

CHINESE NATIONALITY I. CHINESE NATIONALITY Chinese nationality is conferred by the Nationality Law of the People's Republic of China (PRC). It is acquired primarily through ancestry, not place of birth. Under articles 4 and 5 of the Nationality Law of the People's Republic of China, persons of Chinese descent, regardless of whether they were born in China (including Hong Kong) are usually considered to be Chinese citizens. However, there is an exception to this rule: article 5 of the Nationality Law states that a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality. In other words, if one of your parents has settled abroad and you were born in a foreign country and acquired foreign nationality at birth, then you do not have Chinese nationality even if you are a person of Chinese descent. A child can acquire Chinese nationality at birth even if only one of its parents is Chinese. However, persons who are not of Chinese ancestry are not usually considered to be Chinese citizens albeit they were born in China. The Nationality Law of the PRC also applies in the Hong Kong Special Administrative Region (SAR). However, it is amplified in Hong Kong by "the explanations", which are an interpretation of the Law by the Standing Committee of the National People's Congress (NPCSC). According to the explanations, some provisions of the Nationality Law may not apply, or may apply differently, to Hong Kong. Some of the major explanations made by the NPCSC regarding the implementation of the Nationality Law in Hong Kong can be found on the website of the Immigration Department.

1. IS THERE ANY DIFFERENCE BETWEEN "NATIONALITY" AND "CITIZENSHIP" IN LAW? 1. IS THERE ANY DIFFERENCE BETWEEN "NATIONALITY" AND "CITIZENSHIP" IN LAW? In Hong Kong, the terms "nationality" and "citizenship" have more or less the same meaning for legal purposes. The Nationality Law of the People's Republic of China uses the term "Chinese national", whereas the Hong Kong SAR's Immigration Ordinance (Cap. 115 of the Laws of Hong Kong) uses the term "Chinese citizen".

2. ARE ALL ETHNIC MINORITIES OF CHINA ENTITLED TO CHINESE NATIONALITY? 2. ARE ALL ETHNIC MINORITIES OF CHINA ENTITLED TO CHINESE NATIONALITY? In terms of nationality, Chinese ancestry is not limited to the Han Chinese, but includes all recognised ethnic minority groups in China (see article 2 of the Nationality Law of the PRC). However, it does not include persons who have immigrated to China (including Hong Kong) from other places or their children, unless they are naturalised. To find out more about matters relating to naturalisation, please go to the relevant question and answer.

3. WHAT ARE THE LEGAL RIGHTS OF CHINESE CITIZENS/NATIONALS IN HONG KONG? 3. WHAT ARE THE LEGAL RIGHTS OF CHINESE CITIZENS/NATIONALS IN HONG KONG? Some of the major legal rights of Chinese citizens in Hong Kong are explained in the following. Under the Basic Law of the Hong Kong SAR, only Chinese citizens who are permanent residents of Hong Kong can hold senior posts, such as Chief Executive or senior government officer. Only Hong Kong Chinese citizens are entitled to apply for Hong Kong SAR passports and "home return permits" (for travel to Mainland China). Non-Chinese citizens, regardless of whether they are permanent residents of Hong Kong, can only obtain a passport from their country of nationality, and need a visa to enter the Mainland. Voting rights in Hong Kong do not derive from citizenship. According to section 27 of the Legislative Council Ordinance (Cap. 542 of the Laws of Hong Kong), any person who is a permanent resident of Hong Kong is eligible to register as an elector for a constituency. In other words, foreigners who are Hong Kong permanent residents are entitled to the same voting rights as Chinese citizens in Hong Kong. Note that a Chinese citizen does not automatically enjoy the right of permanent residence in Hong Kong. There are statutory requirements limiting the status a Chinese citizen with close connections with Hong Kong to be eligible. Details about these requirements and the legal rights that Hong Kong permanent residents enjoy are given in Section II.

4. CAN HONG KONG RESIDENTS HOLD DUAL NATIONALITY? 4. CAN HONG KONG RESIDENTS HOLD DUAL NATIONALITY? Article 3 of the Nationality Law of the PRC states that dual nationality or citizenship is not recognised. However, in Hong Kong, this is subject to "the explanations" made by the Standing Committee of the National People's Congress (NPCSC). These explanations declare how the Nationality Law is to be interpreted in Hong Kong. According to the explanations, a Hong Kong Chinese person may still be considered to be a Chinese citizen even after obtaining foreign citizenship.

5.

CAN CHINESE NATIONALITY BE LOST OR RENOUNCED? 5. CAN CHINESE NATIONALITY BE LOST OR RENOUNCED? According to article 9 of the Nationality Law of the PRC, a Chinese citizen who emigrates abroad and acquires foreign citizenship ceases to be a Chinese national, and is no longer able to transmit Chinese nationality to his or her children. In addition, article 10 of the Nationality Law states that Chinese nationals may apply to renounce their Chinese nationality. For Hong Kong Chinese persons, the situation as detailed by "the explanations" made by the Standing Committee of the National People's Congress (NPCSC) is different. Such persons are still considered to be Chinese citizens even after acquiring foreign nationality unless they apply to the Immigration Department under article 5 of "the explanations" to be recognised as foreign citizens. Details of the application process can be found on the website of the Immigration Department.

