

Chapter:	115	Title:	IMMIGRATION ORDINANCE	Gazette Number:	L.N. 230 of 2009
Section:	2	Heading:	Interpretation	Version Date:	14/11/2009

Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3

(1) In this Ordinance, unless the context otherwise requires-

"adjudicator" (審裁員) means the chief adjudicator, deputy chief adjudicator and any other adjudicator appointed under section 53F; (Added 62 of 1980 s. 2. Amended 24 of 1984 s. 2)

"APEC business travel card" (亞太經合組織商務旅遊證) means a document-

(a) issued by-

(i) the Director of Immigration; or

(ii) the person-

(A) of a place outside Hong Kong which is-

(I) a member of the organization known as the Asia Pacific Economic Co-operation established in 1989; and

(II) recognized in writing by the Director of Immigration for the purposes of this definition; and

(B) who is, in relation to that place-

(I) equivalent to the Director of Immigration; or

(II) accepted in writing by the Director of Immigration as the person who may issue the document; and

(b) which enables the holder of the document-

(i) if the document is issued by the Director of Immigration, to go to the place referred to in paragraph (a)(ii)(A) without a visa;

(ii) if the document is issued by the person referred to in paragraph (a)(ii), to enter Hong Kong as a visitor without a visa; (Added 6 of 1999 s. 2)

"approved immigration anchorage" (入境船隻認可碇泊處) means a place designated as an approved immigration anchorage by order under section 60;

"approved landing place" (認可着陸地點) means a place designated as an approved landing place by order under section 60;

"Board" (委員會) means a Refugee Status Review Board established under section 13G; (Added 23 of 1989 s. 2)

"captain" (船長、機長) means master (of a ship) and commander (of an aircraft);

"certificate of entitlement" (居留權證明書) means a Certificate of Entitlement to the Right of Abode in the Hong Kong Special Administrative Region issued under section 2AB(6)(a) and includes a certified duplicate issued under section 2AC(6)(a); (Added 124 of 1997 s. 2)

"certificate of identity" (身分證明書) means a document, other than a document of identity, which is issued by the Director of Immigration for the purpose of international travel to a person who is not the holder of, and is unable to obtain, a valid travel document; (Added 66 of 1981 s. 2)

"child" (子女), for the purposes of Part IIIA, means a legitimate or legitimated child, a stepchild and a child adopted in a manner recognized by law; (Amended 122 of 1997 s. 2)

"Commissioner of Registration" (人事登記處處長) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Replaced 31 of 1987 s. 2)

"crew" (全體船員、全體機員), in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain, and "member of the crew" (船員、機員) shall be construed accordingly;

"deportation order" (遞解離境令) means an order under section 20;

"detention centre" (羈留中心) means any place designated under section 13H as a detention centre; (Added 53 of 1989 s. 2)

"detention warrant" (羈留令) means a warrant issued under section 29(1) or (2);

"Director" (處長) means the Director of Immigration, the Deputy Director of Immigration, any assistant director of immigration and any member of the Immigration Service of the rank of senior principal immigration officer; (Replaced 82 of 1993 s. 2)

"document of identity" (簽證身分書) means a document issued by the Director of Immigration for the purpose of visa endorsement to a person who is not the holder of, and is unable to obtain, a valid travel document; (Added 66 of 1981 s. 2)

"empowered" (獲賦權) means empowered by or under this Ordinance;

"entry permit" (入境證) means an entry permit issued under this Ordinance;

"examination" (訊問) includes a further examination under section 4(1), and

"examine" (訊問) shall be construed accordingly;

"HKSAR passport" (特區護照) means a Hong Kong Special Administrative Region Passport issued under section 3 of the Hong Kong Special Administrative Region Passports Ordinance (Cap 539); (Added 124 of 1997 s. 2. Amended 127 of 1997 s. 13)

"Hong Kong permanent resident" (香港永久性居民) means a person who belongs to a class or description of persons specified in Schedule 1; (Added 31 of 1987 s. 2)

"identity card" (身分證) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Replaced 31 of 1987 s. 2)

"immigrant" (入境者) means a person who is not a Hong Kong permanent resident; (Amended 31 of 1987 s. 2)

"immigration assistant" (入境事務助理員) means any member of the Immigration Service of the rank of chief immigration assistant, senior immigration assistant or immigration assistant; (Added 57 of 1972 s. 2. Amended 42 of 1979 s. 2; 65 of 1989 s. 2)

