

Right of Abode: The Solution

Purpose

This paper informs Members that the Chief Executive has decided to seek the Central Authorities' assistance in requesting the Standing Committee of the National People's Congress (NPCSC) through the State Council to interpret Articles 22(4) and 24(2)(3) of the Basic Law in accordance with the true legislative intent of the BL, so as confirm the true legislative intent of the relevant provisions.

Background

2. The CFA gave a judgment on the right of abode (ROA) of Mainland persons on 29 January 1999. The CFA's interpretation of the relevant provisions of the BL was as follows:

- (1) BL 24(2)(3) gives ROA to children born of a Hong Kong permanent resident regardless of whether that parent became a permanent resident before or after the child's birth.
- (2) Children born out of wedlock may derive their ROA from their natural father as well as their natural mother.
- (3) The restrictions on entry into Hong Kong imposed by BL 22(4) on "people from other parts of China" do not apply to persons who have ROA under BL 24(2). As a result, the stipulation in the Immigration Ordinance requiring a Certificate of Entitlement to be affixed to a One Way Permit was held to be inconsistent with the Basic Law.

3. At the Legislative Council (LegCo) meeting on 28 April this year, the Government reported to the Council the interim findings of a survey being conducted by the Census and Statistics Department. The number of people who are immediately eligible for entry into Hong Kong and the number of people who will acquire ROA after their parents have completed seven years' residence in Hong Kong in the coming ten years were announced. At the special meeting of the LegCo House

Committee on 6 May, the Government further reported that the admission of this enormous number of additional eligible persons within ten years would create a very huge pressure on Hong Kong. Hong Kong's social resources could hardly meet the immediate needs of this large group of immigrants for education, housing, medical and health, social welfare, etc, thereby triggering severe social problems.

4. Findings from the opinion polls conducted in the past few weeks show that the public is very concerned about these unbearable consequences. We have decided to inform the LegCo at the soonest possible of the option we have taken to deal with the ROA issue concerning Mainland residents born of Hong Kong residents.

Options

5. In view of the problems arising from the CFA judgment, we have considered the following four options:

- (1) All the persons who are eligible for ROA by virtue of the CFA judgment to be allowed to come to Hong Kong for settlement;
- (2) A new ruling to be delivered by CFA through new cases;
- (3) NPC to amend the Basic Law; and
- (4) NPCSC to interpret the relevant provisions of the Basic Law.

Option 1: Absorbing all the additional eligible persons

6. This option means that we have to absorb all the Mainland residents who have ROA by virtue of the CFA ruling, but as clearly indicated in the assessment announced on 6 May, this would create an unbearable burden for the Hong Kong Special Administrative Region (HKSAR). Even if, as critics have suggested, some of the eligible persons will not come to Hong Kong, and that there might be discrepancy in the statistical estimates, the total number of additional persons eligible for ROA will still be enormous. Even if we use longer time to admit them,

the only difference lies in the impact on the quality of services and the extent of difficulties the various government departments have in providing the additional services. Irrespective of whether the rate of admission is a fast or slow one, the rate of unemployment would eventually soar because of over-supply in the labour market. The problem of environmental pollution would aggravate as well. Hence, unless the people of Hong Kong are all willing to accept a much lower standard of living, it will be impossible for Hong Kong to withstand the repercussion brought about by the entry of the first generation in full.

7. Even if the public are willing to pay this price and accept a lower standard of living, it might not be possible for us to regulate the rate of admission of all the eligible persons, keeping them waiting for longer time before entry into Hong Kong to claim their ROA. This is because the CFA has clearly ruled that we must not unreasonably delay the processing of ROA applications. If these persons have to wait for a longer time, it is possible that many of them will take the Government to courts to demand for an early processing of their applications.

Option 2: Further CFA decision

8. We have considered inviting the CFA to reconsider its decision when the relevant material issues are raised in a future case that comes before it. The advantage of this approach is that any change in the interpretation of the Basic Law would be achieved by judicial action in Hong Kong.

9. However, there is no guarantee that an appropriate case will emerge shortly. Even such a case does emerge, it would take a long time to reach the CFA and this would offer no quick solution to the problem. Moreover, we could not be sure that the CFA would reach a different conclusion on the relevant issues. If it did, the CFA might be criticized as having yielded to political pressure instead of making a rational judicial decision. This would damage its credibility.