6. CAN FOREIGNERS APPLY TO BECOME CHINESE CITIZENS IN HONG KONG? 6. CAN FOREIGNERS APPLY TO BECOME CHINESE CITIZENS IN HONG KONG? Foreigners can apply to become Chinese citizens under article 7 of the Nationality Law of the PRC. To qualify for citizenship under that article, a foreigner must: have close relatives who are Chinese nationals; have settled in a part of China; or have other legitimate reasons for applying for citizenship. In Hong Kong, all applications for naturalisation are handled by the Immigration Department in accordance with the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap. 540 of the Laws of Hong Kong). More information about applying for naturalisation is available from the website of the Immigration Department. Successful applicants for naturalisation are entitled to the same rights as persons who acquired Chinese nationality at birth. Foreigners are required by article 8 of the Nationality Law of the PRC to renounce their original nationality on acquiring Chinese citizenship.

7. WHAT IS THE LEGAL CONCEPT OF "DOMICILE"? HOW DO I KNOW IF MY DOMICILE IS HONG KONG? 7. WHAT IS THE LEGAL CONCEPT OF "DOMICILE"? HOW DO I KNOW IF MY DOMICILE IS HONG KONG? "Domicile" is a legal concept that is recognised by common law. It refers to the country (or division within a country) from which a person originally comes or, if he or she has abandoned that place in favour of another, the new country or jurisdiction. Domicile is different from nationality and permanent residence, although for most people their place of domicile is the same as their place of nationality or residence. Domicile (sometimes spelt "domicil") may affect matters of marriage, divorce and inheritance of a deceased person's property. This is because, under the rules of private international law, the Hong Kong courts defer to the law of the place of domicile of a person in certain circumstances. For example, if a person dies in Hong Kong but was domiciled somewhere else at the time of death, then the law of the place of domicile may determine the manner in which the deceased person's property is allocated. In some countries the place of domicile may affect tax liability. In reply to the second question, if your ancestral roots are in Hong Kong, then you are probably domiciled in Hong Kong unless you have migrated to another place and made a decision never to live in Hong Kong again. If you come from a place other than Hong Kong, you probably acquired a domicile of origin at birth from that place, whether it was Mainland China or another country. However, you may have acquired a domicile of choice in Hong Kong if you have settled here permanently without any intention to return to live in your place of origin. The law of domicile is very complex. Advice should always be sought from a lawyer with expertise in this area whenever questions about place of domicile arise.

HONG KONG PERMANENT RESIDENCE II. HONG KONG PERMANENT RESIDENCE The legal status of permanent resident of Hong Kong may be acquired by any person, regardless of whether they have Chinese nationality. Article 24 of the Hong Kong Basic Law and paragraph 2 of schedule 1 to the Immigration Ordinance set out in concise terms for who is entitled to Hong Kong permanent resident status. In summary, they state that the following persons are the permanent residents of Hong Kong: Chinese nationals who were born in Hong Kong. Chinese nationals who were born outside Hong Kong but who are lawfully permitted to live in Hong Kong and have done so for 7 years. Chinese nationals who were born outside Hong Kong to a parent (father or mother) who, at the time of birth, was already a Hong Kong permanent resident. Foreigners (persons not of Chinese nationality) who have lived in Hong Kong lawfully for 7 years and have taken Hong Kong as their permanent place of residence (\*note). Foreigners under the age of 21 who were born in Hong Kong to a parent who is a permanent resident as

defined in category (iv). On reaching the age of 21, these persons must establish their own permanent resident status under one of the above categories, otherwise they will cease to be permanent residents of Hong Kong. Persons who had no right of abode anywhere other than Hong Kong before the establishment of the Hong Kong SAR. (\*Note: In practice, the Immigration Department may impose additional requirements on foreigners who apply for Hong Kong permanent resident status under article 24 of the Basic Law, including the proof that they have paid all taxes that have been levied on them.) In addition, the Immigration Ordinance contains other provisions that relate to the entitlement to Hong Kong permanent resident status. For example, paragraph 6 of schedule 1 of the Immigration Ordinance provides for the continuation of the permanent resident status that was enjoyed by certain non-Chinese persons before the transfer of sovereignty of Hong Kong in 1997. Section 2(4) of the Ordinance excludes certain occupational categories, such as foreign domestic helpers and Mainland government officials, from acquiring Hong Kong permanent resident status. Generally speaking, no one is entitled to exercise the right of permanent residence until their status as such has been verified by the Immigration Department. For residents of Mainland China, this is achieved by applying for a "certificate of entitlement" (issued by the Immigration Department of the Hong Kong SAR). Other nationalities can apply at the Immigration Department for verification of eligibility for a permanent identity card. More details are given in the following sections.

1. DO I HAVE TO BE PRESENT IN HONG KONG FOR 7 YEARS CONTINUOUSLY BEFORE I CAN ACQUIRE THE STATUS OF PERMANENT RESIDENT? 1. DO I HAVE TO BE PRESENT IN HONG KONG FOR 7 YEARS CONTINUOUSLY BEFORE I CAN ACQUIRE THE STATUS OF PERMANENT RESIDENT? Most newcomers to Hong Kong (whether they are from Mainland China or elsewhere) are required to live in Hong Kong for 7 years before they can acquire the status of Hong Kong permanent resident. This does not apply to newcomers who are already Hong Kong permanent residents (for example, Chinese nationals who were born outside Hong Kong to a parent who, at the time of birth, was already a Hong Kong permanent resident). It is not necessary to be present in Hong Kong for the entire 7 years: the law merely stipulates that the person must be "ordinarily resident" in Hong Kong for that time. Ordinary residence may continue even though the person is absent for a temporary purpose. There is no clear and concrete definition of the term "temporary purpose", but section 2(6) of the Immigration Ordinance sets out some of the factors that may be taken into account in determining whether or not a person has ceased to be ordinarily resident in Hong Kong. If Hong Kong is your home and you go abroad for a temporary purpose, then your residency is considered to continue. This means that if you go somewhere else for a holiday, for business or to study, your ordinary residence is not interrupted. You can still accumulate 7 years of residence and the right of abode, even though you were absent during part of that period for a temporary purpose. The 7-year period must be continuous, and only includes the period for which you have lawfully been in Hong Kong. Also, you must be in Hong Kong for a settled purpose (such as for employment, education or business purposes) during the entire 7-year period. A visitor or tourist cannot claim to be an ordinarily resident in Hong Kong, as visiting is not considered to be "ordinary residence". It follows that a person could actually be in Hong Kong for 12 years but "ordinarily resident" only for two periods each of less than 7 years, broken by a period of unlawful or temporary residence. Such a person would not be entitled to permanent residence.

