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第 115 章附表 1A
第 1 條Schedule 1A
Section 1S1A-2
Cap. 115**附表 1A**

[第 37U 及 37ZU 條及附表 4]

酷刑聲請上訴委員會**1. 釋義**

(1) 在本附表中 ——

上訴 (appeal) 指 ——

- (a) 根據第 37ZR 條提出的上訴；或
- (b) 第 37ZM 條所指的要求撤銷決定的申請；

委員 (member) 指根據第 37ZQ 條設立的酷刑聲請上訴委員會的委員；(由 2021 年第 7 號第 25 條修訂)**聆訊通知** (notice of hearing) 指根據本附表第 13 條送達的、關於聆訊的日期、時間及地點的通知；(由 2021 年第 7 號第 25 條增補)**聲請人** (claimant) ——

- (a) 就根據第 37ZR 條提出的上訴而言，指提出該上訴的人；及
 - (b) 就根據第 37ZM 條提出的尋求撤銷決定的申請而言，指已根據該條第 (4) 款獲送達申請通知的人。(由 2021 年第 7 號第 25 條增補)
- (2) 本附表中使用的詞句的涵義，與第 37U 條給予該等詞句的涵義相同。
- (3) 在本附表中，凡提述第 VIIC 部，即包括本附表及根據第 37ZW 條訂立的任何附屬法例。

Schedule 1A

[ss. 37U & 37ZU & Sch. 4]

Torture Claims Appeal Board**1. Interpretation**

(1) In this Schedule—

appeal (上訴) means—

- (a) an appeal made under section 37ZR; or
- (b) an application for a revocation decision under section 37ZM;

claimant (聲請人)—

- (a) in relation to an appeal made under section 37ZR, means the person who has lodged the appeal; and
- (b) in relation to an application for a revocation decision under section 37ZM, means the person who has been served with a notice of application under subsection (4) of the section; (*Added 7 of 2021 s. 25*)

member (委員) means a member of the Torture Claims Appeal Board established by section 37ZQ; (*Amended 7 of 2021 s. 25*)**notice of hearing** (聆訊通知) means a notice of the date, time and place of a hearing served under section 13 of this Schedule. (*Added 7 of 2021 s. 25*)

- (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 37ZW.

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第 2 條Schedule 1A
Section 2S1A-4
Cap. 115**2. 委員的委任**

- (1) 上訴委員會由行政長官所委任的以下委員組成——
 - (a) 一名主席；
 - (b) 最少一名副主席；及
 - (c) 行政長官認為根據本附表第 6 條適合獲遴選以聆訊和裁定上訴的一組人。
- (2) 如任何人符合以下條件，行政長官可委任該人為委員——
 - (a) 該人以前是法官或裁判官；
 - (b) 該人有資格在香港或普通法司法管轄區的任何法院以大律師、律師或訟辯人身分執業，而該法院是在民事或刑事事宜上具有無限司法管轄權的，並曾在一段不少於 5 年（或多於一段合計不少於 5 年）的期間如此執業；或
 - (c) 行政長官認為該人具備合適資格擔任委員。
- (3) 每項委任的任期不得多於 3 年，委員在任期屆滿後，可獲再度委任。
- (4) 委員的委任須於憲報公布。
- (5) 如任何人停任委員，而在停任當時，該人正參與某上訴的聆訊或裁定，則該人可繼續參與審理該上訴，猶如該人是委員一樣，直至該上訴獲處理為止。
- (6) 委員可獲付酬金及津貼，金額由行政長官釐定。

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, 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.

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第 3 條Schedule 1A
Section 3S1A-6
Cap. 115**3. 辭職及撤銷委任**

- (1) 委員可藉給予行政長官書面通知而辭職。
- (2) 行政長官可基於以下理由，而以書面通知撤銷任何委員的委任——
 - (a) 該委員疏於職守、行為不當或破產；
 - (b) 該委員身體上或精神上無行為能力，以致不能執行委員的職能；或
 - (c) 任何其他充分因由。

4. 主席的角色

除主席的其他職能外，主席亦須負責作出切實可行的安排，以確保委員以有秩序及迅速的方式，執行委員職能。

5. 副主席暫代主席

- (1) 如主席在任何期間，因傷病、離開香港或其他因由，無法以主席身分行事，一名副主席須在該段期間內，代主席行事。
- (2) 如有多於一人獲委任為副主席，主席可指定其中任何一人在第 (1) 款所述的期間內，代主席行事。

