

## **LEGISLATIVE COUNCIL BRIEF**

### **IMMIGRATION POLICY ON CAPITAL INVESTMENT ENTRANT**

#### **INTRODUCTION**

At the meeting of the Executive Council on 11 March, 2003, the Council ADVISED and the Chief Executive ORDERED that

- (a) a policy to facilitate the entry for residence by "capital investment entrants", i.e. persons who bring capital to Hong Kong but would not, in the context of the new policy, be engaged in the running of any business here, should be introduced (paragraphs 2 to 19 below);
- (b) the proposed policy should apply to foreign nationals (except those from countries which pose security and/or immigration risks), Macao Special Administrative Region residents, Chinese nationals who have obtained permanent resident status in a foreign country, stateless persons who have obtained permanent resident status in a foreign country with proven re-entry facilities and Taiwan residents. Mainland residents will be excluded at this stage (paragraph 20); and
- (c) the existing policy for entry of investors for purposes of establishing or joining in a business should remain unchanged (paragraphs 21 to 22).

#### **JUSTIFICATIONS**

##### **A New Policy**

2. Following a review conducted in consultation with the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC), we propose that a new policy which facilitates the entry of "capital investment entrants" should be introduced to attract the inflow of capital. Details of the new policy are set below.

### ***Submission and vetting of applications***

3. Applications for entry for residence as capital investment entrants should be made to the Director of Immigration ("the Director") who would also be responsible for vetting them. Applicants will be expected to execute undertakings in favour of Government which will contain the terms and conditions of the Scheme (see paragraph 13 below).

### ***Eligibility Criteria***

4. Persons who satisfy the following criteria will be eligible for approval in principle by the Director for admission into Hong Kong as capital investment entrants:

- (i) subject to sub-paragraph (ii) below, has net assets to which he is absolutely beneficially entitled of not less than 6.5 million Hong Kong Dollars throughout the two years preceding his application for entry for residence as a capital investment entrant;
- (ii) has invested within six months before submission of his application to the Director, or will invest within six months after the granting of approval in principle by the Director, not less than 6.5 million Hong Kong Dollars in permissible investment assets except Certificates of Deposits which must be invested within the latter period (paragraph 7);
- (iii) can demonstrate that he is capable of supporting and accommodating himself and his dependants, if any, on his own without relying on the return on the permissible investment assets, employment or public assistance. In addition, the entry of dependants will be subject to any other policy applicable to such entry at the time; and
- (iv) has no adverse immigration record and meets normal immigration and security requirements.

5. We believe the threshold of 6.5 million Hong Kong Dollars is in line with the general level of thresholds stipulated by various countries for the admission of investors, and provides a proper balance between making Hong Kong attractive in the global competition for investors and the need to ensure that these investors are of an appropriate quality.

### ***Permissible Investment Asset Classes***

6. In preparing the list of qualifying investments, our main objective is to attract new capital into Hong Kong and to ensure that they are ring-fenced so as to generate additional economic and financial activities. Entrants should be allowed a reasonable degree of flexibility in their choice of investment assets to suit their individual needs. An effective monitoring mechanism should be put in place to prevent abuse and avoidance.

7. Bearing in mind these considerations, we propose to allow entrants to invest in either or both of the following two permissible investment asset classes :-

- (i) Real estate, i.e. commercial, industrial or residential, including land and pre-completion properties in Hong Kong; and
- (ii) Financial assets

Under this class, the entrant can invest in one or a combination of the following types of financial assets :-

(a) *Equities*

shares of companies that are listed on the Hong Kong Stock Exchange and traded in Hong Kong Dollars;

(b) *Debt securities* denominated in Hong Kong dollars including fixed or floating rate instruments and convertible bonds which are issued or fully guaranteed by :-

- the HKSAR Government (the “Government”), the Exchange Fund, the Hong Kong Mortgage Corporation, MTR Corporation Limited, Kowloon-Canton Railway Corporation, Hong Kong Airport Authority, and other corporations, agencies or bodies wholly or partly owned by the Government as may be specified from time to time; or
- companies referred to under (a) above;

(c) *Certificates of Deposits* denominated in Hong Kong Dollars issued by authorised institutions as defined in the Banking Ordinance with a remaining term to maturity of not less than 12 months at the time of purchase (such purchase should take place after approval in principle has been given by the Director for the entrant to join the Capital Investment Entrant Scheme (“the Scheme”) and that such instruments, on reaching maturity, should be replaced by Certificates of Deposits with a

remaining term to maturity of not less than 12 months or by assets in other permissible investments asset classes);

