

(3) In this Schedule, a reference to Part VIIC includes this Schedule and any subsidiary legislation made under section 37ZU.

2. Appointment of members

(1) The Appeal Board comprises the following members appointed by the Chief Executive—

(a) a Chairperson;

(b) at least one Deputy Chairperson; and

(c) a panel of persons whom the Chief Executive considers suitable for selection under section 6 of this Schedule for hearing and determining an appeal.

(2) The Chief Executive may appoint a person as a member if—

(a) the person was formerly a judge or magistrate;

(b) the person is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or a common law jurisdiction having unlimited jurisdiction either in civil or criminal matters, and has so practised for a period of or periods totalling not less than 5 years; or

(c) the person, in the opinion of the Chief Executive, is suitably qualified to be a member.

(3) Each appointment is for a term of not more than 3 years and a member may be re-appointed at the end of a term.

(4) An appointment of a member is to be published in the Gazette.

(5) If a person ceases to be a member at a time when the person is involved in the hearing or determination of an appeal ~~under section 37ZP~~, the person may continue to be involved in the appeal as if the person were a member until the appeal is disposed of.

- (6) A member may be paid remuneration and allowances at any rates determined by the Chief Executive.

8. Notice of Appeal be served on Director

- (1) Subject to subsection (2), the Appeal Board must, as soon as practicable after receiving a notice of appeal filed under section 37ZQ(1), serve a copy of the notice on the Director.
- (2) If a notice of appeal under section 37ZQ(1) is filed out of time, the Appeal Board is required to serve a copy of the notice on the Director only if it decides to allow late filing of the notice under section 37ZR(3), and in that event, the Board must serve the notice on the Director as soon as practicable after the decision is made.

9. Director to provide facts

- (1) The Director must, as soon as practicable after receiving a copy of a notice of appeal served under section 8 of this Schedule, provide to the Appeal Board and the person who has lodged the appeal—
- (a) if the decision being appealed against is a decision under section 37ZI(1)(b) rejecting a torture claim—
- (i) a copy of the completed torture claim form relating to the torture claim in respect of which the decision was made; and
- (ii) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the torture claim; ~~or~~
- (b) if the decision being appealed against is a revocation decision of an immigration officer under section 37ZL(1)—
- (i) a copy of the completed torture claim form relating to the torture claim in respect of which the decision was made;
- (ii) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the torture claim;
- (iii) a copy of the notice of the decision under section 37ZI(1)(a) accepting the torture claim as substantiated;
- (iv) a copy of the notice of proposed revocation of the torture claim given under section 37ZL(3); and
- (v) a copy of the claimant's objection notice (if any) referred to in section 37ZL(4)(b);
- (c) if the decision being appealed against is a decision under section 37ZE(4) not to re-open a torture claim withdrawn by the person who made the claim—
- (i) a copy of any completed torture claim form relating to the torture claim;

- (ii) a copy of the written record of any interview of the person conducted by an immigration officer in considering the torture claim;
 - (iii) a copy of the person's notice withdrawing the claim; and
 - (iv) a copy of any evidence in writing provided by the person under section 37ZE(2); or
 - (d) if the decision being appealed against is a decision under section 37ZG(5) not to re-open a torture claim treated as withdrawn on a person's failure to return a completed torture claim form—
 - (i) a copy of the written notice under section 37ZG(2) informing the person that the claim is treated as withdrawn; and
 - (ii) a copy of any evidence in writing provided by the person under section 37ZG(3).
- (2) The Director must, as soon as practicable after filing with the Appeal Board a notice of application for a revocation decision under section 37ZLA(3), provide to the Appeal Board and the claimant—
- (a) a copy of the completed torture claim form relating to the torture 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;
 - (c) a copy of the written notice under section 37ZJ(1) informing the claimant of an immigration officer's decision rejecting the torture claim;
 - (d) a copy of the written decision given under section 21(2) of this Schedule reversing an immigration officer's decision rejecting the torture claim;
 - (e) a copy of the written notice under section 37ZLA(2) informing the claimant of an intended application for a revocation decision to be made by the Board under section 37ZLA(1); and
 - (f) a copy of the claimant's objection notice (if any) referred to in section 37ZLA(2)(b).