5A. 轉授主席的權力及職能

- (1) 主席可將以下條文所訂的任何主席權力及職能，轉授予

3. Resignation and revocation of appointment

- (1) A member may resign by notice in writing to the Chief Executive.
- (2) The Chief Executive may by notice in writing revoke the appointment of a member on the ground of—
 - (a) neglect of duty, misconduct or bankruptcy;
 - (b) physical or mental incapacity that precludes the member from carrying out the member's functions; or
 - (c) any other sufficient cause.

4. Role of Chairperson

In addition to the Chairperson's other functions, the Chairperson is responsible for making any arrangements that are practicable to ensure that members discharge their functions in an orderly and expeditious manner.

5. Deputy Chairperson to act in place of Chairperson

- (1) If the Chairperson is unable to act as Chairperson for any period by reason of illness, absence from Hong Kong or any other cause, a Deputy Chairperson is to act in the place of the Chairperson for that period.
- (2) If 2 or more persons are appointed as Deputy Chairpersons, the Chairperson may designate any one of them to act on behalf of the Chairperson during the period mentioned in subsection (1).

5A. Delegation by Chairperson

- (1) The Chairperson may delegate to a Deputy Chairperson

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副主席 ——

- (a) 本附表第 6 條；
 - (b) 本附表第 7 條；
 - (c) 本附表第 16 條，但僅限於在其關乎在某特定個案中作出指示的範圍內。
- (2) 上述權力或職能的轉授，可受主席認為適當的條款及條件所規限。
- (3) 任何權力或職能的轉授，均可由主席撤銷。

*(由 2021 年第 7 號第 25 條增補)***6. 為每宗上訴組成上訴委員會**

- (1) 除第 (2) 款另有規定外，為聆訊和裁定每宗上訴，上訴委員會須由 1 名由主席為此目的而遴選的委員（不論該委員是否主席）組成。
- (2) 主席在顧及個別上訴的情況下，可選出 3 名委員聆訊和裁定該上訴。
- (3) 在根據第 (2) 款行使權力時，主席須在上述 3 名委員中，指定一位主持聆訊的委員。*(由 2021 年第 7 號第 25 條代替)*
- (4) 委員如在上訴中有直接或間接的利害關係，不得參與該上訴的聆訊和裁定。

7. 聆訊上訴的次序

- (1) 主席可決定概括地或在特定情況下聆訊或裁定上訴及事宜的次序。

any of the Chairperson's powers and functions under the following provisions—

- (a) section 6 of this Schedule;
 - (b) section 7 of this Schedule;
 - (c) section 16 of this Schedule (but only in so far as it relates to giving directions in a particular case).
- (2) A delegation may be subject to any terms and conditions that the Chairperson considers appropriate.
- (3) The Chairperson may revoke a delegation.

*(Added 7 of 2021 s. 25)***6. Composition of Appeal Board for purposes of appeal**

- (1) For hearing and determining an appeal, the Appeal Board is to consist of 1 member (who may or may not be the Chairperson) selected by the Chairperson for this purpose, except as provided in subsection (2).
- (2) Having regard to the circumstances of a particular appeal, the Chairperson may select 3 members to hear and determine the appeal.
- (3) In exercising the power under subsection (2), the Chairperson must nominate one of the 3 members to be the presiding member. *(Replaced 7 of 2021 s. 25)*
- (4) A member who has a direct or indirect interest in an appeal must not take part in the hearing and determination of the appeal.