10. Legal analysis indicates that the chance of the CFA reversing its judgment is slim. Under common law principles, there must be stability in case precedents. Unless there are changes in the

circumstances or in legal viewpoints over a long period of time, the CFA will not easily reverse any of its previous decisions. The House of Lords in Britain has unanimously ruled that even if it considered that a previous judgment had been wrongly decided, this did not constitute sufficient grounds for reversion. If the CFA in Hong Kong adopts this principle, it could not possible change its judgment made on 29 January within just a few months.

11. We must stress that by reversion we mean the CFA reverses its previous decision in a similar case in the future. We are not asking the CFA to reverse its original judgment when there is no case before it. Such an approach is without legal basis, nor is it acceptable.

Option 3: Amending the Basic Law

12. An alternative is to amend the Basic Law. The basis for the amendment would be that the CFA judgment has correctly reflected the true legislative intent of BL 22(4) and 24(2)(3), but having considered the impact of the CFA judgment on society, an amendment will be made. The measure of redressing the deficiency of law through legislative amendment is more acceptable to common law jurisdictions. There have also been precedents in Hong Kong, a common law jurisdiction, to repudiate a court judgment by means of legislative amendment. Besides, amendment to the Basic Law may help us resume effective control over the entry of Mainland residents into Hong Kong for settlement and resolve the population crisis caused by the CFA judgment.

13. However, this option has the following disadvantages:-

- (i) The authority to amend the Basic Law is vested in the NPC which holds its meeting only once a year in March. Hence, the people of Hong Kong have to decide whether they would accept delaying resolving the problem through amendment until next March. Prior to this, many Mainland residents will have exercised or obtained ROA under the CFA ruling. Meanwhile, more and more ROA claimants in the Mainland may attempt to enter Hong Kong illegally or by other means and ask for the permission to stay. Such a prolonged period

would have a severe impact on Hong Kong.

- (ii) The CFA ruling made on 29 January has become part of the laws of Hong Kong. Before NPC amends the Basic Law, the HKSAR Government has the responsibility to enforce the CFA's ruling. We must not depart from it from now till next March, and assume that NPC will definitely amend the Basic Law. Any departure would have adverse effects on the rule of law of Hong Kong.
- (iii) Some critics have pointed out that amendment of BL 22(4) and BL 24(2)(3) is not guaranteed because BL 159(4) provides that no amendment to the Basic Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong. Since BL 22(4) and BL 24(2)(3) find their origin in section XIV of Annex I to the Joint Declaration (JD) concerning the elaboration of such basic policies, if the two provisions have already reflected the Central Government's basic policies on SAR, it may not be possible to amend the Basic Law as such a move would mean contravention of these basic policies.
- (iv) We need to consider carefully whether amendment of the Basic Law should be made retrospective. Generally speaking, amended legislation will take effect after the legislative amendments are passed. If we revoke the rights of people who are entitled to ROA under the CFA judgment, the Government will be criticised for acting wrongly in not paying compensation now that it has accepted the CFA judgment as correct.
- (v) The Basic Law is a constitutional document. Decisions should not be taken lightly to amend it for individual cases. It should be kept intact as far as possible. In fact, the Basic Law has only come into force for less than two years. We should actively explore the feasibility of other options before considering amending it.

Option 4: Interpretation of the Basic Law by NPCSC

14. The fourth option is to seek NPCSC's interpretation of the BL. Under BL 158(1), the power to interpret the Basic Law is vested in the NPCSC. This provision reflects that, under Article 67 (4) of the PRC Constitution, the NPCSC has the constitutional power to interpret laws. While the NPCSC, under BL 158 (2) and (3), grants the SAR courts the power of final adjudication and the judicial power to interpret relevant provisions of the BL, the ultimate power to interpret the Basic Law is vested in the NPCSC.

15. We must point out that legislative interpretation is not equivalent to amendment. Legislative interpretation must be faithful to the true legislative intent. It can expound the express or implied meaning of the law only within the bounds of the legislative principle of the law in question; it cannot make any expansionist or restrictive interpretation which changes the true legislative intent, for otherwise it would be tantamount to legislative amendment.