- (d) *Subordinated debt* denominated in Hong Kong dollars issued by authorised institutions under paragraphs 3(k) and 3(m) of the 3<sup>rd</sup> Schedule to the Banking Ordinance; and
- (e) *Unit trusts or mutual funds* managed by registrants of the SFC and investing primarily in the assets listed in (i) or (ii) (a) – (d) above. These unit trusts / mutual funds may be domiciled in Hong Kong or overseas, but they must be an authorised fund approved by the SFC for sale to the public. A list of approved unit trusts and mutual funds for the purpose of the Scheme will be published and updated from time to time by the Director after consultation with the SFC.

### ***Portfolio maintenance requirements***

8. We will impose portfolio maintenance and “ring-fencing” requirements, i.e. requirements aimed at ensuring that an entrant does not reduce his investment commitment to Hong Kong during the time when he is permitted to stay in Hong Kong under the Scheme. Capital investment entrants will have to abide by the following requirements in respect of the purchase, maintenance and management of their investment portfolio:-

#### (i) Real estate

9. There is no restriction on the number of properties bought for the purpose of gaining entry under the Scheme. Only investment in the form of equity in real estate is counted towards the qualifying investment of 6.5 million Hong Kong Dollars. The capital investment entrant may take out a mortgage loan with a bank or financial institution licensed in Hong Kong in respect of a property but only the amount of the equity is counted for the purpose of the Scheme. Refinancing of the outstanding mortgage loan is allowed provided the entrant does not increase the outstanding loan or in any way realize any capital gain on the value of the property. A capital investment entrant may sell the qualifying investment and would continue to qualify under the Scheme if he invests the entire proceeds from the sale of his original property in other permissible investments after deducting the amount of the original mortgage loan, if any, secured by the property.

10. The entrant may also choose to buy a property with a value of more than \$6.5 million Hong Kong Dollars (say 10 million) by paying additional equity. In such case, only the requisite amount of equity (i.e. 6.5 million) would be counted and ring-fenced as the qualifying investment under the Scheme. The entrant may sell the property and would continue to qualify

under the Scheme if he invests the entire proceeds from the sale in permissible investments after deducting the additional equity he paid (i.e. 3.5 million).

11. A capital investment entrant is required to prove to the satisfaction of the Director all the essential details of the transaction by providing documents such as Land Registry records, bank statements and where the Director considers necessary a professional valuation report. He is also required to make a declaration under the criminal sanctions of section 42 of the Immigration Ordinance every 12 months to confirm that he is and remains as the absolute beneficial owner of the property, subject to any permitted mortgage or charge over the property. He should notify the Director within 7 working days should there be any changes in circumstances. Rental income from the qualifying property can be paid to and retained by the entrant and need not be ring-fenced under the Scheme.

(ii) Financial assets

12. A capital investment entrant wishing to invest in permissible financial assets, whether or not in combination with investment in permissible real estate, has to make the investment in the financial assets through a designated account operated by a single financial intermediary. The entrant should inform the Director of his appointed financial intermediary, which must be an authorized institution as defined in the Banking Ordinance or a licensed investment adviser or securities dealer for the purpose of the Securities Ordinance (Securities and Futures Ordinance with effect from 1 April 2003). The entrant should be the absolute beneficial owner of the financial assets and is required to prove to the satisfaction of the Director all the essential details of the transactions by providing documentary evidence and where the Director considers necessary, a valuation report. To facilitate effective monitoring, the use of more than one financial intermediary is not permitted. The investments can be managed on a self-directed basis or at the discretion of the investment account manager.

13. The following arrangements will be implemented to “ring-fence” the requisite amount of capital :

- (a) the entrant will be required by the Director to transact only in the permissible instruments listed in paragraph 7(ii) in the designated account opened with a single financial intermediary for the purpose of the Scheme and to give instructions to this effect in the contract with his/her financial intermediary;
- (b) with the exception of a switch to investment in permissible real estate and the withdrawal of cash dividend income or interest income derived from permissible financial assets in the qualifying

portfolio (paragraph 14 below), the entrant should not take out any cash or investment from the designated account if he wishes to stay eligible under the Scheme. Where he wishes to switch any financial assets under his account to permissible real estate, he should only do so after notifying the Director and the financial intermediary;