2. WHAT LEGAL RIGHTS DO HONG KONG PERMANENT RESIDENTS ENJOY? 2. WHAT LEGAL RIGHTS DO HONG KONG PERMANENT RESIDENTS ENJOY? By virtue of article 24(3) of the Basic Law, a Hong Kong permanent resident has the right of abode in the Hong Kong SAR. This means that he or she has a legal right to come and go from Hong Kong and to take any job that is offered, to study or to establish any business (section 2A of the Immigration Ordinance). There is an important qualification for the exercise of the right of abode by Mainland Chinese citizens. Persons who reside in the Mainland of China who acquire Hong Kong permanent resident status by descent from a Hong Kong parent are not entitled to exercise the rights that are conferred by that status unless and until the following criteria have been met: they have obtained permission from the Mainland authorities to settle in Hong Kong (they have obtained a "one-way permit") under article 22(4) of the Basic Law; and they have been granted a "certificate of entitlement" under section 2AB

of the Immigration Ordinance. In 1999 the Court of Final Appeal declared this qualification to be unconstitutional, but it was restored by an interpretation by the Standing Committee of the National People's Congress in June of that year ( \*note ). According to section 27 of the Legislative Council Ordinance, the right to vote is also conferred with permanent residence. Under normal circumstances, only permanent residents are entitled to social benefits such as public housing and assistance payments (e.g. Comprehensive Social Security Assistance). Broadly speaking, the rights of permanent residence are enjoyed equally by all Hong Kong permanent residents, regardless of whether they are Chinese or foreign citizens. However, those who are Chinese citizens have some additional rights. For example, Chinese citizens who are also Hong Kong permanent residents are entitled to apply for Hong Kong SAR passports and home return permits (for travel to Mainland China), and can also hold senior posts in the Hong Kong SAR Government. ( \*Note: In the judgment of Ng Ka Ling v Director of Immigration in January 1999, the Court of Final Appeal ruled that Mainland Chinese residents who are entitled to the right of abode in Hong Kong under article 24(2) (3) of the Basic Law could exercise their right to permanent residence in Hong Kong (once verified) even if they had not obtained a one-way permit from the Mainland authorities before entering Hong Kong. In June 1999, the Standing Committee of the National People's Congress (NPCSC) issued an interpretation that effectively reversed this aspect of the judgement. The NPCSC stated that persons who are eligible to the right of abode under article 24(2) (3) must obtain a one-way permit before being entitled to exercise the right to live in Hong Kong ).

3. CAN HONG KONG PERMANENT RESIDENT STATUS BE LOST? 3. CAN HONG KONG PERMANENT RESIDENT STATUS BE LOST? Under Hong Kong's Immigration Ordinance, the status of a permanent resident can be lost. Despite its name, it is not necessarily "permanent", as the following scenarios show. A permanent resident who is a Chinese citizen loses permanent residence on ceasing to be a Chinese citizen. Permanent residents who are not Chinese citizens lose that status if they are absent from Hong Kong for any continuous period of 3 years or more (paragraph 7 of schedule 1 to the Immigration Ordinance). Legal scholars believe that the current law on the loss of permanent residence may be unconstitutional, and that it may be struck down by the courts. The legal arguments are complex, but in essence these scholars say that "permanent" under the Basic Law (which is considered to be Hong Kong's mini-constitution) means forever, and cannot lawfully be limited by the Immigration Ordinance.

4. CAN FORMER RESIDENTS RETURN TO HONG KONG AND RENEW THEIR STATUS AS HONG KONG PERMANENT RESIDENTS? 4. CAN FORMER RESIDENTS RETURN TO HONG KONG AND RENEW THEIR STATUS AS HONG KONG PERMANENT RESIDENTS? If such persons are Chinese citizens who are Hong Kong permanent residents but have lived elsewhere, then they are entitled to return to live in Hong Kong regardless of how long they have been away. The situation may be different if they have lost Chinese nationality (in which case they may also lose their permanent resident status). Foreigners (non-Chinese citizens) who have acquired the right to live in Hong Kong may also be entitled to return to live in Hong Kong after a period of absence, but it depends on the circumstances. For example, British citizens who acquired the right of residence during Hong Kong's colonial era may, depending on the circumstances, have the right to return and live in Hong Kong free of conditions of stay. However, this is a very complex area of the law, and legal advice should be sought from an expert. Alternatively, you can ascertain the Immigration Department's view as to whether or not you have lost your Hong Kong permanent resident status by applying for verification of eligibility for permanent identity card with the Right of Abode Section of the Immigration Department . The Right of Abode Section will assess whether or not you have lost permanent resident status. To contact the Right of Abode Section, please [click here](#). If your application is rejected by the Right of Abode Section, you should seek legal advice from an expert. It is because the Immigration Department's approach tends to be restrictive and on closer analysis some persons who are rejected by the Department are later recognised as being entitled to live and work in Hong Kong. Another point to note is that under section 2AAA of the Immigration Ordinance, persons who were Hong Kong permanent residents but have lost that status are entitled to unconditional stay when they return. This means they are still entitled to live and work in Hong Kong,