16. As regards the true legislative intent of BL 22(4) and BL 24(2)(3), BL 24(2)(1), (2)(2) and (2)(3) find their origin in the JD. Section XIV of Annex I to the JD sets out the categories of persons who would have the ROA in the HKSAR. It is clearly stipulated therein that, amongst others, they include all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the HKSAR for a continuous period of seven years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals. Subsequently, the Joint Liaison Group reached an agreement in 1993 in respect of BL 24(2)(3). It was agreed between both parties that that provision should be interpreted as "A person of Chinese nationality born outside Hong Kong shall have the right of abode in HKSAR, if at the time of his or her birth, whether before or after the establishment of the HKSAR, one of his or her parents is a Chinese national who has ROA in Hong Kong." At its fourth plenary session held in August 1996, the Preparatory Committee (PC) made a resolution to put forth its views on the implementation of paragraph 2 of Article 24 for the HKSAR Government's reference in the making of detailed rules to implement those provisions (see Annex). The said resolution was also specifically

referred to by the PC's Chairman Qian Qichen in his working report of the PC presented at the Eighth NPC at its 5th session on 10 March 1997. The resolution was approved at that NPC meeting.

17. The option of interpretation by NPCSC has the following advantages:

- (i) It could smoothen the implementation of the BL, making it possible that the true legislative intent of the Basic Law can be reflected in the Immigration Ordinance of the HKSAR.
- (ii) The NPCSC will be able to consider our request for clarifying the true legislative intent of the relevant BL provisions at its coming meeting in June. The following pressing problems call for swift actions to tackle them -
 - (a) Since the CFA gave its judgment, nearly 1 800 Mainland residents who claim to have ROA have already registered themselves formally with the Immigration Department. They include Two-way Permit holders for sight-seeing or visiting relatives, transitees and even illegal immigrants. As a tourist and international trade centre, Hong Kong cannot persistently rely on the Mainland to tighten the control over the issue of Two-way Permits to Mainland residents who have parents in Hong Kong. Meanwhile, Mainland residents may under their law apply for entry into Hong Kong for visiting relatives. In addition, it is impossible for the law enforcement agencies of both Hong Kong and the Mainland to deploy on a long-term basis a large number of additional staff to curb the influx of illegal immigrants that might be triggered by the judgment of CFA.
 - (b) The number of eligible persons is actually increasing on a daily basis because every day there are persons becoming permanent residents by ordinarily residing in Hong Kong for a continuous period of seven years.

Their children in the Mainland will then immediately become eligible for ROA. The pressure on population will be increasingly severe if the problem cannot be solved speedily.

- (c) As the CFA has stated explicitly that the Director of Immigration should not cause any unreasonable delay in the processing of C of E applications, new litigation accusing the Government of unreasonable delay in processing the applications might arise if the problem is not solved speedily. This in turn will lead to more serious consequences.

- (iii) After NPCSC's interpretation of the Basic Law, effective exit control over the entry of Mainland residents for settlement can be resumed.

18. However, NPCSC's interpretation of the Basic Law may be regarded by common law jurisdictions and some people in Hong Kong as undermining the rule of law and CFA's power of final adjudication, as well as interference with the judicial independence and jeopardizing Hong Kong's autonomy. These perceptions may attract negative criticisms on NPCSC's interpretation and the HKSAR Government.

The Proposal

19. After careful consideration of the pros and cons of the above options, the SAR Government takes a view that the problems should be resolved by an interpretation of the BL. This approach offers the most resolute, prompt and conclusive solution to the present problems. It is also conducive to maintaining the prosperity and stability of Hong Kong, and is in our long term and overall interests. We consider it unjustified to criticize an interpretation of the Basic Law as undermining the rule of law and judicial independence of Hong Kong. The reasons are listed below in paragraphs 20-26.

20. The Basic Law is a national law. Under the Mainland system, the ultimate power to interpret statutes is vested in the NPCSC. Since the NPC enacts statutes, its Standing Committee knows best what the true legislative intent was and is the most authoritative body to interpret the law.

21. During the process of drafting the BL, one of the problems was to combine the two distinctly different systems of legislative interpretation practised in the Mainland and Hong Kong. Consequently, the following approach was adopted:

- The Court of Final Appeal of Hong Kong shall enjoy the power of final adjudication.
- While the power to interpret the BL is vested in the NPCSC, the Committee for the BL should be consulted before interpretation is made.
- The NPCSC shall authorize the courts of Hong Kong to interpret the provisions of the BL in adjudicating cases, but in certain cases, the courts shall seek an interpretation from the NPCSC.