7. Order in which appeals are to be heard

- (1) The Chairperson may decide the order in which appeals and matters are to be heard or determined generally or in any

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- (2) 任何人不得基於某上訴或事宜本應在早於或遲於任何其他上訴或事宜或類別的上訴或事宜的時間作出聆訊或裁定，而質疑對該上訴或事宜的決定。

8. 須向處長送達上訴通知

- (1) 除第 (2) 款另有規定外，上訴委員會在收到根據第 37ZS(1) 條送交存檔的上訴通知後，須在切實可行的範圍內，盡快向處長送達一份通知的副本。
- (2) 如第 37ZS(1) 條所指的上訴通知逾時送交存檔，則只有在上訴委員會根據第 37ZT(3) 條容許將該通知作逾時送交存檔的情況下，委員會才須向處長送達該通知的副本，而在該情況下，委員會須在作出上述決定後，在切實可行的範圍內，盡快向處長送達該通知。

9. 處長須提供事實

- (1) 處長須在收到根據本附表第 8 條送達的上訴通知的副本後，在切實可行的範圍內，盡快向上訴委員會及聲請人提供以下資料——(由 2021 年第 7 號第 25 條修訂)
- (a) 如上訴所針對的決定屬根據第 37ZI(1)(b) 條駁回酷刑聲請的決定——
- (i) 就該酷刑聲請(該決定是就該聲請作出的)而填妥的酷刑聲請表格的副本；及
- (ii) 在考慮該酷刑聲請時，入境事務主任與聲請人所進行的任何會面的書面紀錄的副本；
- (b) 如上訴所針對的決定屬入境事務主任根據第 37ZL(1) 條作出的撤銷決定——

particular circumstances.

- (2) No decision on an appeal or matter is to be called into question on the basis that the appeal or matter ought to have been heard or determined earlier or later than any other appeal or matter, or category of appeals or matters.

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 37ZS(1), serve a copy of the notice on the Director.
- (2) If a notice of appeal under section 37ZS(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 37ZT(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 claimant—(Amended 7 of 2021 s. 25)
- (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;

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- (i) 就酷刑聲請 (該決定是就該聲請作出的) 而填妥的酷刑聲請表格的副本;
- (ii) 在考慮該酷刑聲請時, 入境事務主任與聲請人所進行的任何會面的書面紀錄的副本;
- (iii) 根據第 37ZI(1)(a) 條接納該酷刑聲請為已確立聲請的決定的通知的副本;
- (iv) 根據第 37ZL(2) 條給予的建議撤銷該酷刑聲請的通知的副本; 及
- (v) 第 37ZL(3)(b) 條提述的聲請人的反對通知 (如有的話) 的副本;
- (c) 如上訴所針對的決定屬根據第 37ZE(4) 條作出的不重新啟動已被聲請人撤回的酷刑聲請的決定 —— (由 2021 年第 7 號第 25 條修訂)
 - (i) 任何就該酷刑聲請而填妥的酷刑聲請表格的副本;
 - (ii) 在考慮該酷刑聲請時, 入境事務主任與該聲請人進行的任何會面的書面紀錄的副本;
 - (iii) 該聲請人撤回該聲請的通知的副本; 及
 - (iv) 該聲請人根據第 37ZE(2) 條提供的任何書面證據的副本; 或 (由 2021 年第 7 號第 25 條修訂)
- (d) 如上訴所針對的決定屬根據第 37ZG(5) 條作出的不重新啟動酷刑聲請的決定 (該酷刑聲請是在該聲請人沒有交回已填妥的酷刑聲請表格的情況下, 視為已被撤回的) —— (由 2021 年第 7 號第 25 條修訂)
 - (i) 第 37ZG(2) 條所指的、告知該聲請人該聲請視為已被撤回的書面通知的副本; 及
 - (ii) 該聲請人根據第 37ZG(3) 條提供的任何書面證據的副本。 (由 2021 年第 7 號第 25 條修訂)

- (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(2); and
 - (v) a copy of the claimant's objection notice (if any) referred to in section 37ZL(3)(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 claimant— (*Amended 7 of 2021 s. 25*)
 - (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 claimant conducted by an immigration officer in considering the torture claim;
 - (iii) a copy of the claimant's notice withdrawing the claim; and
 - (iv) a copy of any evidence in writing provided by the claimant under section 37ZE(2); or (*Amended 7 of 2021 s. 25*)
- (d) if the decision being appealed against is a decision under section 37ZG(5) not to re-open a torture claim