but are no longer eligible to hold high government office, participate in elections or enjoy certain social benefits. 5. ARE ALL CHILDREN WHO ARE BORN IN HONG KONG AUTOMATICALLY ENTITLED TO RIGHT OF ABODE? 5. ARE ALL CHILDREN WHO ARE BORN IN HONG KONG AUTOMATICALLY ENTITLED TO RIGHT OF ABODE? Under ancient common law, any person who is born within a territory is entitled to full right of abode and citizenship of that territory. This rule still applies in common-law countries such as Canada, Ireland and the United States, but it was abolished in the United Kingdom and Hong Kong during the colonial era. The change in the law meant that only persons with an ancestral connection with Hong Kong could acquire the right of abode by the simple fact of birth. After the reunification of Hong Kong with Mainland China in 1997, although the common-law system was preserved, the abolition of the automatic right of abode by birth was retained. The present law is complicated. Essentially, being born in Hong Kong does not of itself confer any rights. Additional qualifications must be met and are summarised below: Persons who were born in Hong Kong who also have Chinese nationality are entitled to Hong Kong permanent resident status, regardless of where their parents are from. This was established in a landmark decision by the Court of Final Appeal in *Director of Immigration v Chong Fung Yuen*. Persons who were born in Hong Kong who are not of Chinese nationality may be entitled to permanent residence if one of their parents is a permanent resident. In such cases, the entitlement to permanent residence is only valid up to the age of 21, and thereafter these persons must apply for qualification on their own (article 24(2)(5) of the Basic Law). Persons who were born in Hong Kong who are neither Chinese nationals nor have a parent who is a Hong Kong permanent resident acquire no legal rights by virtue of being born in Hong Kong. If the parents of such persons are living in Hong Kong, they must seek a dependant visa for the child. 6. ARE NON-CHINESE PERSONS OR ETHNIC MINORITIES ENTITLED TO THE SAME RIGHTS AS CHINESE PERSONS IN HONG KONG? 6. ARE NON-CHINESE PERSONS OR ETHNIC MINORITIES ENTITLED TO THE SAME RIGHTS AS CHINESE PERSONS IN HONG KONG? Legal rights in Hong Kong stem from the legal statuses of Chinese citizenship and Hong Kong permanent residence. They do not depend on race. As has been mentioned, persons who are not of Chinese race may qualify for permanent residence in Hong Kong and can also apply to be naturalised as Chinese citizens. If they are successful, they will acquire the same legal rights in Hong Kong as locally born Chinese persons. More information on how foreigners can apply to be naturalised as Chinese citizens can be found in the relevant question and answer.

IMMIGRATION TO HONG KONG FOR NON-RESIDENTS (FAMILY MEMBERS) III. IMMIGRATION TO HONG KONG FOR NON-RESIDENTS (FAMILY MEMBERS) If you are a Hong Kong resident (permanent or otherwise), then you may be entitled to sponsor your spouse, children or other family members to join you to reside in Hong Kong. However, different requirements apply to family members who live in Mainland China and to those who live elsewhere. 1. WHO IS ENTITLED TO SPONSOR FAMILY MEMBERS TO COME TO LIVE IN HONG KONG? IF I AM A LAWFUL RESIDENT OF HONG KONG, CAN MY FAMILY MEMBERS IN THE MAINLAND (OR ELSEWHERE) APPLY TO IMMIGRATE TO HONG KONG? 1. WHO IS ENTITLED TO SPONSOR FAMILY MEMBERS TO COME TO LIVE IN HONG KONG? IF I AM A LAWFUL RESIDENT OF HONG KONG, CAN MY FAMILY MEMBERS IN THE MAINLAND (OR ELSEWHERE) APPLY TO IMMIGRATE TO HONG KONG? The information that is set out here is intended as a general guide only. You should not make an important decision about immigration rights without consulting a lawyer who is knowledgeable in this area. Briefly, the different groups of people who may be entitled to settle in Hong Kong with their relatives are as follows. A) Family members from Mainland China At present, a daily quota of 150 immigrants from Mainland China are granted a "one-way permit" to leave the Mainland to settle in Hong Kong. According to the rules and procedures of the Mainland (which are not governed by the Hong Kong SAR government authorities and courts), the following persons are eligible to apply for a one-way permit: The children of Hong Kong permanent residents of Chinese nationality who have the right of abode in Hong Kong according to section 24(2)(3) of the Basic Law and paragraph 2(c) of schedule 1 to the Immigration Ordinance (\*note). The spouses of Hong Kong permanent residents. Dependent children (who are not being cared for in the Mainland) who are coming to Hong Kong to join their relatives. Dependent elderly people (who are not being cared for in the Mainland) who are coming to Hong Kong to join their relatives. Persons who are

