

LCQ9: Legal basis for non-Hong Kong residents to reside or stay in Hong Kong

Following is a question by the Hon Alvin Yeung and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (February 20):

Question:

Regarding the legal basis for non-Hong Kong residents to settle/stay in Hong Kong, will the Government inform this Council:

(1) of the provisions in the Basic Law and/or the laws of Hong Kong by virtue of which holders of Permits for Proceeding to Hong Kong and Macao may come to Hong Kong for settlement; and

(2) of the respective provisions in the Basic Law and/or the laws of Hong Kong under which the Director of Immigration gives permission for the following categories of non-Hong Kong residents to stay in Hong Kong:

- (i) dependants of Hong Kong permanent residents,
- (ii) dependants of persons other than Hong Kong permanent residents,
- (iii) persons who are granted entry into Hong Kong under the Admission Scheme for Mainland Talents and Professionals,
- (iv) Mainland residents who are granted entry into Hong Kong under the Quality Migrant Admission Scheme,
- (v) non-Mainland residents who are granted entry into Hong Kong under the Quality Migrant Admission Scheme,
- (vi) persons of Chinese nationality who have obtained permanent resident status in a foreign country and are granted entry into Hong Kong under the Capital Investment Entrant Scheme,
- (vii) foreign nationals who are granted entry into Hong Kong under the Capital Investment Entrant Scheme, and
- (viii) persons who are granted entry into Hong Kong under the Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents?

Reply:

President,

Pursuant to section 7(1) of the Immigration Ordinance (Cap 115), a person may not land in Hong Kong without the permission of an immigration officer or immigration assistant unless he enjoys the right of abode in Hong Kong, he has the right to land in Hong Kong, or he may land in Hong Kong without such permission by virtue of the Immigration Ordinance (such as members of crew of aircraft). Regarding the legal basis for non-Hong Kong residents to reside/stay in Hong Kong, my reply is as follows:

(1) It is stipulated in Article 22(4) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China that "[f]or entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region." According to the Interpretation by the Standing Committee of the National People's Congress Regarding Paragraph 4 in Article 22 and Category (3) of Paragraph 2 in Article 24 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the 10th Meeting of the Standing Committee of the Ninth National People's Congress on June 26, 1999), "[t]he provisions of Paragraph 4 in Article 22 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China 'for entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval', mean that persons from provinces, autonomous regions and municipalities directly under the Central Government, including the children of permanent residents of the Hong Kong Special Administrative Region born in the mainland with Chinese nationality, who request to enter the Hong Kong Special Administrative Region with whatever reason shall, in accordance with the provisions of relevant laws and administrative regulations of the State, apply for approval from the relevant government department in the place of their residence and may only enter the Hong Kong Special Administrative Region with valid certificates issued by relevant authorities. It is illegal for any persons or children mentioned above to enter the Hong Kong Special Administrative Region without going through due approval procedures in accordance with the provisions of relevant laws and administrative regulations of the State."

It is also stipulated in Article 154(2) of the Basic Law that "[t]he Government of the Hong Kong Special Administrative Region may apply immigration controls on entry into, stay in and departure from the Region by persons from foreign states and regions."

Upon arrival in Hong Kong, Mainland residents who hold valid One-way Permits (i.e. Permits for Proceeding to Hong Kong and Macao) will be given permission to land in Hong Kong by an immigration officer or immigration assistant under section 11 of the Immigration Ordinance.

(2) Part (2) of the question mentions various immigration policies/schemes, including the immigration policy on entry of dependants, the Admission Scheme for Mainland Talents and Professionals (ASMP), the Quality Migrant Admission Scheme (QMAS), the Capital Investment Entrant Scheme (CIES) and the Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents (ASSG).

The immigration policy on entry of dependants allows those who are able to provide care and financial support to their dependants to sponsor their non-local dependants to come to reside in Hong Kong. The immigration policy on entry of dependants also ensures that Hong Kong will continue to attract and retain people with the right talent and skills to come to and remain in

Hong Kong by giving them the choice of bringing in their non-local dependants to live with them in Hong Kong.

The ASMP aims at attracting talents with special skills, knowledge or experience of value to and not readily available in Hong Kong to work here in meeting the needs of the Hong Kong economy.

The QMAS aims at attracting highly skilled or talented persons to settle in Hong Kong in order to enhance Hong Kong's human capital and maintain Hong Kong's competitiveness.

The objective of the CIES is to facilitate the entry for residence by capital investment entrants (the entrant), i.e. persons who make capital investment in Hong Kong but would not be engaged in the running of any business here. The entrant is allowed to make his choice of investments amongst permissible assets without the need to establish or join in a business.

The ASSG aims at attracting the second generation of Chinese Hong Kong permanent residents from overseas to return to Hong Kong for development.

Pursuant to the stipulations in Article 22(4) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Interpretation by the Standing Committee of the National People's Congress Regarding Paragraph 4 in Article 22 and Category (3) of Paragraph 2 in Article 24 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the 10th Meeting of the Standing Committee of the Ninth National People's Congress on June 26, 1999) and the stipulations in Article 154(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China mentioned above, for those who have been admitted for employment or residence under various immigration policies/schemes, including dependants of Hong Kong permanent residents, dependants of persons other than Hong Kong permanent residents, persons admitted under the ASMP, Mainland residents admitted under the QMAS, non-Mainland residents admitted under the QMAS, Chinese nationals who have obtained permanent resident status in a foreign country and are admitted under the CIES, foreign nationals admitted under the CIES and persons admitted under the ASSG mentioned in the question, they will be given permission to land in Hong Kong upon arrival by an immigration officer or immigration assistant under section 11 of the Immigration Ordinance.

Persons from foreign states and regions who enter and stay in Hong Kong under various immigration policies/schemes must meet normal immigration requirements as well as the relevant specific eligibility criteria set out by the Immigration Department in accordance with the laws of Hong Kong and immigration policies.