

# CPD.HK™

## Business Immigration to Hong Kong: A Practical Guide

*by*

Mr. Stephen D. Barnes,  
Co-Founder,  
Hong Kong Visa Centre



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09:30 - 12:45

Hong Kong

LSHK 3.0 CPD Points  
(LSHK Allocated Number: 20172227)

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**Course Presenter**



**Mr. Stephen D. Barnes**

*Co-Founder*

*Hong Kong Visa Centre*

A graduate of the London School of Economics, Stephen started his first dedicated Hong Kong immigration practice, LL.B Consultancy, in Kowloon in 1993 straight out of law school. In 1996, Stephen wrote, then published, the first edition of the Hong Kong Visa Handbook on the internet - which went on to be the leading D-I-Y guide to the Hong Kong visa and immigration process. Stephen is an acknowledged expert in all matters relating to Hong Kong immigration and for many years has delivered CPD programmes to the legal community of the HKSAR. Frequently invited to speak on the topic of Hong Kong visas, Stephen is widely sought after for commentary from the Hong Kong press, to deliver talks to business and HR organisations and appears regularly as guest on RTHK Radio 3 answering visa and immigration questions live on air.

**Course Schedule**

<b>Time</b>	<b>Content</b>	<b>Presenter</b>
09:00	Reception	
09:30	Opening and Introduction	
09:35	<ul style="list-style-type: none"> <li>▪ Audit Commission Report No.66 April 2016</li> <li>▪ Visitor Visa</li> <li>▪ Employment Visa</li> <li>▪ Admission of Mainland Talents &amp; Professionals</li> <li>▪ Training Visa</li> <li>▪ Non-Local Graduates</li> <li>▪ Supplementary Labour Scheme</li> </ul>	Mr. Stephen D. Barnes
11:00	Break	
11:15	<ul style="list-style-type: none"> <li>▪ Business Investment Visa</li> <li>▪ Capital Investment Entrant Scheme - Suspended January 2015</li> <li>▪ Quality Migrant Admission Scheme</li> <li>▪ Family Visas</li> <li>▪ Long Stay &amp; Permanent Residence</li> <li>▪ Refusals</li> <li>▪ Admission Scheme for the Second Generation of Hong Kong Chinese Permanent Residents</li> </ul>	Mr. Stephen D. Barnes
12:40	Questions & Answers, Summary and Conclusion	
12:45	End	

A Audit Commission Report No.66 April 2016

2 Employment Visa

6 Supplementary Labour Scheme

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1-A Visitor Visa: Entry Visitor

3 Admission of Mainland Talents  
& Professionals

7 Business Investment Visa

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1-B Visitor Visa: Visitor Extension

4 Training Visa

8 Capital Investment Entrant Scheme  
- Suspended January 2015

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1-C Visitor Visa: Travel Pass

5 Non-Local Graduates

9 Quality Migrant Admission Scheme

10-A Family Visas: Legal Dependants

11-B Long Stay & Permanent Residence:  
Unconditional Stay

B Hong Kong Visa Application  
Planning Tool

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10-B Family Visas: Defacto Spouse

12-A Refusals: Reconsideration

C Hong Kong Visa Extension Kit

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10-C Family Visas: Same Sex Partners

12-B Refusals: Final Appeal

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11-A Long Stay & Permanent Residence:  
Right of Abode

13 Admission Scheme for the Second  
Generation of Hong Kong Chinese  
Permanent Residents

## VISITOR VISAS

# Entry Visas for Nationals Not Enjoying Visitor Status Upon Arrival

(or otherwise seeking a longer limit of stay)

## HONG KONG VISA CENTRE

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### GENERAL RULES

#### Permitted Activity

- Genuine business or leisure visit – ‘do your thing’ then finally depart
- Pre-relocation for business residence subsequently
- Trade fair participation, speaking at conferences

#### Has ‘Intention to Reside’ Crystallized?

- If so, your Visitor Visa is no longer appropriate.
- Need to approach the HKID and change status.
- Possible inadvertent breach of conditions of stay.