coming to Hong Kong to take care of their dependent parents. Persons who are coming to Hong Kong to inherit property from Hong Kong relatives. (\*Note : In the judgment of Chan Kam Nga v Director of Immigration in January 1999, the Court of Final Appeal held that children acquire the right of abode in Hong Kong under article 24(2)(3) of the Basic Law if, at or after the time of their birth one or both of their parents was a Hong Kong permanent resident. The Standing Committee of the National People's Congress (NPCSC) issued an interpretation of the relevant part of the Basic Law later that year which clarified that for such children to exercise their right of abode in Hong Kong, their parent(s) must have already been a Hong Kong permanent resident at the time of the children's birth). Residents of Mainland China who wish to reside in Hong Kong must first obtain a "one-way permit" from the Mainland authorities. When persons who hold such permits arrive in Hong Kong, they are usually (but not always) granted permission by the Hong Kong Immigration Department to enter for the purpose of residence. Note that the one-way permit granted to persons in the foregoing category (i) must be affixed with a "certificate of entitlement" (see the following section). The issue of such permits is the responsibility of the relevant Mainland authorities (article 22(4) of the Basic Law), although the Hong Kong SAR Government is consulted on questions such as quotas. The Mainland authorities are said to operate a points system for the allocation of one-way permits to close relatives of Hong Kong residents who reside in Mainland China. If the dependants from Mainland China (who are applying for a one-way permit) are the children of Hong Kong permanent residents, they must also obtain a "certificate of entitlement" from the Hong Kong Immigration Department before they can enter Hong Kong to exercise their right of abode. The main purpose of this certificate is to provide prior verification as to whether such persons have the right of abode in Hong Kong according to article 24(2)(3) of the Basic Law and paragraph 2(c) of schedule 1 to the Immigration Ordinance. This certificate must be affixed to the one-way permit of the relevant immigrant before he or she enters Hong Kong. More information about how to obtain this certificate is given in the guidance notes (in bilingual format) that are issued by the Immigration Department.

B) Family members from Macau You may be entitled to sponsor the following dependants from Macau to reside in Hong Kong with you: Your spouse. Any unmarried dependent children who are under the age of 18. Your parents if they are aged 60 or above. In the case of the vetting and approval of entry for immigration from Macao to Hong Kong, the Mainland authorities do not play any role. All applications are handled by the Hong Kong Immigration Department. More details about the application requirements and the relevant application form can be found on the website of the Immigration Department.

C) Non-Chinese family members You may also sponsor a non-Chinese dependent spouse or child to enter Hong Kong to live with you. However, you must be able to show that you have sufficient financial resources to support and accommodate the new arrival. Dependent children must be under 18 years of age. Entry is granted to non-Chinese dependants at the general discretion of the Director of Immigration under section 11 of the Immigration Ordinance to admit any persons and to impose any conditions of stay. The Director operates the scheme under internal policy guidelines that may be amended from time to time without the need for legislation. It is important to note that the guidelines are guidelines only, and may be ignored in exceptional cases. The law requires the Director of Immigration to exercise the discretion on a case by case basis. If the Director refuses your application because it does not come within the guidelines and you consider the refusal to be unreasonable, you should seek legal advice from an expert.

D) Family members of non-permanent Hong Kong residents The most common types of persons who fall within this category are the children and spouses of non-Chinese Hong Kong residents who work in Hong Kong with employment visas. These children and spouses are required to apply for a dependant visa from the Immigration Department. If they are granted the visa, they will usually be permitted to reside in Hong Kong as long as their sponsor's employment visa lasts. Again, these dependant visas are granted at the general discretion of the Director of Immigration. Sponsors must show that they have sufficient financial resources to support and accommodate their dependants in Hong Kong. Other important notes As a general policy, only traditional lawful marriages are normally recognised - cohabitants or

same-sex partners are excluded, although the legal power to admit spouses and children is discretionary and there is room for the Immigration Department to make exceptions. Certain categories of person, including foreign domestic helpers, are not permitted to sponsor dependants to reside in Hong Kong. However, domestic helpers who have children while living in Hong Kong may be able to gain permission for them to remain.

2. WHAT OTHER CATEGORIES OF IMMIGRATION ARE THERE? 2. WHAT OTHER CATEGORIES OF IMMIGRATION ARE THERE? The Immigration Department operates other schemes or programmes by which persons may be admitted to Hong Kong to live and work. These include the Quality Migrant Admission Scheme. The requirements for qualification under these schemes are set out clearly on the website of the Immigration Department. The schemes are operated under the general discretion that is held by the Director of Immigration under section 11 of the Immigration Ordinance.

3. IF A FAMILY MEMBER'S APPLICATION TO IMMIGRATE TO HONG KONG IS REJECTED, IS THERE ANY CHANNEL THROUGH WHICH I CAN APPEAL? 3. IF A FAMILY MEMBER'S APPLICATION TO IMMIGRATE TO HONG KONG IS REJECTED, IS THERE ANY CHANNEL THROUGH WHICH I CAN APPEAL? If your case involves the refusal of a one-way permit for a resident of Mainland China, then you must approach the relevant Mainland authority, as Hong Kong government officials do not have the legal authority to grant this permit. If your case is related to a rejection by the Hong Kong Immigration Department of an application by a non-Chinese family member in a foreign country, then you should first contact the Immigration Department to see whether there is any missing or incorrect information that you could rectify (and try to ask for a review of your application). If you are still unsatisfied with the decision of the Immigration Department, you can consider applying to the High Court for a judicial review. However, you should note that judicial review is not an appeal process, and the grounds on which the High Court can rule in your favour are very restricted. You must seek legal advice before making this application because substantial time and legal costs will be incurred.