18. Evidence considered by Appeal Board in an appeal under section 37ZP

- (1) In an appeal under section 37ZP, the Appeal Board has the power to review the merits of the case, and accordingly it may consider—
 - (a) the same evidence that was before an immigration officer; and
 - (b) if subsection (2) applies, evidence that was not before an immigration officer.
- (2) The Appeal Board may consider evidence that was not before an immigration officer if—
 - (a) the evidence relates to matters that have occurred after the decision being appealed against was made; ~~or~~

(b) the evidence was not reasonably available before the decision being appealed against was made; or

(c) the Board is satisfied that exceptional circumstances exist that justify the consideration of the evidence.

~~(3) For the purposes of subsections (1) and (2), the Appeal Board may—~~

~~(a) administer oaths and affirmations;~~

~~(b) receive and consider any material by way of oral evidence (on oath or otherwise) or written statements or documents (by affidavit or otherwise).~~

19. Notice of new evidence

(1) A party to an appeal who wishes to present any evidence under section 18(2) of this Schedule at a hearing must—

(a) file with the Appeal Board a written notice to that effect; and

(b) serve a copy of the notice on the other party.

(2) The notice must—

(a) indicate the nature of the evidence; and

(b) explain why the evidence was not before an immigration officer before the decision being appealed against was made.

19A. Evidence considered by Appeal Board in an application for revocation decision

In an application for a revocation decision under section 37ZLA, the Appeal Board—

(a) has the power to review the merits of the case; and

(b) may consider any evidence that the Board considers relevant.

19B. Evidence on oath etc.

For the purposes of sections 18 and 19A of this Schedule, the Appeal Board may—

(a) administer oaths and affirmations;

(b) receive and consider any material by way of oral evidence (on oath or otherwise) or written statements or documents (by affidavit or otherwise).

21. Appeal Board's decision

(1) On an appeal against a decision referred to in section 37ZP, the Appeal Board may confirm or reverse the decision.

(1A) On an application for a revocation decision under section 37ZLA, the Appeal Board may allow or refuse the application.

(2) The Appeal Board must give its decision with reasons in writing.

(3) The Appeal Board's decision is final.

13. **Schedule 4** — ~~Transitional and Savings Provisions in respect of Immigration (Amendment) Ordinance 2011 (Torture Claims)~~

“Schedule 4

[s. 37ZX]

Transitional and Savings Provisions in respect of Immigration (Amendment) Ordinance 2011 (Torture Claims)

Table of Transitional Provisions

10.	Non-refoulement claim has been determined by an adjudicator as an established claim and, by virtue of the determination, the person making the claim has not been removed from Hong Kong	Part A The established claim is taken to be a substantiated claim within the meaning of paragraph (b) of the definition of <i>substantiated claim</i> in section 37U(1) and, without limiting section 2(1) of this Schedule, section 37ZL ^A applies accordingly
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14. Form No. 8

“FORM NO. 8

IMMIGRATION ORDINANCE

(Chapter 115)

Section 36(1A)

RECOGNIZANCE

(1)
of
*is detained under section 27, 32, 34 or 37ZK of the
Immigration Ordinance:
*is liable to be detained under section 27, 32, 34 or 37ZK of
the Immigration Ordinance and is not now so detained:

Now—

(1)
*(2) of; and
*(3) of

hereby acknowledges/acknowledge that he/she/they severally will
pay to the Government the following sum/sums—

(1) the sum of \$.....
*(2) the sum of \$.....
*(3) the sum of \$.....

if (1) fails to
comply with the *following condition/*any of the following
conditions—

(a) report to—

(i)* the duty officer
Police Station on every
between the hours of
and
(ii)* the duty officer

Immigration Department on every
between the hours of
and
commencing
until this recognizance ceases to have effect.

†[(b) etc.]

Signed by—

(1)

* (2)

* (3)

on the day of
20..... in the presence
of

.....

Signature

* Delete where inappropriate.

(i) complete in case of police recognizance.

(ii) complete in case of Immigration Department recognizance.

† Set out any other condition(s) imposed under section 36(1A) of
the Immigration Ordinance.”