#### HKID Ultimately Decide

- If challenged, they will assess your actions and intentions
- Prosecution, removal or cancellation of Visitor visa consents all possible
- Short Conditional Landing a real possibility

## Visitor Visa

### Eligibility

Most foreign nationals do not need to apply for any visa in advance of a Visit to Hong Kong. They are granted visitor permissions upon arrival. The length of stay is nationality-dependant. Canadian's get 90 days, citizens of Chad, 14. For historical reasons, British Citizens secure a six month Visitor visa each time they land in the HKSAR. A complete list is available at:

[HKID Links: Visitor Visa](#)

### Approvability Test

When a visitor presents himself at (a) an overseas mission or (b) at the borders of the HKSAR they must be able to satisfy Hong Kong immigration officials that they are a **'bona fide Visitor'** to Hong Kong. For tourism purposes, this is relatively straight forward: return tickets, a firm itinerary, your travelling companions, sufficient funds etc. all suffice. If coming to the HKSAR for a business visit the examining immigration officer will take into consideration the following:

- Is there an existing place of residence and work outside of Hong Kong available to the visitor to return to at the end of the visit?
- Is the visit for a set period of time limited to the maximum period of stay available upon arrival?
- Does the visitor anticipate paid remuneration of any kind from Hong Kong sources during the course of the business visit?
- Is there sufficient funds available to complete the business visit trouble free?
- Is the visitor able to detail a specific plan for the business visit and is it actually realistic?

### Applying Before Arrival

If you need a visa before you arrive in Hong Kong, the application process is managed via the global network of Chinese diplomatic and consular missions. Therefore apply at your nearest. Alternatively, you can also submit your visa application direct to the HKID either directly by post or through a local sponsor. To shorten the processing time, application forms and supporting documents can be sent by fax to (852) 2824 1133 in the first instance. However, the original copy of the completed application form and the accompanying photographs should be immediately dispatched to the HKID by air mail so that the visa can be issued. If you are a Chinese resident of Taiwan, you should submit your application for an entry permit through one of the authorised airlines. There are separate processes regarding the arrangements for entry in respect of residents of the Mainland of China and for overseas Chinese which go beyond the scope of this Visa Information sheet. You can find this information at:

[Link: Entry Permits for Mainland Residents](#)

### Refusal & Appeal

There is no process of appeal where a visitor visa has been refused either prior to or upon arrival. Moreover, any person holding visitor status can be removed from Hong Kong at any time.



Preparing Your Case

[\(Click to Watch\)](#)

#### Highlights

- Most nationalities secure visas upon arrival
- Stay can be from 7 to 180 days
- Must be a 'bona fide visitor'
- If required, apply via a Chinese diplomatic mission
- Otherwise direct to the HKID via fax/original form follow up
- Mainland residents have special processes



## Documents Required

### Applicant Documents

- 1 HKID form ID1003A
- 2 Recent photo to be attached to the form
- 3 Photocopy of the applicant's travel document containing personal particulars, date of issue, date of expiry and/or details of any re-entry visa held (if applicable)
- 4 Photocopy of proof of the applicant's financial standing, e.g. bank statements, savings accounts passbooks, tax receipts, etc. and proof of employment (if any), e.g. company leave letter, salary slips, etc.
- 5 Photocopy of proof of transportation arrangement, e.g. flight itinerary
- 6 Photocopy of proof of the proposed leisure visit to Hong Kong, e.g. receipt of joining a package tour to Hong Kong, itinerary, etc. *(for leisure visit only)*
- 7 Photocopy of proof of the proposed visit in the next destination after visiting Hong Kong, itinerary, etc. *(for transit only)*
- 8 Photocopy of proof of the proposed business visit to Hong Kong, e.g. letter issued by the applicant's employing company to confirm his/her proposed business activities in Hong Kong, invitation letter issued by a local company, letter issued by a trade body to confirm the applicant's attendance at trade fairs and exhibitions, etc. *(for business visit only)*
- 9 Photocopy of proof of relationship with the local sponsor *(for family visit only)*
- 10 Photocopy of proof of the proposed visit to Hong Kong *(for purposes of visit other than leisure, transit, business or family visit)*

