

Chief Executive's report to State Council

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Following is the translation of the Chief Executive's report to the State Council concerning the right of abode :

20 May 1999

The State Council  
The People's Republic of China

Report on Seeking Assistance from  
the Central People's Government  
in Solving Problems Encountered in the Implementation of  
the Basic Law of the Hong Kong Special Administrative Region  
of the People's Republic of China

The judgments of the Court of Final Appeal (CFA) of the Hong Kong Special Administrative Region (HKSAR) delivered on 29 January 1999 have extended the eligibility for the right of abode of persons born in the Mainland of Hong Kong permanent residents beyond that previously provided for in the Immigration Ordinance. The CFA also ruled that these persons could enter Hong Kong for settlement without the approval of the Mainland authorities. This interpretation is different from the HKSAR Government's understanding of the relevant provisions of the Basic Law. Furthermore, the effect of the CFA's interpretation would be to place unbearable pressure on the HKSAR. The HKSAR Government (HKSARG) therefore seeks assistance from the Central People's Government (CPG). Specific details and our request for assistance are as follows.

The Legislative Basis for the Enactment of the Relevant Legislation of the HKSAR

The Provisional Legislative Council of the HKSAR enacted the Immigration (Amendment) (No.2) Ordinance 1997 and the Immigration (Amendment) (No.3) Ordinance 1997 on the following basis -

(1) It considered that the relevant provisions of the Basic Law, including Articles 22 and 24, formed the legislative basis for the enactment of the legislation. These provisions reflect the CPG's basic policies regarding Hong Kong on the issues of "Right of Abode, Travel and Immigration", as set out in Section XIV of Annex I of the Sino-British Joint Declaration.

(2) It also acted in accordance with the "Opinion on the implementation of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" adopted by the Preparatory Committee for the HKSAR of the National People's Congress (Preparatory Committee) at its 4th Plenary Meeting held in August 1996. In that "Opinion", it was clearly stated that :

"persons of Chinese nationality born outside Hong Kong referred to in Category (3) of Paragraph 2 of Article 24 of the Basic Law refer to those who are born when either one or both of their parents have already attained Hong Kong permanent resident status under Category (1) or (2) of Paragraph 2 of Article 24 of the Basic Law."

This Opinion was set out in the Working Report of the Preparatory Committee. The 8th National People's Congress (NPC) passed "the resolution regarding the Working Report of the Preparatory Committee for the HKSAR of the National People's Congress" at its 5th Session held on 14 March 1997.

Having regard to that "Opinion", the Provisional Legislative Council of the HKSAR enacted the Immigration (Amendment) (No.2) Ordinance 1997 and the Immigration (Amendment) (No.3) Ordinance 1997. These Ordinances provide that persons born in the Mainland of Hong Kong permanent residents have the right of abode in Hong Kong provided that, at the time of birth, either one or both of their parents were already Hong Kong permanent residents, and provide for a Certificate of Entitlement Scheme. These two Ordinances enacted by the legislature of the HKSAR have been

duly reported to the Standing Committee of the NPC (NPCSC) for the record in accordance with Article 17 of the Basic Law.

#### The CFA's Judgment on the Relevant Provisions of the Basic Law

On 29 January 1999, the CFA gave final judgments in cases concerning the right of abode of persons born in the Mainland of Hong Kong residents. In its judgments, the CFA decided that certain provisions in the two Ordinances were inconsistent with the Basic Law. The CFA ruled that persons born of Hong Kong residents referred to in Article 24(2)(3) of the Basic Law included persons born before, as well as persons born after, either one of their parents became a permanent resident, and included persons born in or out of wedlock, and ruled that the restrictions on entry into Hong Kong imposed by Article 22(4) of the Basic Law on "people from other parts of China" did not apply to these persons.

The HKSARG will take appropriate measures to implement the CFA's ruling on persons born out of wedlock.

The other rulings of the CFA have changed the previous immigration control system of Hong Kong and have caused widespread concern and debate in the local community. The statistical surveys conducted by the HKSARG show that, under the CFA's rulings, the number of Mainland people who are eligible for the right of abode in Hong Kong would be increased by at least 1.67 million (about 690,000 are in the first generation; and, after those persons have ordinarily resided in Hong Kong for a continuous period of not less than seven years, about 980,000 people in the second generation will acquire the right of abode). The assessment of the HKSARG is that the admission of these additional people would create enormous pressure on Hong Kong. Hong Kong's land and social resources would not be capable of coping with the demands of such a large number of new arrivals for education, housing, medical and health services, social welfare and other needs. This would trigger social problems and lead to consequences which would have a serious and adverse effect on the stability and prosperity of Hong Kong, and which we would not be able to bear.

## Request for Assistance from the CPG

The CFA's interpretation of the relevant provisions of the Basic Law is different from the HKSARG's understanding of the wording, purpose and legislative intent of these provisions. Queries and arguments as to whether the CFA's interpretation is in line with the Basic Law have been raised in the community. Public opinion is overwhelmingly in favour of an early resolution of this issue.

The HKSARG respects the judgments of Hong Kong's courts. We have considered carefully and repeatedly the available options for resolving this issue. As the issue is one of principle involving how the Basic Law should be interpreted, and as the control of entry of Mainland residents into Hong Kong has a bearing on the relationship between the Central Authorities and the HKSAR, the HKSAR is no longer capable of resolving the problem on its own. Accordingly, the HKSARG has decided to request the State Council to ask the NPCSC to make a legislative interpretation of the relevant provisions of the Basic Law. This is a decision which we have been compelled to take in the face of exceptional circumstances.

Under Articles 43 and 48(2) of the Basic Law, I hereby report to the CPG the problems we have encountered in the implementation of certain provisions of the Basic Law, and request assistance. I suggest that the State Council should ask the NPCSC to interpret, under the relevant provisions of the Constitution and the Basic Law, Articles 22(4) and 24(2)(3) of the Basic Law according to the true legislative intent.

(Signed)

The Chief Executive,

Hong Kong Special Administrative Region

Appendix 1: The CFA's three Judgments

Appendix 2: "The Judgment of the Court of Final Appeal on Right of Abode Issue - Assessment of Service Implications" prepared by the HKSARG