

L.N. 39 of 2023

Immigration (Advance Passenger Information) Regulation

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Immigration (Advance Passenger Information) Regulation

(Made by the Secretary for Security under section 6A of the Immigration Ordinance (Cap. 115))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

In this Regulation—

aircraft information (飛機資料), in relation to a traveller of an aircraft, means the information specified in section 5(3) relating to the aircraft;

API data (預報乘客資料), in relation to a traveller, means—

- (a) the following information set out in the traveller's specified travel document—
 - (i) the traveller's family name and given name;
 - (ii) the traveller's date of birth;
 - (iii) the traveller's gender;
 - (iv) the traveller's nationality;
 - (v) the type of the specified travel document;
 - (vi) the number of that travel document;
 - (vii) the expiry date of that travel document; and

(viii) the issuing state, place or organization of that travel document; and

(b) the traveller's status (whether the traveller is a passenger or a member of the crew of an aircraft and whether the traveller is in transit);

designated system (指定系統) means any system or means designated by the Director under section 8;

direction (指示) means a direction issued by the Director under section 6;

Hong Kong Identity Card (香港身分證) means an identity card as defined by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);

Mainland Travel Permit for Hong Kong and Macao Residents (港澳居民來往內地通行證) means a travel permit issued by the Central People's Government of the People's Republic of China to its holder for the purpose of travelling to and from the Mainland;

operator (經營人), in relation to an aircraft, means the person having the management of the aircraft for the time being or, in relation to a time, at that time;

specified travel document (指明旅行證件) means—

- (a) a valid travel document;
- (b) a Hong Kong Identity Card; or
- (c) a Mainland Travel Permit for Hong Kong and Macao Residents;

traveller (旅客) means a passenger or a member of the crew of an aircraft.

3. Application

This Regulation applies to a civil aircraft that carries a traveller who—

- (a) is to land in Hong Kong from a place outside Hong Kong; or
- (b) is to transit through Hong Kong and land in a place outside Hong Kong.

4. Exemptions

The Director may, by notice in writing, exempt an operator of an aircraft from any of the requirements of this Regulation in respect of the aircraft or a traveller of the aircraft by reason of an emergency, accident, or any other special circumstances.

Part 2

Advance Passenger Information and Boarding Directions

- 5. Supply of API data and aircraft information etc. through designated system**
- (1) The operator of an aircraft must, no later than the time specified in section 7, supply to the Director through a designated system—
 - (a) the API data relating to each of the passengers of the aircraft together with the aircraft information simultaneously; and
 - (b) the API data relating to each of the members of the crew of the aircraft together with the aircraft information simultaneously.
 - (2) The operator of the aircraft must, after the departure of the aircraft from the last port of embarkation but within the time specified in section 7, supply to the Director through a designated system a consolidated list of—
 - (a) the API data relating to all passengers on board the aircraft;
 - (b) the API data relating to all members of the crew on board the aircraft; and
 - (c) the total number of passengers and members of the crew on board the aircraft.
 - (3) The aircraft information are—
 - (a) the flight number of the aircraft;

- (b) the scheduled date and time of departure of the aircraft from the last port of embarkation to Hong Kong;
- (c) the scheduled date and time of arrival of the aircraft in Hong Kong; and
- (d) the last port of embarkation before the aircraft arrives in Hong Kong.

6. Operator of aircraft to comply with Director's directions

- (1) On receipt of the API data relating to a traveller of an aircraft together with the aircraft information under section 5(1), the Director must, as soon as possible but no later than the time of departure of the aircraft, issue either one of the following directions in relation to the traveller to the operator of the aircraft through a designated system—
 - (a) a direction that the traveller is allowed to board the aircraft (known as “board direction”);
 - (b) a direction that the traveller is not allowed to board the aircraft (known as “no-board direction”).
- (2) The operator of the aircraft must not allow a traveller to board the aircraft unless a board direction has been issued in relation to the traveller to the operator.

7. Specified time for supplying API data and aircraft information etc.

- (1) The time specified for the purposes of section 5(1)(a) is—
 - (a) for an aircraft (except a helicopter)—40 minutes before the time of its departure for Hong Kong; and
 - (b) for a helicopter—10 minutes before the time of its departure for Hong Kong.

- (2) The time specified for the purposes of section 5(1)(b) is—
 - (a) for an aircraft (except a helicopter)—60 minutes before the time of its departure for Hong Kong; and
 - (b) for a helicopter—60 minutes before the time of its departure for Hong Kong.
 - (3) The time specified for the purposes of section 5(2) is—
 - (a) for an aircraft (except a helicopter)—30 minutes after the time of its departure for Hong Kong; and
 - (b) for a helicopter—10 minutes after the time of its departure for Hong Kong.
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Part 3

Designation of Systems and Refusal of Entry

8. Director is to designate systems

The Director must designate at least one system or means—

- (a) for the transmission and collection of the data and information under section 5; and
- (b) for the issuance of a direction.

9. Board direction does not validate invalid specified travel document

To avoid doubt, if a specified travel document held by a traveller of an aircraft is invalid, a board direction issued in relation to the traveller under section 6(1)(a) does not validate the travel document.