### Sponsor's Documents

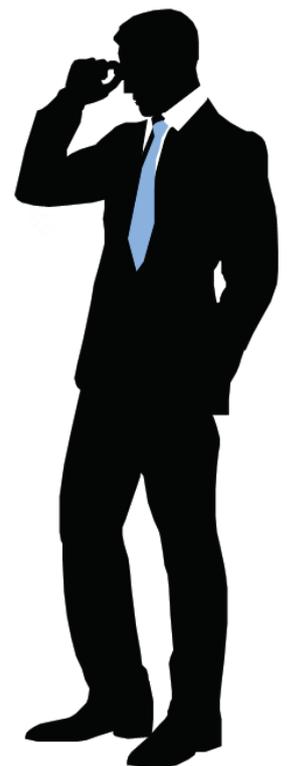
- 1 HKID form ID 1003B
- 2 Photocopy of Business Registration Certificate *(if a company sponsor)*
- 3 Photocopy of the sponsor's Hong Kong identity card *(and if not a permanent resident a Photocopy of the sponsor's travel document containing personal particulars, date of issue, date of expiry, and the latest arrival stamp/extension of stay label in the HKSAR)*



Discussion

## Pre-Arrival Registration For Indian Nationals

Prior to January 23, 2017 Indian nationals could visit Hong Kong visa free for a period of up to 14 days, However, since that date Indian nationals must apply for and successfully complete online pre-arrival registration before they can continue to enjoy the current 14-day visa-free visit or enter Hong Kong during transit (except in direct transit by air and not leaving the airport transit area), unless they belong to one of the categories of persons who may continue to come to Hong Kong visa-free without pre-arrival registration. Persons exempted from the requirement of pre-arrival registration include, among others, holders of an Indian diplomatic or official passport or a Hong Kong Travel Pass and Indian nationals who have successfully enrolled for the e-Channel service for frequent visitors, To apply for pre-arrival registration, an Indian national shall access the designated Pre-arrival Registration for Indian Nationals platform at the GovHK website ([www.gov.hk/en/apps/immdindianparreg.htm](http://www.gov.hk/en/apps/immdindianparreg.htm)). Pre-arrival registration is free of charge. After the required information has been received, the computer system will process the registration and display the registration result instantly. Successful registrants are required to print on their own a Notification Slip for Pre-arrival Registration for Indian Nationals generated by the system on a sheet of blank A4 white paper for the purposes of boarding a conveyance bound for Hong Kong and immigration clearance upon arrival. Each pre-arrival registration for an Indian national will be valid for six months or until the expiry date of the Indian passport linked to it, whichever is earlier. Provided that normal immigration requirements are met, a registrant may, during the validity of the pre-arrival registration, use a valid notification slip together with the specific and valid Indian passport linked to the successful pre-arrival registration to make multiple visits to Hong Kong visa-free. On each visit, a registrant may stay in Hong Kong for up to 14 days. In case pre-arrival registration is unsuccessful, Indian nationals shall apply to the Immigration Department directly for an


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## Visitor Visa

### Applicant Documents

- HKID form ID1003A
- Recent photo to be attached to the form
- Photocopy of the applicant's travel document containing personal particulars, date of issue, date of expiry and/or details of any re-entry visa held (if applicable)
- Photocopy of proof of the applicant's financial standing, e.g. bank statements, savings accounts passbooks, tax receipts, etc. and proof of employment (if any), e.g. company leave letter, salary slips, etc.
- Photocopy of proof of transportation arrangement, e.g. flight itinerary
- Photocopy of proof of the proposed leisure visit to Hong Kong, e.g. receipt of joining a package tour to Hong Kong, itinerary, etc. *(for leisure visit only)*
- Photocopy of proof of the proposed visit in the next destination after visiting Hong Kong, itinerary, etc. *(for transit only)*
- Photocopy of proof of the proposed business visit to Hong Kong, e.g. letter issued by the applicant's employing company to confirm his/her proposed business activities in Hong Kong, invitation letter issued by a local company, letter issued by a trade body to confirm the applicant's attendance at trade fairs and exhibitions, etc. *(for business visit only)*
- Photocopy of proof of relationship with the local sponsor *(for family visit only)*
- Photocopy of proof of the proposed visit to Hong Kong *(for purposes of visit other than leisure, transit, business or family visit)*

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Discussion

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Visitor Visa

Notes



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VISITOR VISAS

# Applying for an Extension to a Visitor Visa



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VISITOR VISA EXTENSIONS



## Visitor Visa Extensions

### Eligibility

Once admitted into Hong Kong, first extensions of stay to visitor visas are usually, although reluctantly, granted.