- (c) the entrant should ensure that his appointed financial intermediary notifies the Director within 7 working days if there is any withdrawal of asset or cash (save for cash dividend and interest income referred to in paragraph 14 below), in part or in full, from the designated investment account<sup>1</sup>;
- (d) the entrant should ensure that his financial intermediary informs the Director every 12 months of -
  - the acquisition cost and assets of the investment portfolio in the designated account;
  - has not taken, caused or facilitated the creation of any encumbrance over the financial assets;
  - has complied with the terms and conditions of the investment contract between the entrant and the financial intermediary;
  - has not received any instruction from the entrant to withdraw the financial assets from the designated account or otherwise to withdraw from the Scheme;
- (e) the entrant should not, either by himself or through his financial intermediary, make any scheme or arrangements which would enable him to extract any value or benefit from the investment portfolio held in his designated account, or incur any indebtedness in any form whatsoever using the investment portfolio as collateral for such indebtedness;
- (f) the entrant is required to make a declaration under the sanctions of section 42 of the Immigration Ordinance every 12 months to confirm that he is and remains as the absolute beneficial owner of the financial assets in the designated account maintained with a financial intermediary; and
- (g) the entrant may switch his designated account from one qualified

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<sup>1</sup> This notification requirement does not apply to switching amongst permissible financial investments within the designated account.

financial intermediary to another qualified financial intermediary at any time, provided that the portfolio in his old account is transferred to the new account in entirety. He should notify the Director within 7 working days of any such change.

14. Cash dividend income and interest income derived from permissible financial assets in the designated account can be paid to and retained by the entrant and need not be ring-fenced under the Scheme.

### ***Change in value of investment***

15. We do not propose to require a capital investment entrant to top up the value of his investment in either asset class should its market value fall below the requisite minimum level of 6.5 million Hong Kong Dollars or in the event of a total loss. By the same token we do not propose to allow an entrant to withdraw any capital gain from his portfolio even if its subsequent market value rises above the requisite level. In other words, the investment that qualifies the capital investment entrant's entry and continued stay in Hong Kong will be ring-fenced.

16. An entrant is allowed to switch his investments from one permissible asset class to another (e.g. a switch from real estate to financial assets) provided that the ring-fencing principle is adhered to, i.e. the entire proceeds from the sale of the initial assets except for permitted deductions referred to in paragraphs 9 and 10 above are reinvested. He is required to notify the Director within 7 working days respectively after the completion of the realization and acquisition transactions in case of a switch from real property to financial assets or vice versa, or a switch of real properties. In the case of a switch from real property to financial assets or vice versa, or a switch of real properties, during the interim period between the realization of the original permissible investment assets and the completion of acquisition of the replacement investment assets, the entrant is permitted to deposit the proceeds derived from such realisation in a designated account for a specified limited period. An entrant should keep a record of every change to his investment portfolio and may be required to present such records to the Director when applying for extension of stay.

### ***Entry, Stay and Extension***

17. A person who has obtained an approval in principle under the proposed policy and his dependants, where any, will be initially allowed to enter Hong Kong as a visitor for 3 months. If evidence of active progress in investment can be shown, his visitor status can be extended for another 3 months. Upon his furnishing proof to the satisfaction of the Director that the qualifying investment has been made, permission to stay will be granted

for 2 years subject to the condition that they should continue to satisfy the requirements of the Scheme during this period. Further extensions for 2 years will be granted if the entrant can demonstrate to the satisfaction of the Director that he continues to meet the eligibility criteria and portfolio maintenance requirements in paragraphs 4 and 8 to 14 above respectively. After a period of continuous ordinary residence in Hong Kong of not less than seven years and where applicable if they have taken Hong Kong as the place of permanent residence, an entrant and his dependants may apply to become the permanent residents of Hong Kong in accordance with the law.

18. Some capital investment entrants may not be able to fulfill the continuous ordinary residence requirement even after parking their investment here for seven years, e.g. they may have incurred periods of prolonged absence from Hong Kong which disrupt the continuous residence. We propose that in recognition of the contribution they have made to the local economy through parking a substantial investment in Hong Kong for a long period of time, they be granted unconditional stay (which would allow them to enter and stay in Hong Kong without being subject to any conditions or limit of stay) at the end of the seventh year when they would also be free to dispose of the assets they have invested under the Scheme in whatever way they like. This would allow them to apply for right of abode if they can satisfy the requirement of seven years of continuous ordinary residence in future.