FOREIGN DOMESTIC HELPERS IV. FOREIGN DOMESTIC HELPERS Hong Kong residents are permitted to sponsor foreign domestic helpers to immigrate to Hong Kong to work in their homes. The general guidelines of the Immigration Department state that the prospective employer should be able to satisfy the Department that he or she has sufficient financial resources and can accommodate a helper in his or her own home. To obtain permission for a foreign domestic helper, the employer must usually have a household income of not less than HK\$15,000 per month or assets that are sufficient to meet the comparable expenses for the entire contractual period. The guidelines as to income and assets are discretionary, and may be adjusted by the Government from time to time. Employers of foreign domestic helpers who have a record of mistreatment or underpayment may be refused permission to employ by the Immigration Department. The domestic helper scheme is operated under the general discretion that the Director of Immigration possesses to grant permission to non-residents to live and work in Hong Kong and also to impose conditions on their stay. There is no specific legislation that sets out who may employ, and who may be employed as, a foreign domestic helper. As permission to sponsor a foreign domestic helper is discretionary, the Director of Immigration considers each application on a case by case basis. This means that in exceptional circumstances permission may be obtained even though the usual guidelines are not met. If your application is rejected on the grounds that it does not come within the guidelines and you consider the decision to be unreasonable, then you should seek advice from a legal expert. More information about employing foreign domestic helpers is contained in the Guidebook for Employment of Domestic Helpers from Abroad that is issued by the Immigration Department.

1. HOW MUCH DO I HAVE TO PAY MY FOREIGN DOMESTIC HELPER? IS THERE A STANDARD EMPLOYMENT CONTRACT THAT I CAN ENTER INTO WITH MY DOMESTIC HELPER? 1. HOW MUCH DO I HAVE TO PAY MY FOREIGN DOMESTIC HELPER? IS THERE A STANDARD EMPLOYMENT CONTRACT THAT I CAN ENTER INTO WITH MY DOMESTIC HELPER? Employers of foreign domestic helpers are required to pay no less than a minimum salary that is fixed by the Government, and must in addition pay a levy that goes toward the retraining of local workers. Failure to comply with the above requirements is an offence that can result in fine or imprisonment. It is important to note that the fixed salary is a minimum amount only (the minimum allowable salary is currently set at HK\$4,410 per month). A foreign domestic helper and employer are

entitled to agree to a higher salary in accordance with normal employment law. You and your domestic helper must sign a standard employment contract as specified by the Director of Immigration. This is the only contract that is acceptable to the Immigration Department, and may be required for inspection when the helper arrives in Hong Kong. You can download a sample employment contract (for reference only) from the website of the Immigration Department.

2. DOES MY DOMESTIC HELPER HAVE TO LIVE IN MY HOME? 2. DOES MY DOMESTIC HELPER HAVE TO LIVE IN MY HOME? The Immigration Department normally requires foreign domestic helpers to live with their employers. Also, the home address must be specified in the employment contract. Legal experts believe that this requirement may be inconsistent with the right of Hong Kong residents to live where they choose, and thus may be subject to legal challenge.

3. IS IT LEGAL TO EMPLOY A PART-TIME FOREIGN DOMESTIC HELPER? 3. IS IT LEGAL TO EMPLOY A PART-TIME FOREIGN DOMESTIC HELPER? The Immigration Department states that foreign domestic helpers can only work for the employer that is designated on their employment visa, and may only perform domestic duties. Those found doing other work may be prosecuted, as may their employers. If you employ a part-time foreign domestic helper who has permission only to work for another employer, then you may be prosecuted for aiding and abetting a breach of conditions of stay. Permission is rarely, if ever, given to foreign domestic helpers to work part-time outside the home of the sponsoring employer, although in theory it is legally possible.

4. CAN FOREIGN DOMESTIC HELPERS BECOME PERMANENT RESIDENTS OF HONG KONG? 4. CAN FOREIGN DOMESTIC HELPERS BECOME PERMANENT RESIDENTS OF HONG KONG? Unlike most other persons who are admitted to Hong Kong for employment, foreign domestic helpers are not entitled to become permanent residents after 7 years residence. Section 2(4) of the Immigration Ordinance excludes domestic helpers and certain other occupational categories. Legal experts believe that this provision may be unconstitutional, as no such restriction is found in the Basic Law of the Hong Kong SAR.

VISITORS/TOURISTS AND EMPLOYMENT VISAS V. VISITORS/TOURISTS AND EMPLOYMENT VISAS Any person who has no legal right to land or reside in Hong Kong and wishes to visit requires permission to do so. Citizens of some countries are required to obtain prior entry clearance, visas or entry permits, which can be obtained from the Chinese diplomatic missions in their country of residence. Although permission is given on a case by case basis, the general requirements are that visitors should be able to prove their ability to support themselves during their visit to Hong Kong and must possess return tickets. The invariable practice is to permit visitors to stay for a limited period, which varies from only one week to several months depending on the visitor's nationality. To find out whether you need to apply for a visa or entry permit before visiting Hong Kong, please read the visa requirements section of the Immigration Department's website. The entry of visitors is not covered by any specific legislation. Instead, it is governed by the general discretion of the Director of Immigration under section 11 of the Immigration Ordinance. However, regulation 2 of the Immigration Regulations contains specific provisions that prohibit visitors from working in Hong Kong.

1. HOW CAN VISITORS FROM MAINLAND CHINA GAIN PERMISSION TO ENTER HONG KONG? 1. HOW CAN VISITORS FROM MAINLAND CHINA GAIN PERMISSION TO ENTER HONG KONG? Visitors from Mainland China are normally permitted to remain in Hong Kong for the period that is stated on the "exit-entry permit" (also called "two-way permit") that is issued to them by the Mainland authorities. More details can be found on the website of the Immigration Department.