### Approvability Test

Upon application, the visitor visa holder must be able to satisfy the HKID that he or she remains **a bona fide visitor to Hong Kong**. Particularly, the examining officer is looking to ensure that you are not breaching/will not breach your conditions of stay if they allow you to remain in Hong Kong as a visitor for a further period of time.

### Structuring Your Argument

When applying at the HKID Immigration Tower in Wanchai, you will need to prepare in advance a letter justifying your reasons for the extension and also provide a written undertaking as when you will finally end the visit and exit Hong Kong. First extensions are usually granted for the period of time requested, such being no longer than the original visa granted upon or prior to arrival. If you believe you will be requiring a further extension it is wise to anticipate this and provide for it in your written representations the first time around. Securing the support of a local business or social contact is very helpful in promoting your case, especially if the same writes to substantiate the essential rationale for your extension request.

### Further Extensions & Appeal

Second and subsequent applications are not granted lightly and are scrutinized thoroughly. Hence the importance of anticipating the possibility of a further extension when you make your first application. A similar process to the first is followed for subsequent applications; namely the same type of representations and third party communications in support (which are even more critical). If refused, there is no right/process to appeal.

### Documents Required

- Immigration Department Form ID91
- Letter from Applicant
- Third Party Letter of Support



### The Shenzhen Shuttle

In a practical sense, you may choose to leave Hong Kong just prior to the expiry of your current period of stay as a visitor and immediately (or after a relatively short period of time, in any event) re-enter the HKSAR with a fresh period of stay. This often involves a quick visit across the boundary to Shenzhen or Macau. Whilst seemingly common practice, it is not recommended. The immigration officials are alert to these techniques and still subject the traveller to the Approvability Test each time they present at immigration control. There is a real risk of refusal of entry.



Preparing Your Case

[\(Click to Watch\)](#)

#### Highlights

- Apply at Immigration Tower in Wanchai
- First extensions are readily forthcoming
- Need to provide representations in writing
- The support of a local contact is invaluable
- No right of appeal if your application fails
- Beware the Shenzhen Shuttle



Discussion





## Visitor Visa Extension

- Immigration Department Form ID91
- Letter from Applicant
- Third Party Letter of Support

### Notes



Discussion

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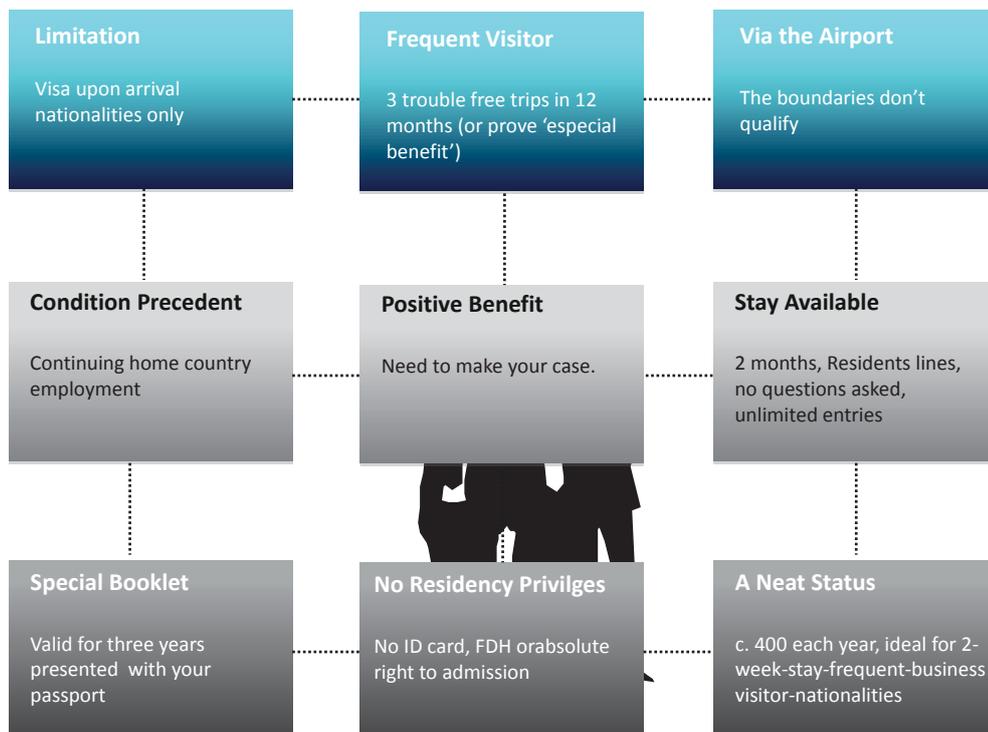
# The Hong Kong Travel Pass

