

Information paper on
21 February 2001

Panel on Security of the Legislative Council

HKSAR Identity Card Project – Assessment of Right of Abode during the Region-wide New Identity Card Replacement Exercise

INTRODUCTION

At the LegCo Panel on Security meeting on 14 February 2001, a Member enquired whether the right of abode of Permanent Identity Card holders would be re-assessed during the region-wide new identity card replacement exercise. This paper provides a detailed response.

LEGAL POSITION

Replacement of identity card

2. Under Regulation 14 of the Registration of Persons (ROP) Regulations, when a person applies to a registration officer for replacement of his identity card and the registration officer is satisfied that that person enjoys the right of abode in Hong Kong, the registration officer shall issue to the person a permanent identity card.

Definition of permanent identity card and right of abode in Hong Kong

3. Under section 1A of the ROP Ordinance, “permanent identity card” means an identity card which contains a statement that the holder has the right of abode in Hong Kong. “Right of abode in Hong Kong” has the same meaning as in the Immigration Ordinance (Cap. 115).

Eligibility for right of abode

4. Section 2A(1) of the Immigration Ordinance states that a Hong Kong permanent resident enjoys the right of abode in Hong Kong. Paragraph 2 of Schedule 1 to the Immigration Ordinance sets out six categories of persons who are permanent residents of the HKSAR. Details

are at Annex. Broadly speaking, they can be divided into Chinese citizens and persons who are not of Chinese nationality.

Loss of right of abode

5. Under paragraph 6(2) of Schedule 1 to the Immigration Ordinance, a person who is a Chinese citizen and was a Hong Kong permanent resident immediately before 1 July 1997 under the Ordinance as then in force shall, as from 1 July 1997, be a permanent resident of the HKSAR as long as he remains a Chinese citizen.

6. Hong Kong residents who are of Chinese descent and born in Chinese territory (including Hong Kong) are, for the purpose of the Nationality Law of the People's Republic of China, Chinese citizens. They include persons who are holding foreign passports. As long as they do not go through the procedure of declaring a change of nationality with the Immigration Department, they will remain Chinese citizens and their right of abode will not be lost.

7. In the case of persons who are not of Chinese nationality, they will not lose their right of abode unless they cease to meet the requirements under the law. For example, they have been absent from Hong Kong for a continuous period of not less than 36 months since they ceased to have ordinarily resided in Hong Kong. By virtue of section 2AAA of the Immigration Ordinance, those who have lost their right of abode still have a statutory right to land in Hong Kong and the right to work and live in Hong Kong without any restrictions.

ASSESSMENT OF ELIGIBILITY FOR PERMANENT IDENTITY CARD

8. A person's eligibility for the permanent resident status is a matter of fact to be determined in accordance with the law. Similarly, permanent residents with the right of abode in Hong Kong are eligible for a permanent identity card in accordance with the law.

9. Except in a situation involving a change of circumstances as described in paragraphs 6-7 above, persons who are holding the existing permanent identity cards will in the region-wide identity card replacement exercise continue to be eligible for a new form of permanent identity cards. They will not need to prove their eligibility for the permanent resident status

again when they apply for a new identity card.

10. In the new identity card replacement exercise, we plan to adopt a system whereby the need to report changes in circumstances will be decided by the applicants. We will explain to the applicants the circumstances in which a person may lose his right of abode and cease to be eligible to hold a permanent identity card. Those who do not report any change in circumstances will be deemed to have retained their permanent resident status and their applications for a new identity card will be processed in the normal manner.

Security Bureau
February 2001

**Categories of Persons who are Permanent Residents of the
HKSAR**

Chinese citizen

- (a) A Chinese citizen born in Hong Kong –
 - (i) before 1 July 1987; or
 - (ii) on or after 1 July 1987 if his father or mother was settled or had the right of abode in Hong Kong at the time of his birth or at any later time.
- (b) A Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than 7 years before or after the establishment of the HKSAR.
- (c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the HKSAR to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b).

Non-Chinese national

- (d) A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his place of permanent residence before or after the establishment of the HKSAR.
- (e) A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the HKSAR in category (d) before or after the establishment of the HKSAR if at the time of his birth or at any time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong.
- (f) A person other than those residents in categories (a) to (e), who, before the establishment of the HKSAR, had the right of abode in Hong Kong only.