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- (2) 處長須在根據第 37ZM(3) 條將撤銷決定的申請通知送交上訴委員會存檔後，在切實可行的範圍內，盡快向上訴委員會及有關聲請人提供以下資料的副本 ——
- (a) 就酷刑聲請 (有關申請是就該酷刑聲請提出的) 而填妥的酷刑聲請表格；
 - (b) 在考慮該酷刑聲請時，入境事務主任與聲請人所進行的任何會面的書面紀錄；
 - (c) 第 37ZJ(1) 條所指的、將入境事務主任駁回酷刑聲請的決定告知聲請人的書面通知；
 - (d) 根據本附表第 23(3) 條給予的、推翻入境事務主任駁回酷刑聲請的決定的書面決定；
 - (e) 第 37ZM(2) 條所指的、將提出申請要求上訴委員會作出撤銷決定的意向告知聲請人的書面通知；及
 - (f) 第 37ZM(2)(b) 條提述的聲請人的反對通知 (如有的話)。

treated as withdrawn on the claimant's failure to return a completed torture claim form— (*Amended 7 of 2021 s. 25*)

- (i) a copy of the written notice under section 37ZG(2) informing the claimant that the claim is treated as withdrawn; and
 - (ii) a copy of any evidence in writing provided by the claimant under section 37ZG(3). (*Amended 7 of 2021 s. 25*)
- (2) The Director must, as soon as practicable after filing with the Appeal Board a notice of application for a revocation decision under section 37ZM(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 23(3) of this Schedule reversing an immigration officer's decision rejecting the torture claim;
 - (e) a copy of the written notice under section 37ZM(2) informing the claimant of an intended application for a revocation decision to be made by the Board; and
 - (f) a copy of the claimant's objection notice (if any) referred to in section 37ZM(2)(b).

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Section 10S1A-16
Cap. 115**10. 以非公開形式進行聆訊**

除非上訴委員會指示以公開形式進行聆訊，否則聆訊須以非公開形式進行。

11. 法律程序所採用的語文

- (1) 在上訴委員會進行的法律程序可用中文或英文進行，或兼用中文及英文進行，視乎委員會認為何者屬適當而定。
- (2) 儘管有第 (1) 款的規定——
 - (a) 如上訴委員會合理地認為，某聲請人能理解某語文，並能以該語文溝通，則上訴委員會可指示該聲請人以該語文向上訴委員會陳詞；(由 2021 年第 7 號第 25 條代替)
 - (b) 如上訴委員會合理地認為，某證人能理解某語文，並能以該語文溝通，則上訴委員會可指示該證人，在上訴委員會進行的法律程序中，以該語文作證；及 (由 2021 年第 7 號第 25 條代替)
 - (c) 於在上訴委員會進行的法律程序中的法律代表，可使用中文或英文，或兼用中文及英文。

12. 不經聆訊而裁定上訴

如上訴委員會在顧及其席前的材料及提出的爭論點的性質後，信納可不經聆訊而公平地裁定某上訴，則可不經聆訊而裁定該上訴。

13. 聆訊通知**10. Hearing to be in private**

A hearing is to be held in private unless the Appeal Board directs that it be held in public.

11. Language of proceedings

- (1) The proceedings before the Appeal Board may be conducted in the English or Chinese language, or both, as the Board considers appropriate.
- (2) Despite subsection (1)—
 - (a) the Appeal Board may direct a claimant to address the Board in a language that the Board reasonably considers the claimant is able to understand and communicate in; (*Replaced 7 of 2021 s. 25*)
 - (b) the Appeal Board may direct a witness in proceedings before the Board to testify in a language that the Board reasonably considers the witness is able to understand and communicate in; and (*Replaced 7 of 2021 s. 25*)
 - (c) a legal representative in proceedings before the Appeal Board may use the English or Chinese language, or both.

12. Determination of appeal without a hearing

The Appeal Board may determine an appeal without a hearing if, having regard to the material before it and the nature of the issues raised, the Board is satisfied that the appeal can be justly determined without a hearing.

13. Notice of hearing

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- (1) 如上訴委員會決定舉行聆訊，則須在聆訊日期前不少於 28 日之前，向聆訊各方送達關於該聆訊的日期、時間及地點的通知。(由 2021 年第 7 號第 25 條修訂)
- (2) 儘管有第 (1) 款的規定，上訴委員會如認為在特定個案中屬適當，可向聆訊各方給予少於 28 日的通知，但無論如何，有關通知期不得少於 7 日。(由 2021 年第 7 號第 25 條增補)
- (3) 為免生疑問，本條不適用於——
 - (a) 根據本附表第 15(5) 條改期的聆訊；或
 - (b) 上訴的進一步聆訊。(由 2021 年第 7 號第 25 條增補)