(a super-charged Visitor visa)



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## TRAVEL PASS



## Travel Pass

### Eligibility

You are eligible to apply for a HKSAR Travel Pass if you have made, at a minimum, 3 separate trips to Hong Kong in the previous 12 months entering via the airport. Therefore, this excludes 'side visits' to Macau and China via the immigration control points at the boundaries. You are expected to have a pre-existing employment in another country (which will continue after successful receipt of Travel Pass) and be able to satisfy the Director of Immigration that granting you a Travel Pass will positively benefit the economy of Hong Kong. In special circumstances the Immigration Department are prepared to waive the 3 trips rule. To be eligible for a Travel Pass you must be citizen of a country which enjoys 'visa-upon-arrival' access to Hong Kong.

### Approvability Test

You will have to provide the HKID with evidence that you have a genuine need for the frequent visits to Hong Kong underpinning your requirement for a Travel Pass and that such visits will be of benefit to Hong Kong's economy. This will require detailed written representations, ideally supported by a local sponsor, alongside the application form. Moreover, the HKID will occasionally waive the 3 trips rule and accept applications for a Travel Pass from foreign nationals who can prove that their visits will be of substantial (especial) benefit to the HKSAR. In these instances such applications will be treated on special grounds and on their individual merits. The burden of proving the extent of the benefit to Hong Kong lies with you and you will have to furnish significant documentary evidence in support.

### Benefits & Limitations

Your Travel Pass affords efficient clearance through immigration formalities upon arrival and departure from Hong Kong as you are allowed to use the Hong Kong Residents' counters (as opposed to the much lengthier Visitors'). However, the Travel Pass does not avail 'residency' rights in the HKSAR. Consequently, you will not be able to secure a Hong Kong Identity Card, Dependant Visas for your family nor employ/sponsor a foreign domestic helper.

### Permitted Activity

The Travel Pass does not allow the holder to take up employment in Hong Kong, nor establish or join in any business. It does NOT allow a business entity in Hong Kong to employ the holder. The Travel Pass enables you to enjoy frequent, extended periods of stay as a visitor to the HKSAR allowing the Hong Kong originated business matters of your overseas employer to be readily and efficiently pursued without any immigration hindrances. A Travel Pass does not afford the holder the right to land in Hong Kong so you should not expect to be admitted to Hong Kong as a matter of legal right.

### Structuring Your Arguments

The challenge to making a successful case for a Travel Pass is to articulate clearly the reasons why you have been travelling frequently to the HKSAR these last 12 months. Explain how these trips have led to growth opportunities which conceivably could lead to your employer needing to establish some kind of formal business presence in Hong Kong in due course. Indicate the specific value of the turnover of your firm which is ascribed to your Hong Kong activities and how your local contacts have benefitted. If you believe that the upcoming activities of your firm in Hong Kong are going to require frequent extended visits and you have not satisfied the 'three trips' rule it is advisable to lay out your company's plan vis Hong Kong in some considerable detail and illustrate exactly where you fit in. Solid, extensive representations from your Hong Kong contacts will go a long way to helping secure the Travel Pass.