"immigration officer" (入境事務主任) means any member of the Immigration Service of or above the rank of assistant immigration officer;

"land" (入境) means-

- (a) enter by land or disembark from a ship or aircraft; and
- (b) in the case of a person who arrives in Hong Kong otherwise than by land or in a ship or aircraft, land in Hong Kong;

"limit of stay" (逗留期限) means a condition of stay limiting the period during which a person may remain in Hong Kong;

"owner" (擁有人) includes-

- (a) in relation to a ship or aircraft, any charterer to whom the ship or aircraft is demised;
- (b) in relation to a vehicle-
 - (i) any person in whose name the vehicle is registered under the Road Traffic Ordinance (Cap 374);
 - (ii) any person by whom the vehicle is kept and used; and
 - (iii) if it is the subject of a hiring agreement or hire purchase agreement, the person in possession of the vehicle under the agreement; (Replaced 61 of 1986 s. 2)

"passenger" (乘客) means any person carried in a ship or aircraft other than a member of the crew;

"permanent identity card" (永久性居民身分證) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Added 124 of 1997 s. 2)

"prescribed Central People's Government travel document" (訂明的中央人民政府旅行證件) means a travel permit issued by the Central People's Government which on its cover is called“因公往来香港澳门特别行政区通行证”and which bears an endorsement stating that“持证人系国家公职人员，受委派在香港、澳门特别行政区工作。”; (Added 31 of 2002 s. 2)

"re-entry permit" (回港證) means a re-entry permit issued under this Ordinance;

"refugee centre" (難民中心) means any place designated under section 13C as a refugee centre; (Added 35 of 1981 s. 2)

"registration officer" (登記主任) has the same meaning as it has in the Registration of Persons Ordinance (Cap 177); (Added 31 of 1987 s. 2)

"Registration of Persons Tribunal" (人事登記審裁處) means the Registration of Persons Tribunal established by section 3C of the Registration of Persons Ordinance (Cap 177); (Added 31 of 1987 s. 2)

"removal order" (遣送離境令) means an order under section 19(1);

"right of abode in Hong Kong" (香港居留權) means the right of abode in Hong Kong referred to in Part IA; (Added 31 of 1987 s. 2)

"serviceman" (軍人) means a person, not being locally engaged, who is a serving member of the Chinese People's Liberation Army; (Amended 2 of 2012 s. 3)

"ship" (船、船隻) includes a barge, a hovercraft and every other description of vessel; (Added 61 of 1979 s. 2. Amended 78 of 1982 s. 2)

"specified country" (指明國家) means a country or territory-

- (a) of which a person who is to be removed from Hong Kong is a national or a citizen;
- (b) in which that person has obtained a travel document;
- (c) in which that person embarked for Hong Kong; or
- (d) to which an immigration officer or immigration assistant has reason to believe that that person will be admitted; (Amended 15 of 1980 s. 10)

"travel document" (旅行證件) means a passport furnished with a photograph of the holder, or some other document establishing to the satisfaction of an immigration officer or immigration assistant the identity and nationality, domicile or place of permanent residence of the holder; (Amended 15 of 1980 s. 10; 31 of 1984 s. 2)

"travel pass" (旅遊通行證) means a document-

- (a) issued by the Director of Immigration to a person (other than a Hong Kong permanent resident) who-
 - (i) is not the holder of an identity card; or
 - (ii) is the holder of an identity card (other than a permanent identity card within the meaning of the Registration of Persons Ordinance (Cap 177)) which belongs to a class of identity cards, if any, specified in writing by the Director of Immigration for the purposes of this definition; and
- (b) which enables the holder of the document to enter Hong Kong as a visitor without a visa; (Added 6 of 1999 s. 2)

"Tribunal" (審裁處) means the Immigration Tribunal established by section 53F; (Added 62 of 1980 s. 2)

"valid travel document" (有效旅行證件) means-

- (a) a passport furnished with a photograph, or any other document establishing to the satisfaction of an immigration officer or immigration assistant the identity and nationality of the holder of the document and the domicile or place of permanent residence of the holder of the document, which-