2. WHO IS ENTITLED TO AN EMPLOYMENT VISA? 2. WHO IS ENTITLED TO AN EMPLOYMENT VISA? In general, only two groups of people are entitled to work in Hong Kong unless prior permission is obtained from the Immigration Department. These two groups of people are: Hong Kong permanent residents (i.e. holders of permanent identity cards); and non-permanent resident identity card holders whose passports or travel documents are endorsed with permission that does not restrict employment. There are no legal rules that set out when a person may be granted permission to remain in Hong Kong for employment purposes. It is entirely a matter of discretion under section 11 of the Immigration Ordinance. That discretion is exercised in accordance with internal guidelines that are largely unpublished, but some general rules are known. For most people, the following principles apply: the job should generally be of a senior nature; or there should be a shortage of persons in Hong Kong who are able to do the job.



Certain categories of persons (such as domestic helpers) come under special schemes that are administered by the Immigration Department. More information about the application procedures for employment visas is available on the website of the Immigration Department. A person who is granted an employment visa may only work for the sponsoring employer. Further permission must be sought from the Immigration Department should such a person wish to change employer. As the granting of employment visas is entirely a matter of discretion, the Director of Immigration must consider each application on a case by case basis. If your application is rejected because it does not come within the relevant guidelines and you consider this rejection to be unreasonable, then you should consult a legal expert.

3. ARE SPONSORED FAMILY MEMBERS ALLOWED TO WORK IN HONG KONG? 3. ARE SPONSORED FAMILY MEMBERS ALLOWED TO WORK IN HONG KONG? Spouses and children who are admitted to Hong Kong from China for the purpose of family reunion are not normally subject to any employment restrictions. The spouses and children of foreigners are normally admitted to Hong Kong with "dependant" visas. After June 2006, these dependants will not normally be subject to any restrictions on taking up employment or starting a business (unless the employment or business is illegal). As the granting of dependant visas is entirely a matter of discretion, the Director of Immigration must consider each application on a case by case basis. If your application is rejected because it does not come within the relevant guidelines and you consider this rejection to be unreasonable, then you should consult a legal expert.

4. DO BRITISH CITIZENS HAVE TO APPLY FOR EMPLOYMENT VISAS IF THEY WANT TO WORK IN HONG KONG? 4. DO BRITISH CITIZENS HAVE TO APPLY FOR EMPLOYMENT VISAS IF THEY WANT TO WORK IN HONG KONG? During the colonial era, British citizens from the United Kingdom were permitted to enter Hong Kong with few restrictions. They were also entitled to work without employment visas. In line with the transfer of sovereignty, these privileges were abolished in 1997. British citizens are now required to seek permission to take up employment in Hong Kong unless, through long-term residence, they have acquired a legal right of residence (such as permanent resident status).

PASSPORTS AND IDENTITY CARDS VI. PASSPORTS AND IDENTITY CARDS Hong Kong permanent residents who are Chinese citizens are entitled to apply for Hong Kong SAR passports. These passports are issued by the Hong Kong Immigration Department and are governed by the Hong Kong SAR Passports Ordinance (Cap. 539 of the Laws of Hong Kong). They are much more widely accepted for international visa-free travel than the Chinese passports that are issued by the Mainland government. The Hong Kong SAR passport states that its holder has Chinese nationality (that means the holder is a Chinese citizen). More information about applying for a Hong Kong SAR passport can be found on the website of the Immigration Department.

1. WHAT IS THE BRITISH NATIONAL (OVERSEAS) PASSPORT? 1. WHAT IS THE BRITISH NATIONAL (OVERSEAS) PASSPORT? Millions of Hong Kong residents hold British National (Overseas), or BNO, passports. These are issued by the United Kingdom Government to Hong Kong residents who had British nationality by virtue of a connection with Hong Kong before reunification with China in 1997. It was agreed by Britain and China in an annex to the Sino-British Joint Declaration of 1984 (which led to the return of Hong Kong to Chinese sovereignty) that such people would be entitled to continue to use British travel documents for their lifetime. Only persons who registered before the reunification of Hong Kong with China are entitled to obtain BNO passports. Under Hong Kong and Chinese law, these passports are considered to be travel documents only, and do not confer any rights of citizenship on their holders. Under United Kingdom law, holders of these passports are considered to be British, and are entitled to consular protection if they get into difficulties in any place outside of China. Holders of these passports are permitted to visit the United Kingdom without having to obtain a visa beforehand, but they are not entitled to right of abode. When resident in the United Kingdom, a BNO passport holder is also entitled to the right to vote in that country. These passports are also recognised by many other countries for visa-free travel purposes. BNO passports are governed by the Hong Kong (British Nationality) Order 1986, which is an Order-in-Council of the United Kingdom Government.