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Preparing Your Case

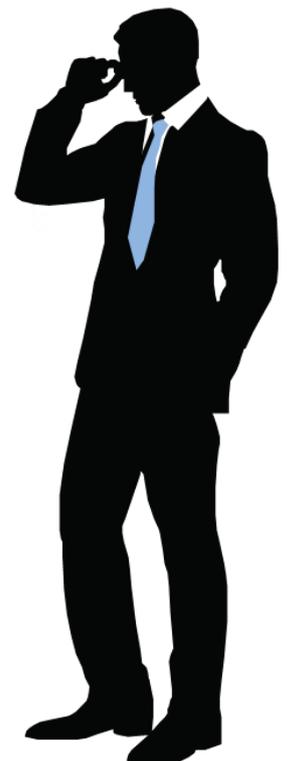
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#### Highlights

- The Travel Pass is a 'supercharged' Visitor visa
- Available to frequent visitors to Hong Kong
- Only available to 'visa upon arrival' nationalities
- Travel Pass is not an employment visa
- Enlist the help of a local Hong Kong contact



Discussion



## Documents Required

- Hong Kong SAR Travel Pass Application Form ID 888 (to be completed and executed by the applicant along with a recent passport sized photograph duly affixed on the space indicated the same).
- Duly completed Acknowledgement Card ID 889.Address Labels ID 839 (duly completed with full correspondence address of the applicant).
- Photocopy of valid passport (relevant personal particulars pages and records showing the minimum three visits to Hong Kong in the preceding 12 months).
- Second passport sized photograph of the applicant which is identical to that appended to the Form.
- Prescribed fee of HKD575 in the form of a cashier order or bank draft
- Letter from your current employer in support of the application (indicating the background information of the company).
- If the visits are mainly for business purposes, a supporting letter from your major business contact in Hong Kong.
- If the visits are for purposes other than business, detailed representations illustrating to the HKID how your frequent/ extended visits will be of 'especial benefit' to Hong Kong.



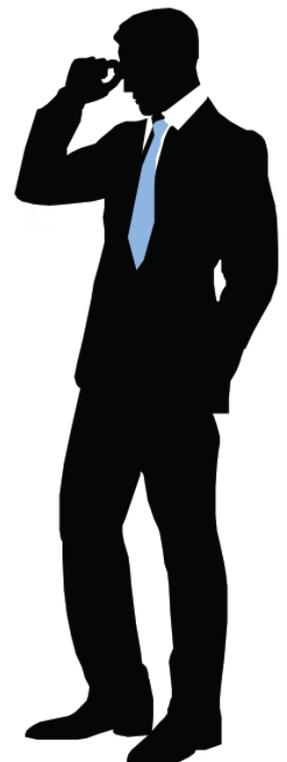
## Validity & Booklet

Once approved, the Travel Pass allows a two month period of stay upon each entry, with unlimited entries permitted. Once granted it will be valid for three years. The Travel Pass itself is manifested in a special booklet issued by the HKID which is presented during immigration clearance formalities along with your passport.

## Refusal & Appeal

There is no process of appeal where a Travel Pass has been refused. Moreover, any person holding a Travel Pass can be removed from Hong Kong at any time.

## A Space for Your Notes





## Travel Pass

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- If the visits are for purposes other than business, detailed representations illustrating to the HKID how your frequent/extended visits will be of 'especial benefit' to Hong Kong.

## Notes



Discussion

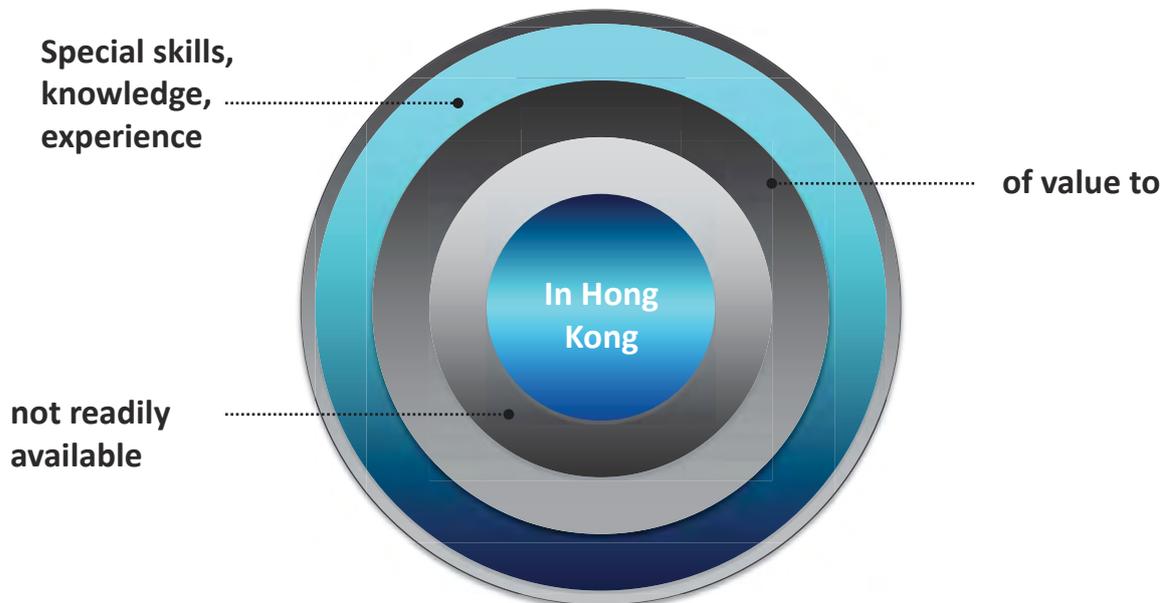
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# Visa to Take Up Employment in the HKSAR