13A. 處長出席聆訊

- (1) 除非聆訊通知要求處長出席聆訊，否則處長無需出席聆訊。
- (2) 如上訴委員會在顧及某上訴的特定情況後，認為處長出席該上訴的聆訊屬必要，則上訴委員會可藉聆訊通知，要求處長出席該聆訊。
- (3) 處長亦可主動出席聆訊。
- (4) 處長如有意主動出席聆訊，則須在切實可行的範圍內，盡快以書面將其意向通知上訴委員會及有關聲請人。
(由 2021 年第 7 號第 25 條增補)

14. 須向上訴委員會送達的文件

(由 2021 年第 7 號第 25 條修訂)

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Section 13AS1A-18
Cap. 115

- (1) If the Appeal Board decides to hold a hearing, the Board must, not less than 28 days before the date of hearing, serve on the parties notice of the date, time and place of the hearing. *(Amended 7 of 2021 s. 25)*
- (2) Despite subsection (1), the Appeal Board may give less than 28 days' notice to the parties if it considers appropriate to do so in a particular case, but in any event the notice period must not be less than 7 days. *(Added 7 of 2021 s. 25)*
- (3) To avoid doubt, this section does not apply to—
 - (a) a hearing that is rescheduled under section 15(5) of this Schedule; or
 - (b) a further hearing of an appeal. *(Added 7 of 2021 s. 25)*

13A. Director's attendance at hearing

- (1) The Director need not attend a hearing unless required to do so by a notice of hearing.
- (2) If, having regard to the particular circumstances of an appeal, the Appeal Board considers that the Director's attendance at the hearing of the appeal is necessary, the Board may, by the notice of hearing, require the Director to attend the hearing.
- (3) The Director may also attend a hearing on the Director's own initiative.
- (4) If the Director intends to attend a hearing on the Director's own initiative, the Director must notify the Appeal Board and the claimant in writing as soon as practicable of the intention.
(Added 7 of 2021 s. 25)

14. Documents to be served on Appeal Board*(Amended 7 of 2021 s. 25)*

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第 115 章附表 1A
第 15 條

- (1) 處長在收到聆訊通知後，須在切實可行的範圍內，盡快將關乎有關酷刑聲請的所有文件的文件冊，送達上訴委員會，並將該文件冊的副本送交有關聲請人。
- (2) 上訴委員會可要求任何一方向委員會存檔及送達以下文件，並將該等文件的副本抄送另一方——
 - (a) 在聆訊中將會提出的證據陳述，以及上訴委員會認為必需的、關乎有關上訴的其他資料或證據；及
 - (b) 該方希望傳召作供的證人的名單。
- (3) 第 (2) 款提述的陳述、資料、證據及名單，須在上訴委員會指明的期間內送交存檔和送達。(由 2021 年第 7 號第 25 條增補)

(由 2021 年第 7 號第 25 條修訂)

15. 聲請人缺席聆訊

- (1) 如聲請人(不論在聆訊中是否有法律代表擔任聲請人的代表)沒有親自出席有關聆訊，上訴委員會可在該聲請人缺席下，聆訊有關上訴。
- (2) 第 (1) 款提述的聲請人如欲上訴委員會就有關上訴定出另一聆訊日期，則須在有關聆訊的日期後的 3 個工作日內，向上訴委員會提交定出另一聆訊日期的書面要求。
- (3) 有關要求須載有該聲請人缺席有關聆訊的書面解釋，以及支持該解釋的所有可取用證據。
- (4) 在以下情況下，上訴委員會須藉根據本附表第 23(1) 條作出決定而就有關上訴進行裁定——
 - (a) 聲請人沒有根據第 (2) 款提出要求；或

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Section 15S1A-20
Cap. 115

- (1) The Director must, as soon as practicable after receiving a notice of hearing, serve on the Appeal Board, with a copy to the claimant, a bundle of all the documents relating to the torture claim concerned.
- (2) The Appeal Board may require a party to file and serve on the Board, with a copy to the other party—
 - (a) statements of evidence that will be called at the hearing together with other information or evidence relating to the appeal that the Board considers necessary; and
 - (b) a list of witnesses whom the party wishes to call to give evidence.
- (3) The statements, information, evidence and list referred to in subsection (2) must be filed and served within the period specified by the Appeal Board. (*Added 7 of 2021 s. 25*)