- (i) indicates in specific or general terms that it is not invalid for Hong Kong;
 - (ii) indicates that it is still valid according to the laws of the country or territory by or on behalf of which it was issued;
 - (iii) allows its holder to return to the country or territory by or on behalf of which it was issued; and
 - (iv) complies with section 61; or
- (b) a document issued by or on behalf of a competent authority of any country or territory to its holder for the purpose of identification or travel, which-
- (i) establishes to the satisfaction of an immigration officer or immigration assistant the identity of its holder and the domicile or place of permanent residence of its holder;
 - (ii) indicates that it is still valid according to the laws of that country or territory;
 - (iii) allows its holder to return to that country or territory; and
 - (iv) complies with section 61; (Replaced 13 of 2009 s. 3)

"Vietnamese refugee" (越南難民) means a person who-

- (a) was previously resident in Vietnam; or (Amended 79 of 1982 s. 2)
- (aa) was born after 31 December 1982 and whose father or mother was previously resident in Vietnam; and (Added 79 of 1982 s. 2)
- (b) is permitted to remain in Hong Kong as a refugee pending his resettlement elsewhere; (Added 35 of 1981 s. 2)

"Vietnamese refugee card" (越南難民證) means a card of identity issued by the Director to a Vietnamese refugee. (Replaced 35 of 1981 s. 2)
(Amended 88 of 1997 s. 2)

(2) References in this Ordinance to landing in Hong Kong unlawfully are references to landing in or entering Hong Kong in contravention of this Ordinance, the repealed Immigration (Control and Offences) Ordinance or the repealed Immigrants Control Ordinance, and for the avoidance of doubt it is hereby declared that no person shall be held not to have landed unlawfully-

- (a) by reason only of any presumption, conclusive or rebuttable, that he cannot be guilty of an offence or is incapable of committing a crime; or
- (b) on the ground only that he is not guilty of an offence under subsection (1) of section 38 in respect of paragraph (a) of that subsection. (Amended 75 of 1981 s. 2)

(3) References in this Ordinance to an offence under this Ordinance include references to an offence under section 90(1) of the Criminal Procedure Ordinance

(Cap 221) where the arrestable offence which a person has committed is an offence under this Ordinance.

(4) For the purposes of this Ordinance, a person shall not be treated as ordinarily resident in Hong Kong-

(a) during any period in which he remains in Hong Kong- (Amended 122 of 1997 s. 2)

(i) with or without the authority of the Director, after landing unlawfully; or (Amended 122 of 1997 s. 2)

(ii) in contravention of any condition of stay; or (Amended 122 of 1997 s. 2)

(iii) as a refugee under section 13A; or (Added 42 of 1982 s. 2)

(iv) while detained in Hong Kong under section 13D; or (Added 23 of 1989 s. 2)

(v) while employed as a contract worker, who is from outside Hong Kong, under a Government importation of labour scheme; or (Added 122 of 1997 s. 2)

(vi) while employed as a domestic helper who is from outside Hong Kong; or (Added 122 of 1997 s. 2)

(vii) as a member of a consular post within the meaning of the Consular Relations Ordinance (Cap 557); or (Added 122 of 1997 s. 2. Amended 16 of 2000 s. 12)

(viii) as a member of the Hong Kong Garrison; or (Added 122 of 1997 s. 2)

(ix) as a holder of a prescribed Central People's Government travel document; or (Added 31 of 2002 s. 2)

(b) during any period, whether before or after the commencement of this Ordinance, of imprisonment or detention pursuant to the sentence or order of any court.

(5) Subsection (4)(a) does not apply to a person-

(a) who acquired the right of abode in Hong Kong before 1 July 1997; or

(b) who remains in Hong Kong with the authority of the Director during the period from 1 July 1990 to 30 June 1997 inclusive after landing unlawfully and whom the Director may exclude from the application of subsection (4)(a). (Added 122 of 1997 s. 2)

(6) For the purposes of this Ordinance, a person does not cease to be ordinarily resident in Hong Kong if he is temporarily absent from Hong Kong. The circumstances of the person and the absence are relevant in determining whether a person has ceased to be ordinarily resident in Hong Kong. The circumstances may

include-

- (a) the reason, duration and frequency of any absence from Hong Kong;
- (b) whether he has habitual residence in Hong Kong;
- (c) employment by a Hong Kong based company; and
- (d) the whereabouts of the principal members of his family (spouse and minor children). (Added 122 of 1997 s. 2)

(Amended 31 of 1987 s. 2)