### ***Employment***

19. We have carefully considered whether a capital investment entrant and his dependants should be allowed to be employed and/or do business in Hong Kong. We conclude that they should be allowed to do so. The Scheme would otherwise be unduly restrictive. Given that they control a substantial amount of capital, it is not inconceivable that they may engage in employment or start a business in a manner that entails the employment of other people and the creation of more job and business opportunities in Hong Kong.

### **Scope of Application of Policy**

20. The proposed scope of application initially covers foreign nationals (except those from countries which pose security and/or immigration risks), Macao SAR residents, Chinese nationals who have obtained permanent resident status in a foreign country, stateless persons who have obtained permanent resident status in a foreign country with proven re-entry facilities and Taiwan residents. As the Mainland authorities exercise foreign exchange control as well as exit control on Mainland residents, the proposed scope would not cover Mainland residents for the time being.

## **Investors intending to set up or join in a business**

21. The proposed policy is distinct from and in addition to our existing immigration policy which aims to facilitate the entry of investors who wish to set up or join in a business in Hong Kong. There is currently no capital threshold requirement for these applications. Each case will be considered on its individual merits. Apart from the amount of investment they would bring to Hong Kong, applicants under our existing policy would have to satisfy the Director on matters such as the nature of the business to be established, number of jobs to be created for local people, whether substantial economic benefit would be brought to Hong Kong, as well as his having reasonable experience in running the business.

22. An earlier survey conducted on successful applications approved in 2002 shows that about 74% of investors allowed entry into Hong Kong under the existing policy made an investment that was less than half a million Hong Kong Dollars. A main target of the existing policy is thus start-up entrepreneurs whose investments are less capital-intensive but who might bring in new management expertise. We are of the view that the existing policy will be complemented by the proposed policy and should remain unchanged.

## **IMPLICATIONS OF THE PROPOSAL**

23. The proposal is in conformity with the Basic Law, including provisions concerning human rights. The proposal has economic, financial and civil service and sustainability implications as set out at Annex. It has no productivity or environmental implication.

## **PUBLIC CONSULTATION**

24. The proposed Scheme, which forms part of the Report of the Task Force on Population Policy, was announced by the Chief Secretary for Administration on 26 February.

## **PUBLICITY**

25. We will announce the plan to allow the entry of non-Mainland capital investment entrants on 11 March. A press release will be issued and a media briefing will be held. We will also arrange a briefing for the Security and any other relevant Panel of the Legislative Council as soon as possible. Taking into account the time required for necessary preparatory work,

implementation will take place in the latter half of 2003.

## **BACKGROUND**

26. Our existing immigration policy does not allow entry for residence by persons who can only bring in capital but would not otherwise engage in the running of any business in Hong Kong. This places Hong Kong at a disadvantage in the global competition for financial capital. Countries like Canada and the UK, for example, both have schemes that allow foreign nationals' entry for residence without requiring them to run any business provided that they can bring in a specified amount of capital.

## **SUBJECT OFFICER**

27. Enquiries on this brief can be made to Ms Linda So, Principal Assistant Secretary for Security (tel: 2810 2330).

**Security Bureau**  
**11 March 2003**

**FINANCIAL AND CIVIL SERVICE IMPLICATIONS**

1. Given that a successful applicant under the proposed policy has to satisfy the Director that he is capable of supporting and accommodating himself and his dependants (if any) without relying on the investment return, employment or public assistance, the proposal should not create significant additional demand for Government's social services. The Immigration Department will absorb the workload from within its existing resources at the initial stage upon the launch of the Scheme. The Department will review the position in the light of operational experience and any additional resources required will be secured in the normal manner.

**ECONOMIC IMPLICATIONS**

2. The proposed scheme can be expected to bring positive benefits to the Hong Kong economy, in terms of injecting additional funds for investment, and generating business and employment in particular for the real estate and financial services sectors. Also, given their financial position and the requirement for themselves and their dependants in Hong Kong to be self-supporting, the respective entrants should not pose a burden to Hong Kong. Rather, they will contribute to local consumption demand and help bolster the retail and related businesses. As for the financial institutions dealing with these cases, there will be additional information reporting requirements. Yet correspondingly they will gain business. There should be sufficient financial institutions to cater for such cases effectively and on a competitive basis.

**SUSTAINABILITY IMPLICATIONS**

3. This proposal should provide an additional channel to attract capital investment to Hong Kong, and is conducive to the sustainability principle of promoting a prosperous market-based economy.