**HONG KONG VISA**  
CENTRE

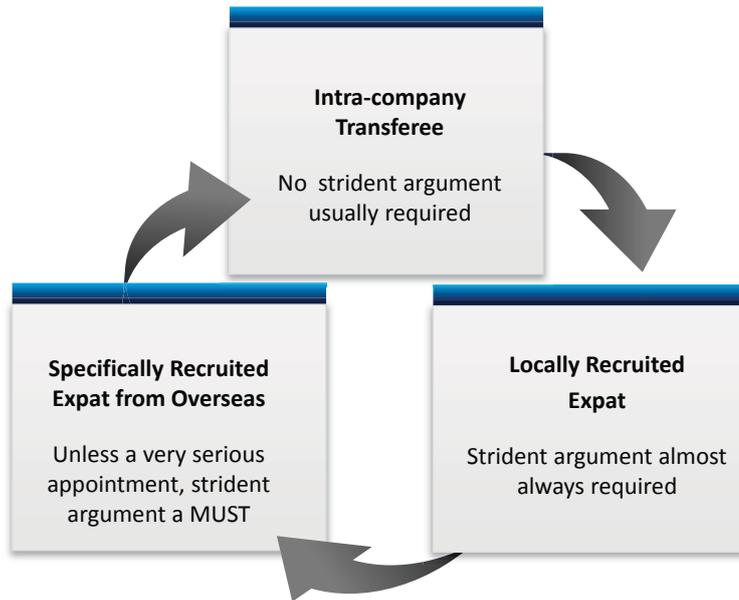
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## ANALYSING THE APPROVABILITY TEST



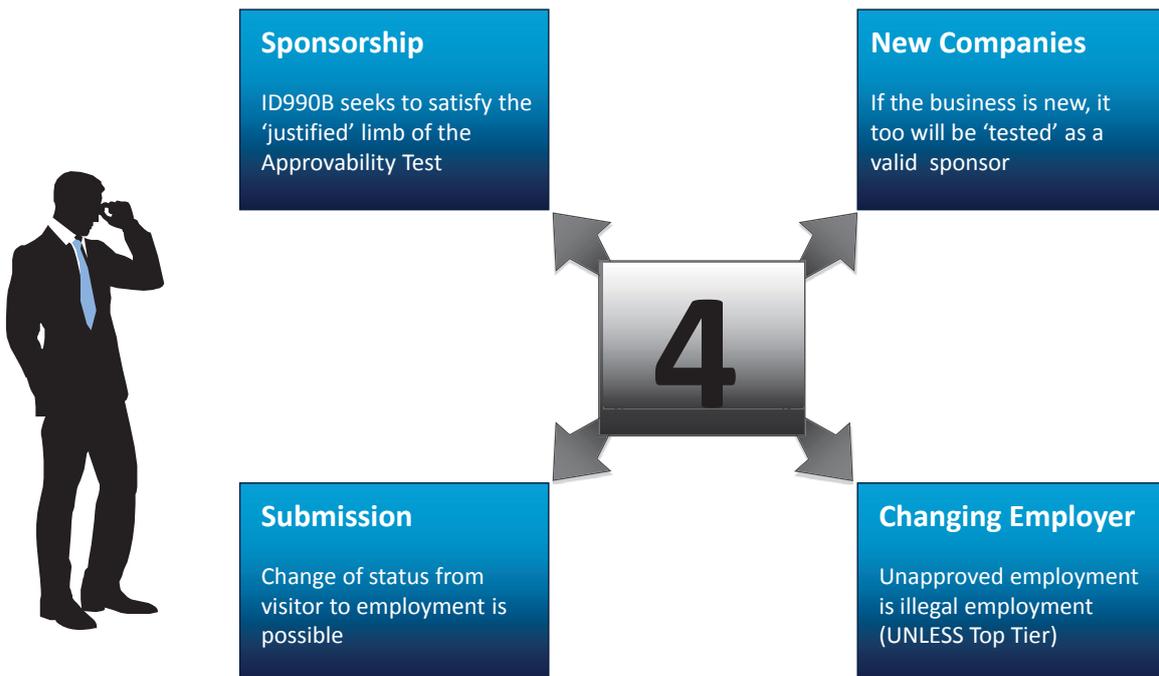
**+** your employer must be justified in engaging the services of an expatriate

