

DOMICILE BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

Clause

Amendment Proposed

- 2(1) By adding “, unless the context otherwise requires” after “this Ordinance”.
- 2(1) By deleting the definition of “parents” and substituting –  
““parent” (父母), in relation to a child, means –
- (a) the natural father or natural mother of the child (whether or not the natural father and natural mother are married to each other);
  - (b) a parent of the child by adoption; or
  - (c) a stepfather or stepmother of the child.”.
- 2 By adding –
- “(1A) For the purposes of the definition of “parent” –
- (a) an adoption means –
    - (i) an adoption under an adoption order made in accordance with the Adoption Ordinance (Cap. 290); or
    - (ii) an adoption recognized as valid by the law of Hong Kong;
  - (b) where a child is so adopted and subject to paragraph (c), the adopter or adopters, and not any other person, is or are treated as the parent or parents of the child; and
  - (c) where –

**ALL PASSED**

- (i) a person married to a natural parent of a child has adopted the child under an adoption within the meaning of paragraph (a); and
- (ii) by virtue of paragraph (c)(i) of section 13(1) of the Adoption Ordinance (Cap. 290), the child stands to the adopter and that natural parent exclusively in the position of a child born to them in lawful wedlock in respect of the relevant matters within the meaning of that section 13(1), or by virtue of any law of the country or territory of adoption other than Hong Kong, the child stands to the adopter and that natural parent exclusively in such a position in respect of such matters,

the adopter and that natural parent, and not any other person, are treated as the parents of the child.”.

4 In the Chinese text, by deleting subclause (1) and substituting –

“(1) 未成年人的居籍為他當其時與之有最密切聯繫的國家或地區。”.

4 By deleting subclause (2).

7 By deleting the clause and substituting –

**“7. Acquiring a domicile in another country or territory**

In determining for the purposes of section 5(2) whether an adult has acquired a domicile in a country or territory other than Hong Kong –

- (a) account shall be taken of whether his presence in

**ALL PASSED**

that country or territory is lawful by the law of that country or territory; but

- (b) even if his presence in that country or territory is unlawful by the law of that country or territory, that fact does not preclude a determination that he has acquired a domicile in that country or territory.”.

8(3) In the Chinese text, by deleting “在緊接該行爲能力恢復之前的他的” and substituting “他在緊接該行爲能力恢復之前的”.

New By adding –

**“10A. Closest connection**

(1) In determining for the purposes of section 4, 8 or 10 the country or territory with which an individual is for the time being most closely connected, account may be taken of any relevant matter.

(2) In determining for the purposes of section 4 the country or territory with which a child is for the time being most closely connected, account shall be taken of any preference that the child may have as to the country or territory in which to have his home.

(3) In determining for the purposes of section 8 the country or territory with which an adult lacking the capacity to form the intention necessary for acquiring a domicile is for the time being most closely connected, account shall be taken of any intention that he might have, immediately before losing that capacity and as an adult, as to the country or territory in which to make a home for an indefinite period.

(4) Any matter taken into account under subsection (1), (2) or (3) may be given such weight as is appropriate in all the circumstances of the case.”.

13(1) By adding “(other than section 12)” after “as if this Ordinance”.

**ALL PASSED**

By deleting subclauses (2) and (3) and substituting -

“(2) For the purposes of a determination under subsection (1), this Ordinance (other than section 12) applies in place of –

- (a) the rules of common law for determining the domicile of an individual to the extent that those rules are inconsistent with this Ordinance (other than section 12); and
- (b) section 11C(2) of the Matrimonial Causes Ordinance (Cap. 179), which section is repealed by this Ordinance.

(3) For the purposes of subsection (2)(a), the rules of common law for determining the domicile of an individual include (without limitation) –

- (a) the rule that a domicile of origin is given to every individual at birth by operation of law;
- (b) the rule that a child has a domicile of dependency;
- (c) the rule that a married woman has at all times the domicile of her husband;
- (d) the rule on the acquisition of the domicile of choice based on residence and intention of permanent residence;
- (e) the rule on the revival of the domicile of origin;
- (f) the rule that a mentally incapacitated adult retains the domicile that he had when he became mentally incapacitated for so long as he remains in that condition; and
- (g) the rule that the standard of proof required to prove that an individual’s domicile changes from a domicile of origin to a domicile of choice is more onerous than that required to prove a change from a domicile of choice to another.”.

**ALL PASSED**