22. Given this constitutional background, would an interpretation of right of abode issues under the BL in fact undermine the rule of law? The CFA stated clearly on 26 February that it could not question the authority of the NPCSC to make an interpretation under the Basic Law, which would have to be followed by the SAR courts. In other words, an NPCSC interpretation of the Basic Law is part of our new constitutional order. This is entirely consistent with the rule of law.

23. As to the worries in respect of undermining the power of final adjudication of the CFA, we consider that under BL 158(3), the HKSAR courts, in applying relevant provisions of the BL, "shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected". The NPCSC interpretation would change only the principles that are to be applied to claims for ROA by other persons that are pending or are made in the future, and the

interpretation would have to be followed by the SAR courts in disposing of those cases.

24. As regards the views that the independence of the judiciary would be undermined, we have to point out that judges have responsibilities to adjudicate cases in accordance with law without outside interference. We must point out that the CFA was free from interference in adjudicating the ROA cases. The purpose of us seeking NPCSC interpretation is simply to clarify the true legislative intent of the BL 22(4) and 24(2)(3), not to overturn the CFA judgment. In the future, our judges will still decide cases in accordance with law, without fear or favour. By then, the NPCSC interpretation can only serve as a legal basis on which the CFA must rely in considering cases concerning BL 24(2). There is no question of an NPCSC interpretation interfering with the independence of the judiciary.

25. There are also worries that Hong Kong's autonomy will be affected. All along, the Central Authorities take a position that since the CFA judgment arose in Hong Kong, the best way out would be for the HKSAR to resolve the problem on its own. If the HKSAR Government requests for assistance, the Central Authorities are willing to provide the assistance. The dramatic increase in the number of eligible persons has posed an unbearable burden on the HKSAR. Against this background and that the Chief Executive shall be accountable to the Central People's Government and the HKSAR in accordance with the BL, the decision to resolve this difficult issue by requesting the State Council to seek an NPCSC interpretation of the BL does not entail the question of the Central Authorities interfering with Hong Kong's autonomy. Additionally, the power of interpretation of the BL is vested in the NPCSC under BL 158(1) while the CFA has the power of final adjudication under BL 158(2) and 158(3). It follows that an interpretation by the NPCSC would reflect the respective role given to the CFA and the NPCSC by the BL. This does not lead to deprivation of the legal power of Hong Kong, nor is our autonomy reduced as a result.

26. Some have argued that if the NPCSC could interpret the BL in respect of ROA, it could do the same in respect of other provisions that are within the limits of Hong Kong's autonomy. This argument entirely

loses sight of the fact that under the BL, the NPCSC has the power of final interpretation of any BL provisions. We are aware that some quarters in our community perceive badly an NPCSC interpretation and give adverse comments accordingly. But the power of NPCSC to interpret BL is expressly provided for in the BL. As a matter of fact, the current problems are very unusual, and relate to one of the most fundamental issues of any community, i.e. who should have the right to join the community as a permanent resident. Since the Government has the responsibility to provide basic services and facilities to our permanent residents, this issue has a direct bearing on the commitment of our resources and our future development for the whole community. In the face of this difficult problem, the interests of the entire community will be undermined if the Government does not resolve it quickly. It is under such exceptional circumstances that we seek NPCSC interpretation. What we are seeking from NPCSC is its explanation of the true legislative intent of BL 22(4) and BL 24(2)(3). All these point to a fact that there is no question of us taking it lightly the request for NPCSC exercising its interpretation power. Although the NPCSC is vested with the power to interpret law under Article 67(4) of the PRC constitution, the NPCSC has exercised the power of interpretation sparingly. It has done so on only eight occasions since 1950s, one occasion being the making of the "Explanations of Some Questions by the NPCSC concerning the Implementation of the Nationality Law of the PRC in the HKSAR" in May 1996. Some of the provisions in that Explanation are in effect supplementary provisions to the Nationality Law made to cater for the implementation of the Law in Hong Kong, taking into account Hong Kong's historical background and actual situation. This NPCSC interpretation of the Nationality Law has resolved a fundamental issue of the community and was widely welcomed.