*(Amended 7 of 2021 s. 25)***15. Claimant's absence from hearing**

- (1) If a claimant does not attend a hearing in person, irrespective of whether the claimant is represented at the hearing by a legal representative, the Appeal Board may hear the appeal in the absence of the claimant.
- (2) If a claimant referred to in subsection (1) wishes the Appeal Board to fix another hearing date for the appeal, the claimant must, within 3 working days after the date of the hearing, submit a written request to the Appeal Board to fix another hearing date.
- (3) The request must contain a written explanation of the claimant's absence from the hearing together with all available evidence supporting the explanation.

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第 16 條

- (b) 聲請人根據第 (2) 款提出要求，而上訴委員會基於連同有關要求提交的書面解釋及支持的證據，並不信納——
- (i) 該聲請人曾作出一切應作出的努力，以出席有關聆訊；但
- (ii) 該聲請人由於其無法控制的情況，缺席有關聆訊。
- (5) 如上訴委員會基於連同有關要求提交的書面解釋及支持的證據，信納——
- (a) 該聲請人曾作出一切應作出的努力，以出席有關聆訊；但
- (b) 該聲請人由於其無法控制的情況，缺席有關聆訊，則上訴委員會可定出另一日期、時間及地點，聆訊有關上訴。

*(由 2021 年第 7 號第 25 條代替)***16. 主席可作出指示**

主席可就上訴委員會聆訊和裁定上訴的常規及程序，概括地或在特定個案中作出指示，但該指示須與第 VIIC 部相符。

17. 上訴委員會可決定本身的程序

在符合第 VIIC 部的規定及主席的指示下，上訴委員會可決定其本身的上訴聆訊程序。

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Section 16S1A-22
Cap. 115

- (4) The Appeal Board must proceed to determine the appeal by making a decision under section 23(1) of this Schedule if—
- (a) no request is made under subsection (2); or
- (b) where a request is made under subsection (2), the Board is not satisfied, on the basis of the written explanation and supporting evidence submitted with the request, that the claimant—
- (i) had exercised all due diligence to attend the hearing; but
- (ii) was absent from the hearing because of circumstances beyond the claimant's control.
- (5) The Appeal Board may fix another date, time and place for hearing the appeal if the Board is satisfied, on the basis of the written explanation and supporting evidence submitted with the request, that the claimant—
- (a) had exercised all due diligence to attend the hearing; but
- (b) was absent from the hearing because of circumstances beyond the claimant's control.

*(Replaced 7 of 2021 s. 25)***16. Chairperson may give directions**

The Chairperson may give directions, generally or in a particular case, on the practice and procedure of the Appeal Board in hearing and determining an appeal, so long as the direction is consistent with Part VIIC.

17. Appeal Board may determine own procedure

Subject to Part VIIC and any direction of the Chairperson, the Appeal Board may determine its own procedure in hearing an

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appeal.

18. 上訴委員會在第 37ZR 條所指的上訴中考慮的證據

- (1) 在第 37ZR 條所指的上訴中，上訴委員會有權審視有關個案的是非曲直，而據此，委員會可考慮——
 - (a) 提供予入境事務主任的相同證據；及
 - (b) (如第 (2) 款適用) 沒有提供予入境事務主任的證據。
- (2) 如有以下情況，上訴委員會可考慮沒有提供予入境事務主任的證據——
 - (a) 該證據關乎在作出遭上訴的決定後發生的事宜；或
(由 2021 年第 7 號第 25 條修訂)
 - (b) 該證據關乎的事宜，是在遭上訴的決定作出前發生的，而聲請人以書面提供充分證據，令上訴委員會信納——
 - (i) 該聲請人曾作出一切應作出的努力，以在該決定作出前，向入境事務主任提供該證據；但
 - (ii) 該聲請人由於其無法控制的情況，沒有在該決定作出前，向入境事務主任提供該證據。(由 2021 年第 7 號第 25 條代替)
 - (c) (由 2021 年第 7 號第 25 條廢除)

19. 新證據的通知**18. Evidence considered by Appeal Board in an appeal under section 37ZR**

