

律政司
法律政策科
香港金鐘道66號
金鐘道政府合署高座1樓
圖文傳真：852-2180 9928
網址：www.doj.gov.hk



DEPARTMENT OF JUSTICE

Legal Policy Division

1/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong

Fax : 852-2180 9928
Web Site : www.doj.gov.hk

本司檔號 **Our Ref.:** LP 5019/9C V
來函檔號 **Your Ref.:** CB2/BC/4/06
電話號碼 **Tel. No.:** 2867 4226

BY FAX: 2509 9055

18 May 2007

Mrs Percy Ma
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

via Mr Michael Scott, SASG/GLP

Dear Mrs Ma,

Bills Committee on Domicile Bill

We refer to the question raised by Mr Yip Ming.

Mr Yip has suggested the following provision to be added to the Bill –

“(5) Where a child is born in Hong Kong and the parents of the child are not Hong Kong Permanent Residents, nor persons ordinarily residing in Hong Kong, the domicile of the child shall be the domicile of either or both of the parents with which he or she or they are not closely connected for the time being.”

Our comments on the suggestion are as follows –

- (1) It is unclear from the provision as to its intention or justification.
- (2) Permanent residents and domicile are two different concepts.

The central notion of domicile is that of a long-term relationship between person and place. In other words, a person is domiciled in the country where he intends to live permanently or indefinitely. The purpose of the concept of domicile is to connect a person with the country in which he has his permanent home or in which he intends to live indefinitely for determining under which system of law and within the jurisdiction of which country's courts certain issues are to be determined.

The meaning of permanent residents is set out in Article 24 of the Basic Law as follows –

“... ”

The permanent residents of the Hong Kong Special Administrative Region shall be: -

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and

- (6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

...”

The requirements of establishing permanent residents are set out in the Immigration Ordinance (Cap. 115).

(3) Clause 4 provides for the determination of the domicile of a child, that is, by adopting a single closest connection test, subject to the 2 rebuttable presumptions. If the parents of the child (who was born in Hong Kong) are domiciled in the same country or place (whether Hong Kong or elsewhere) and the child has his home with either or both parents, the child will be presumed to be most closely connected with that country or place and, under the closest connection test, domiciled there. If the parents of the child (who was born in Hong Kong) have different domiciles and the child has his home with one of them, the child will be presumed to be most closely connected with the country or place in which the parent with whom the child has his home is domiciled and, under the closest connection test, domiciled there.

(4) The purpose of the bill is to simplify the complex and confusing common law rules for determining a person’s domicile, and to make it easier to ascertain a person’s domicile. We consider that clause 4 is clear enough to provide for the domicile of the child in the proposed scenario.

Yours sincerely,

(Ms Kitty Fung)
Senior Government Counsel
Legal Policy Division