Scope and Effect of the Interpretation

27. Against the above background, the Chief Executive has decided to request the State Council to ask NPCSC to interpret the relevant provisions of the BL so as to —

- (a) clarify whether the views on BL 24(2), endorsed by the Preparatory Committee of the HKSAR of the NPC at its fourth plenary session held on 10 August 1996, has reflected the true legislative intent of the BL correctly and whether they have legal effect. This will provide a solid legal basis for the HKSAR courts in hearing future cases concerning BL 24(2).
- (b) clarify whether "people from other parts of China" under BL22(4) should be interpreted as people from various provinces, autonomous regions and municipalities directly under the Central Government (excluding Taiwan province and Macao SAR), including children in the Mainland born of Hong Kong permanent residents. This clarification will help restore the effective One-way Permit quota arrangement which Mainland residents are currently subject to for settlement in Hong Kong.
- (c) concerning "persons of Chinese nationality born outside Hong Kong" under BL 24(2)(3), clarify whether at the time of their birth, both or either of their parents should have acquired the status of Hong Kong permanent residents under BL24(2)(1) or 24(2)(2). The clarification is crucial because the majority of the enormous additional population eligible for ROA in Hong Kong were born at a time when neither of their parents had acquired the status of Hong Kong permanent residents.
- (d) clarify whether the NPCSC interpretation will be effective from the day on which the Basic Law came into force, without affecting those who are eligible for ROA in the HKSAR by virtue of the CFA judgment of 29 January.

28. We will not seek an interpretation in respect of the ROA eligibility of children born out of wedlock. This is because the existing legislation of both the Mainland and HKSAR have already given children born within wedlock and out of wedlock equal status. Besides, in handling the issue of C and E, all the judges of the Court of First Instance,

Court of Appeal and Court of Final Appeal have unanimously ruled that excluding children born out of wedlock from acquiring ROA through their fathers' permanent resident status not only is unreasonable but also contravenes the International Covenant on Civil and Political Rights.

29. It can therefore be seen that in seeking NPCSC's interpretation, we only intend to clarify the true legislative intent of the Basic Law, rather than taking away the rights conferred on by the judgment of 29 January.

30. Under BL158(3), after NPCSC has given an interpretation of the BL, the HKSAR courts must follow it. If anyone not satisfied with the NPCSC interpretation lodges an appeal, the CFA, in adjudicating the case, should follow the NPCSC interpretation under BL 158(3). The CFA clarified on 26 February 1999 that the power of interpretation of the Basic Law was vested in NPCSC under BL158. It also accepted the binding effect of the NPCSC interpretation. In this way the interpretation could be fully implemented.

Conclusions

31. The Chief Executive decides to enlist the assistance of the State Council in seeking an interpretation of BL22(4) and 24(2)(3) by the NPCSC in its June meeting. Before giving an interpretation of the Basic Law in accordance with the power of interpretation and the procedures provided for under BL158, the NPCSC will consult the Committee for the Basic Law of the HKSAR, before considering and deciding on the HKSAR's request. We are of the view that it is lawful and reasonable for the NPC to interpret the Basic Law, and beneficial to maintaining Hong Kong's stability and overall interests.

The Government of the
Hong Kong Special Administrative Region
18 May 1999

(Translation)

**Opinions of the Preparatory Committee for the Hong Kong Special
Administrative Region of the National People's Congress 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 at the Fourth Plenary Meeting of the Preparatory Committee for
the Hong Kong Special Administrative Region of the National People's Congress
on 10 August 1996**

Paragraph 2 of Article 24 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China provides for issues concerning permanent residents of the Hong Kong Special Administrative Region (HKSAR). For the purpose of implementing the provisions, the following opinions are hereby provided for the HKSAR to formulate the details of the implementation rules.

1. Chinese citizens born in Hong Kong as provided in Category (1) of Paragraph 2 of Article 24 of the Basic Law refer to people who are born during which either one or both of their parents were lawfully residing in Hong Kong, but excluding those who are born to illegal immigrants, overstayers or people residing temporarily in Hong Kong.

2. People shall not be considered as "ordinarily resided" in Hong Kong as provided in Categories (2) and (4) of Paragraph 2 of Article 24 of the Basic Law if they are:

- (1) illegal immigrants or illegal immigrants who have been permitted by the Director of Immigration to stay in Hong Kong;
- (2) staying in Hong Kong in violation of the limit of stay or other conditions;
- (3) staying in Hong Kong as a refugee;
- (4) legally detained or sentenced to imprisonment in Hong Kong; or
- (5) permitted to stay in Hong Kong under specific government policies.

