THE

LAW SOCIETY
OF HONG KONG

香 港 律 師 會

Law Society's Submissions

Panel on Administration of Justice and Legal Services
Right of Abode issues of children born in Hong Kong to Mainland Parents both of whom are not Hong Kong Permanent Residents

1. Basic Law - Article 24(2)(1)

Article 24 (2)(1) of the Basic Law sets out the legal regime in relation to the right of abode of children born in Hong Kong to Mainland Parents both of whom are not Hong Kong Permanent Residents.

Article 24(2) of the Basic Law states:

"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. Court of Final Appeal Judgment - *Director of Immigration and Chong Fung Yuen*[1] *(Chong Fung Yuen)*

The Court of Final Appeal unanimously held in its judgment, in the appeal by *Chong Fung Yuen* on 20 July 2001, that children born in Hong Kong to Mainland Parents, neither of whom were Hong Kong Permanent Residents, were entitled to Permanent Residency of Hong Kong.

3. Reference to the NPCSC under Article 158(3) of the Basic Law

The Hong Kong Government did not challenge the CFA's judgment in *Chong Fung Yuen*. It did not seek an interpretation of Article 24(2)(1) from the Standing Committee of the National People's Congress ("NPCSC") pursuant to Article 158(3).

The Law Society's position has always been that too many interpretations of the Basic Law by the NPCSC can undermine the independence of the Judiciary and the rule of law, which are recognized as core values of Hong Kong.

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[1] FACV No.26 of 2000

4. Administrative Measures by the Hong Kong Government and Hospital Authority

We note that various administrative measures have been introduced by the Administration and the Hospital Authority to reduce the number of children born in Hong Kong to Mainland Mothers who are not Hong Kong Permanent Residents and these measures appear to be generally useful. The problem was most acute in 2011 when 35,736 babies were born but the figures for January-November 2012 indicate a significant drop in the number of babies by approximately 30% to 25,174.[2]

5. Right of Abode issues of children born in Hong Kong to Mainland Parents both of whom are not Hong Kong Permanent Residents

The Law Society considers that issues in relation to the right of abode of children born in Hong Kong to Mainland Parents both of whom are not Hong Kong Permanent Residents should be resolved in accordance with the established legal principles in *Chong Fung Yuen*. Any further attempt on the part of the Administration to seek an interpretation from NPCSC on Article 24(2)(1) of the Basic Law to resolve these issues will undermine the independence of the Judiciary and the rule of law.

The Law Society of Hong Kong
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[2] See Appendix 1 on Number of Births in Hong Kong

Number of Births in Hong Kong

Year	Babies born to local women	Babies born in HK to Mainland women				Total number of births
		Spouses are HK permanent residents	Spouses are not HK permanent residents[3]	Others[4]	Sub-total	
2001	**40 409**	7 190	620	N/A	**7 810**	48 219
2002	**39 703**	7 256	1 250	N/A	**8 506**	48 209
2003	**36 837**	7 962	2 070	96	**10 128**	46 965
2004	**36 587**	8 896	4 102	211	**13 209**	49 796
2005	**37 560**	9 879	9 273	386	**19 538**	57 098
2006	**39494**	9 438	16 044	650	**26 132**	65 626
2007	**43 301**	7 989	18 816	769	**27 574**	70 875
2008	**45 257**	7 228	25 269	1 068	**33 565**	78 822
2009	**44 842**	6 213	29 766	1 274	**37 253**	82 095
2010	**47 936**	6 169	32 653	1 826	**40 648**	88 584
2011	**51 436**	6 110	35 736	2 136	**43 982**	95 418
2012 Jan to Nov	**53 508**	4 252	25 174	1 695	**31 121**	84 629

Source: Census and Statistics Department

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[3] Include Hong Kong Non-permanent Residents (persons from the Mainland having resided in Hong Kong for less than seven years being grouped in this category) and non-Hong Kong residents

[4] This category includes Mainland mothers who chose not to provide the father's residential status during birth registration.