2. ARE SOME HONG KONG CHINESE PERSONS ENTITLED TO FULL BRITISH PASSPORTS (NOT BNO PASSPORTS)? 2. ARE SOME HONG KONG CHINESE PERSONS ENTITLED TO FULL BRITISH PASSPORTS (NOT BNO PASSPORTS)? Many tens of thousands of Hong Kong Chinese persons hold full British passports. Some may

have been born in the United Kingdom or settled there before 1962 when immigration controls were imposed on Hong Kong people. Others may have been allowed to settle there since that time and have been naturalised as British citizens. The majority of Hong Kong Chinese persons who are entitled to full British passports successfully applied for them under the nationality selection scheme, by which the United Kingdom granted full nationality to tens of thousands of Hong Kong people in the early 1990s. China objected to the nationality selection scheme at the time, and as a result, British nationality that was acquired under the scheme is not recognised under Hong Kong and Chinese law. Successful applicants are still considered to be Chinese. Their United Kingdom passports are not recognised in Hong Kong or elsewhere in China, and they are not entitled to the protection of the United Kingdom Government anywhere in China. Under United Kingdom law, persons who acquired British citizenship under the nationality selection scheme are entitled to full citizenship rights, including the right to live and work without restriction in the United Kingdom and other parts of the European Union. The nationality selection scheme lasted for only a limited period, and applications closed well before the transfer of sovereignty in 1997. However, successful applicants are entitled to renew their British passports for their lifetime, and may transmit full British nationality to their children.

3. WHO IS REQUIRED TO CARRY A HONG KONG IDENTITY CARD AND WHEN? Under section 17C of the Immigration Ordinance, every Hong Kong resident who is aged 15 or above is required to carry proof of identity. This usually means an identity card. It is an offence to fail to produce proof of identity on demand to a police officer or immigration officer. However, in practice, persons are unlikely to be prosecuted if they are found without an identity card when they are near their home. With respect to children, there is no obligation to apply for an identity card until the age of 11 (section 17C of the Immigration Ordinance). Visitors who are staying in Hong Kong for not more than 180 days are not required to apply for identity cards (regulation 25(d) of the Registration of Persons Regulations). Nevertheless, such visitors are strongly advised to carry proof of identity (e.g. passports) with them, otherwise they may be detained by the police or immigration officers for verification of their status.

4. WHAT TYPES OF IDENTITY CARD ARE THERE? There are two types of identity card. Ordinary Hong Kong identity cards are issued to persons who are admitted to Hong Kong for a limited period of more than 180 days, such as persons with employment or student visas and the dependants of such persons. Hong Kong permanent identity cards are issued to persons with the status of Hong Kong permanent resident. Identity cards for children (aged 11-17) differ from those for adults. More information on these two types of identity card (including the respective application procedures) can be found on the website of the Immigration Department.

IMMIGRATION OFFENCES VII.

IMMIGRATION OFFENCES Hong Kong's immigration laws are strictly enforced. There are many offences under the Immigration Ordinance. Some of the main or usual types of immigration offences are highlighted in this section.

Overstaying This means failing to leave Hong Kong on or before the date that is stamped on the travel document of a visitor or foreign employee. This is a breach of conditions of stay, and the offender will normally be expelled from Hong Kong. Breach of conditions of stay This means working (paid or unpaid) in Hong Kong without approval from the Immigration Department, where such approval is required. Section 41 of the Ordinance stipulates that the offender shall be liable to a maximum fine of \$50,000 and imprisonment for 2 years. Making false statements This means giving false information to the Immigration Department for the purposes of obtaining a travel document, certificate of entitlement or entry permit, or in support of an application for permission to enter or to work in Hong Kong. According to section 42 of the Ordinance, the offender shall be liable to a maximum fine of \$150,000 and imprisonment for 14 years (on conviction on indictment), or to a maximum fine of \$100,000 and imprisonment for 2 years (on summary conviction). Employing illegal workers As mentioned in the section on employment visas, only two groups of people are entitled to work in Hong Kong without requiring prior permission from the Immigration Department. These two groups of people are: Hong Kong permanent residents (i.e. holders of permanent identity cards); and non-permanent resident identity card holders whose

passports or travel documents are endorsed with permission that does not restrict employment. It is important to note that employers are liable to a maximum fine of \$350,000 and 3 years' imprisonment if they employ persons who are not lawfully employable. More information about illegal workers is given on the website of the Immigration Department. Regulations for foreigners staying in a hotel Foreigners who stay in a hotel in Hong Kong are required to provide the hotelkeeper with their full names, nationality, date of arrival and the airline with which they will depart. More details can be found in Immigration Department website.

1. WHAT SHOULD I DO IF I AM INVESTIGATED BY THE IMMIGRATION DEPARTMENT? 1. WHAT SHOULD I DO IF I AM INVESTIGATED BY THE IMMIGRATION DEPARTMENT? If you are investigated by the Immigration Department for any offence, you have the right not to answer any questions and to seek legal advice. It is always a good idea to seek legal advice before answering any questions. It can be intimidating to be questioned by an immigration officer, but you have no reason to be afraid if you assert your rights, and you should certainly do so. If you are arrested, you can ask the Immigration Department to release you on bail. If they refuse, you will be taken before a magistrate and you can apply for bail there. If you are charged with any offence in a Magistrate's Court, you can seek the help of the Duty Lawyer Service. If your case is transferred to the District Court or the Court of First Instance of the High Court, you can apply for legal aid. A lawyer will be assigned to you if you are eligible for legal aid. More information about the free or subsidised legal assistance that is available in Hong Kong is provided in the Legal Aid section. Persons who are found guilty of immigration offences are often refused permission to re-enter Hong Kong.

RELATED WEBSITES IX. RELATED WEBSITES HK immigration Department Online Services GovHK Multi-language Platform (Bahasa Indoneisa, Hindi, Nepali, Punjabi etc.) HK Labour Department Foreign Domestic Helpers Portal "Immigration Detention and Vulnerable Migrants in Hong Kong" (only available in English) - A research project by the Chinese University of Hong Kong Faculty of Law