3. For Chinese citizens who have ordinarily resided in Hong Kong for "a continuous period of seven years" as provided in Category (2) of Paragraph 2 of Article 24 of the Basic Law, this continuous period of seven years may fall on any time. For persons not of Chinese nationality who have ordinarily resided in Hong Kong for "a continuous period of seven years" as provided in Category (4) of Paragraph 2 of Article 24 of the Basic Law, this

continuous period of seven years shall immediately precede their application for being a permanent resident of the HKSAR.

4. Persons of Chinese nationality born outside Hong Kong as provided 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 the Hong Kong permanent resident status under Category (1) or (2) of Paragraph 2 of Article 24 of the Basic Law.

5. The specific requirements for persons not of Chinese nationality to take Hong Kong as their place of permanent residence as provided in Category (4) of Paragraph 2 of Article 24 of the Basic Law are as follows:

- (1) When applying for being a permanent resident of the HKSAR, they shall sign a declaration in accordance with the law, acknowledging that they are willing to take Hong Kong as their place of permanent residence.
- (2) For the HKSAR Government to consider their permanent resident status, they shall honestly state in the declaration whether:
 - (a) they have a dwelling place (a habitual residence) in Hong Kong;
 - (b) whether their main family members (spouse and minors) ordinarily reside in Hong Kong;
 - (c) they have a proper job or a stable source of income; and
 - (d) they have paid tax in Hong Kong in accordance with the law.
- (3) They are held legally responsible for the truth of the above information provided in their declaration. The Government of the HKSAR has the right to demand necessary supporting documents and information from the applicants when necessary. If the information declared is found to be untrue, the applicants will be subjected to punishment according to the laws, including cancellation of their permanent identity cards.
- (4) For persons not of Chinese nationality, if they have obtained the status of Hong Kong permanent residents but do not ordinarily reside in Hong Kong for a continuous period of time as prescribed (the time stretch shall be prescribed by the Government of the HKSAR), they will, except with special reasons, fail to meet the requirement of taking Hong Kong as their permanent residence. Their permanent identity cards shall be revoked and they no longer have the right of abode in Hong Kong. However, they can freely enter Hong Kong in

accordance with the laws, reside or work in Hong Kong without restrictions and have the right to become permanent residents of the HKSAR when they fulfil the relevant requirements as stipulated in paragraph 2 of Article 24 of the Basic Law.

6. Persons under 21 years of age who were born in Hong Kong to parents not of Chinese nationality as stated in Category (5), Paragraph 2 of Article 24 of the Basic Law must be, during or after their birth, the children of parent or parents who have obtained Hong Kong permanent residence in accordance with Category (4), Paragraph 2 of Article 24 of the Basic Law. After these persons, whose parents have Hong Kong permanent residence as stated above, reach 21 years of age, they can have Hong Kong permanent residence if they meet the other relevant requirements prescribed in Paragraph 2 of Article 24 of the Basic Law.

Paragraph 2 of Article 24 of the Basic Law

7. The following arrangements shall be applicable to persons who are Hong Kong permanent identity card holders and have the right of abode in Hong Kong before the establishment of the HKSAR:

- (1) For Chinese citizens who were born in Hong Kong or have ordinarily resided in Hong Kong for a continuous period of seven years, the permanent identity cards they hold shall continue to be valid after 1 July 1997 and they shall have the right of abode in the HKSAR.
- (2) For persons who have Hong Kong permanent residence before the establishment of the HKSAR, have emigrated overseas but have returned to settle in Hong Kong before 30 June 1997 as foreign nationals, the permanent identity cards they hold shall continue to be valid after 1 July 1997 and they shall have the right of abode in the HKSAR.
- (3) For persons who have the status of Hong Kong permanent residents before the establishment of the HKSAR, whose absence from Hong Kong has exceeded the prescribed period and who return to settle in Hong Kong after 1 July 1997 as foreign nationals, the permanent identity cards they hold shall be cancelled in accordance with the law and they shall no longer have the right of abode in Hong Kong. However, they can enter Hong Kong in accordance with the law and reside and work in Hong Kong under no restrictions. Upon meeting the relevant requirements of Article 24 of the Basic Law, they can become permanent residents of the HKSAR.