10. Immigration officer has power to refuse entry

To avoid doubt—

- (a) a board direction issued in relation to a traveller under section 6(1)(a) does not constitute a permission for the traveller to land or remain in Hong Kong under section 11(1) or (1A) of the Ordinance; and
- (b) an immigration officer may refuse to give permission for the traveller to land or remain in Hong Kong under section 11(1) or (1A) of the Ordinance.

11. No obligation to give reasons for no-board direction

The Director is not obliged to give any reason for his or her decision to issue a no-board direction in relation to a traveller under section 6(1)(b).

Part 4

Offences and Defences

- 12. Failure to supply API data or aircraft information etc.**
- (1) If section 5(1) or (2) is contravened, the operator of the aircraft concerned commits an offence.
 - (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6.
- 13. Supply of misleading or inaccurate API data or aircraft information etc.**
- (1) The operator of an aircraft must ensure that the data or information supplied to the Director under section 5(1) or (2) is not misleading or inaccurate in a material particular.
 - (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6.
- 14. Failure to act in accordance with directions issued by Director**
- (1) If section 6(2) is contravened, the operator of the aircraft concerned commits an offence.
 - (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6.
- 15. Act done or omission made outside Hong Kong**
- For the purposes of sections 12, 13 and 14, an alleged act done or omission that is made in relation to the contravention as specified in those sections includes the act done or omission that is made, wholly or partly, outside Hong Kong.

16. Defence

- (1) It is a defence for a person charged with an offence under section 12, 13 or 14 to establish that, at the time of the alleged offence, the person had reasonable excuse for the contravention.
 - (2) A person is taken to have established the reasonable excuse for the contravention if—
 - (a) there is sufficient evidence to raise an issue with respect to the reasonable excuse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
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Part 5

Miscellaneous Provisions

17. Service of documents

If the operator of an aircraft—

- (a) has neither a registered office nor a place of business in Hong Kong; and
- (b) has appointed an agent who has a place of business in Hong Kong,

any documents required to be served on the operator in relation to a proceeding for an offence under section 12, 13 or 14 may be served on the agent at its place of business in Hong Kong, and the service on the agent is taken to be service of the documents on the operator.

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Acting Secretary for Security

20 March 2023

Explanatory Note

The International Civil Aviation Organization adopted amendments to Annex 9 (Facilitation) to the Convention on International Civil Aviation on 16 June 2017 and the amendments apply to Hong Kong from 23 February 2018. The amendments introduced, amongst others, a new requirement for Contracting States to establish the Advance Passenger Information (*API*) system. The API system refers to an electronic communications system whereby certain travellers' data and information are collected and transmitted to the border control agency prior to or after flight departure.

2. This Regulation provides for the legal framework for the implementation of the API system in Hong Kong. The Regulation contains 5 Parts.

Part 1—Preliminary

3. Section 1 provides for the commencement of the Regulation, and section 2 sets out the definitions used in the Regulation.
4. Section 3 provides that the Regulation applies to a civil aircraft that carries travellers who are to land in Hong Kong from a place outside Hong Kong or transit through Hong Kong and land in a place outside Hong Kong.
5. Section 4 provides for the power of the Director as defined by section 2(1) of the Immigration Ordinance (Cap. 115) (*Director*) to exempt an operator of an aircraft from any of the requirements of the Regulation in respect of the aircraft or a traveller of the aircraft.

Part 2—Advance Passenger Information and Boarding Directions

6. Section 5 imposes an obligation on the operator of an aircraft to supply the API data relating to all the travellers of the aircraft and the related aircraft information to the Director through a designated system no later than the time specified in section 7.
7. Section 6 requires the Director to issue a board direction or no-board direction as soon as possible after receiving the API data and aircraft information. The section also imposes an obligation on the operator of an aircraft not to allow a traveller to board the aircraft unless a board direction has been issued in relation to the traveller.
8. Section 7 specifies the time for supplying the API data and aircraft information etc. to the Director under section 5.

Part 3—Designation of Systems and Refusal of Entry

9. Section 8 empowers the Director to designate systems or means for transmitting and collecting the data and information under section 5 and for issuing the Director's directions under section 6.
10. Section 9 makes it clear that a Director's board direction does not validate an invalid specified travel document of a traveller.
11. Section 10 makes it clear that a board direction issued in relation to a traveller does not constitute a permission for the traveller to land or remain in Hong Kong, and an immigration officer may refuse the traveller to land or remain in Hong Kong.

12. Section 11 provides that the Director is not obliged to give any reason for issuing a no-board direction.

Part 4—Offences and Defences

13. Sections 12 to 14 prescribe the following offences—
- (a) failure to supply the API data or aircraft information etc. under section 5 (see section 12);
 - (b) failure to ensure that the data or information supplied under section 5 is not misleading or inaccurate in a material particular (see section 13);
 - (c) acting in contravention of section 6(2) (see section 14).
14. Section 15 makes it clear that an alleged act done or omission that is made in relation to the contravention specified in section 12, 13 or 14 includes the act done or omission that is made, wholly or partly, outside Hong Kong.
15. Section 16 provides that it is a defence for a person charged with an offence under section 12, 13 or 14 to establish that, at the time of the alleged offence, the person had reasonable excuse for the contravention concerned.

Part 5—Miscellaneous Provisions

16. Section 17 provides that under certain circumstances, the service of documents in relation to proceedings for an offence under section 12, 13 or 14 on a Hong Kong agent of the operator of an aircraft is taken to be service of the documents on the operator.