- (1) In an appeal under section 37ZR, 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
(Amended 7 of 2021 s. 25)
 - (b) the evidence relates to matters that occurred before the decision being appealed against was made, and the claimant provides sufficient evidence in writing to satisfy the Board that the claimant—
 - (i) had exercised all due diligence to provide the evidence to an immigration officer before the decision was made; but
 - (ii) failed to provide the evidence to an immigration officer before the decision was made because of circumstances beyond the claimant's control.
(Replaced 7 of 2021 s. 25)
 - (c) (Repealed 7 of 2021 s. 25)

19. Notice of new evidence

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第 115 章附表 1A
第 19 條

- (1) 聲請人如欲根據本附表第 18(2) 條，在聆訊中提交任何證據，則須在根據第 37ZS 條 (或如獲容許作逾時送交存檔，則根據第 37ZT 條) 將上訴通知送交存檔後的 7 日內 ——
 - (a) 將表明此意的書面通知，向上訴委員會送交存檔；及
 - (b) 將該通知的副本送達處長。(由 2021 年第 7 號第 25 條代替)
- (2) 有關書面通知須 ——
 - (a) 說明有關證據的性質；及
 - (b) 解釋有關證據如何支持有關酷刑聲請。(由 2021 年第 7 號第 25 條代替)
- (3) 如有關證據符合本附表第 18(2)(b) 條的描述，則有關書面通知亦須 ——
 - (a) 述明是何種情況，導致該條提述的沒有及時提供證據；
 - (b) 解釋上述情況如何以及在何程度上導致該條提述的沒有及時提供證據；
 - (c) 述明為了在遭上訴的決定作出前向入境事務主任提供有關證據，有關聲請人採取了甚麼步驟，尤其是為處理上述情況而採取的步驟；及
 - (d) 附隨賴以支持該聲請人的個案的所有可取用證據。(由 2021 年第 7 號第 25 條增補)
- (4) 如書面通知在第 (1) 款指明的限期屆滿後，方送交存檔，則除非有關聲請人以書面提供充分證據，令上訴委員會信納 ——
 - (a) 該聲請人曾作出一切應作出的努力，以在該限期屆滿前，將該通知送交存檔；但
 - (b) 該聲請人由於其無法控制的情況，沒有在該限期屆滿前，將該通知送交存檔，

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Section 19S1A-26
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- (1) A claimant who wishes to present any evidence under section 18(2) of this Schedule at a hearing must within 7 days after filing a notice of appeal under section 37ZS (or section 37ZT if late filing is allowed)—
 - (a) file with the Appeal Board a written notice to that effect; and
 - (b) serve a copy of the notice on the Director. *(Replaced 7 of 2021 s. 25)*
- (2) The written notice must—
 - (a) indicate the nature of the evidence; and
 - (b) explain how the evidence supports the torture claim. *(Replaced 7 of 2021 s. 25)*
- (3) If the evidence falls within the description in section 18(2)(b) of this Schedule, the written notice must also—
 - (a) state the circumstances leading to the failure referred to in that section;
 - (b) explain how, and to what extent, the circumstances led to the failure;
 - (c) state the steps that the claimant had taken with a view to providing the evidence to an immigration officer before the decision being appealed against was made and, in particular, the steps taken to deal with the circumstances; and
 - (d) be accompanied by all available evidence relied on in support of the claimant's case. *(Added 7 of 2021 s. 25)*
- (4) A written notice filed after the expiry of the period specified in subsection (1) may not be accepted by the Appeal Board unless the claimant provides sufficient evidence in writing to satisfy the Board that the claimant—

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第 20 條Schedule 1A
Section 20S1A-28
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否則上訴委員會不得接納該通知。(由 2021 年第 7 號第 25 條增補)

20. 上訴委員會在要求撤銷決定的申請中考慮的證據

在第 37ZM 條所指的要求撤銷決定的申請中，上訴委員會——

- (a) 有權審視有關個案的是非曲直；及
- (b) 可考慮任何上訴委員會認為屬攸關的證據。

21. 經宣誓作供等

為施行本附表第 18 及 20 條，上訴委員會可——

- (a) 監誓；
- (b) 收取和考慮任何屬口述證供（不論是否經宣誓）形式的材料，或書面陳述或文件（不論是否藉誓章作出）形式的材料。

22. 證人等

- (1) 上訴委員會可應上訴的任何一方的申請或主動指示任何人——
 - (a) 按委員會指明的時間及地點，以證人身份出席上訴聆訊；及

- (a) had exercised all due diligence to file the notice before the expiry of the period; but
- (b) failed to file the notice before the expiry of the period because of circumstances beyond the claimant's control. *(Added 7 of 2021 s. 25)*

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

In an application for a revocation decision under section 37ZM, 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.

21. Evidence on oath etc.

For the purposes of sections 18 and 20 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).

22. Witnesses etc.

- (1) The Appeal Board may, on an application by a party to an appeal, or on its own motion, direct a person—
 - (a) to attend as a witness at the hearing of the appeal at the time and place the Board specifies; and

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第 23 條Schedule 1A
Section 23S1A-30
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- (b) 在聆訊中回答任何問題、提供證據(不論是否經宣誓)或交出可能關乎上訴的任何爭論點的、由該人管有或保管或在其權力控制下的任何文件。
- (2) 儘管有第(1)款的規定，如任何人在法院的法律程序中，不能被強制提供任何證據或交出任何文件，該人不得被強制提供該證據或交出該文件。
- (3) 第(2)款並不使任何人有權僅以某證據或某文件不可獲法院接納並據此不能強制該人提供或交出為理由，而拒絕提供該證據或拒絕交出該文件。

23. 上訴委員會的決定

- (1) 上訴委員會可應針對第 37ZR 條提述的決定而提出的上訴，確認或推翻該決定。
- (2) 上訴委員會可應第 37ZM 條所指的要求撤銷決定的申請，批准或拒絕該申請。
- (3) 上訴委員會須以書面給予其決定及作出該決定的理由。
- (4) 上訴委員會的決定屬終局決定。

24. 法律程序的紀錄

上訴委員會須按照主席所定的格式，備存法律程序紀錄或撮要及其決定。

25. 更正錯誤

- (b) at the hearing to answer any questions, to give evidence on oath or otherwise or to produce any document in that person's possession, custody or power that may relate to any issue in the appeal.
- (2) Despite subsection (1), a person must not be compelled to give any evidence or produce any document that the person could not be compelled to give or produce in proceedings in a court of law.
- (3) Subsection (2) does not entitle a person to refuse to give any evidence or to produce any document on the ground only that the evidence or document would not be admissible in a court of law and that accordingly the person could not be compelled to give or produce it.

23. Appeal Board's decision

- (1) On an appeal against a decision referred to in section 37ZR, the Appeal Board may confirm or reverse the decision.
- (2) On an application for a revocation decision under section 37ZM, the Appeal Board may allow or refuse the application.
- (3) The Appeal Board must give its decision with reasons in writing.
- (4) The Appeal Board's decision is final.

24. Record of proceedings

The Appeal Board must keep a record or summary of proceedings and of its decisions in such form as the Chairperson may determine.

25. Correction of errors

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第 115 章

附表 1A
第 26 條

上訴委員會可在糾正翻譯或抄錄錯誤或文書上的錯誤所需要的範圍內，更正委員會作出的決定。

26. 委員及證人的特權及豁免

- (1) 在根據第 VIIC 部執行職能時，主席、副主席及上訴委員會其他委員所享有的特權及豁免，等同於原訟法庭法官在該法庭的民事法律程序中所享有者。
- (2) 如任何人以證人、上訴的任何一方或上訴的任何一方的法律代表身分，出席上訴委員會聆訊，該人有權享有的特權及豁免，等同於假若該人是在原訟法庭民事法律程序中該人有權所享有者。

(附表 1A 由 2012 年第 23 號第 12 條增補)

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The Appeal Board may correct a decision made by it to the extent necessary to rectify an error of translation or transcription or a clerical error.

26. Privileges and immunities of members and witnesses

- (1) In the performance of their functions under Part VIIC, the Chairperson, Deputy Chairperson and other members of the Appeal Board have the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.
- (2) A person appearing at a hearing before the Appeal Board as a witness, a party to the appeal or a legal representative of a party to the appeal is entitled to the same privileges and immunities to which the person would be entitled in civil proceedings in the Court of First Instance.

(Schedule 1A added 23 of 2012 s. 12)