THREE TYPES OF APPLICANT



Ensure you know the case type and where it sits on the admin/argue axis

FURTHER CONSIDERATIONS



## OWNER 'EMPLOYEE'

1

You cannot 'self sponsor'

2

You are an 'investor' if you own 50%+ of the shares in your 'employer'

3

Don't play games with the HKID—they always get to the bottom of business ownership

4

If the situation genuinely stacks up, you will receive an approval

**Do you own the business or merely going to work for it?**

## TOP TIER 'EMPLOYEE'

**Enhancement Measure May 6, 2015**New policy designed to attract and retain Entrepreneurs,  
Professionals and Talents**HKD2 million Assessable Income**Present your tax bill showing HKD2 million in income  
in the previous tax year, demonstrate you remain  
gainfully employed and you attain 'Top Tier' status**Ticket to Ride**Once assessed as Top Tier you get an immediate 6 year limit of stay with the  
only limit of stay in force being that of time and a requirement to notify ImmD  
of any change of employment in writing within 30 days

## Eligibility

Under the General Employment Policy, an application for a visa to take up employment will be successful if:

- There is no security objection and no known record of serious crime.
- You have a good educational background in the relevant field but in special circumstances good technical qualifications, proven professional abilities and/or relevant experience.
- There is a genuine job vacancy.
- You have a confirmed offer of employment.
- You will be employed in a job relevant to your qualifications or working experience.
- That job cannot be readily taken up by the local work force.
- The remuneration package. Including income, accommodation, medical and other fringe benefits is broadly commensurate with the prevailing market level for professionals in the HKSAR.

## Approvability Test

You must possess **special skills, knowledge or experience of value to and not readily available in Hong Kong**. Moreover, **your employer must be justified in engaging the services of an expatriate staff**.

## Assessing Your Case Type

How you go about structuring your argument will depend on which classification your application falls. You must first discern the type you generally fit in to and then approach your case accordingly. The three general classifications are:

1. Intra-company transferee.
2. Locally recruited expat.
3. Non-local expat specifically recruited from overseas.

### ***Intra-company Transferee***

Typically no need to engage in substantive argument as long as the applicant has 12 months prior employment with the company. These cases tend to be administrative in nature. However, it is always worthwhile setting out specifically how the applicant satisfies the separate limbs of the approvability test. It may be very obvious to you, but not necessarily so to the examining immigration officer so the more detail you can provide, the easier it will be for him to positively assess the application (suggesting a speedier approval process).

### ***Locally Recruited Expat***

If the applicant is already a 4 years + resident of Hong Kong and is set to move jobs within the same industry but over to a different employer (a change of employers/sponsorship application) these cases tend to be administrative in nature. Any less than four years prior residence or where a previous employment visa was just recently approved or, most typically, where a visitor to Hong Kong is seeking to change status to take up an offer of employment in Hong Kong, the case must be forthrightly argued.

### ***Non-local Expat Specifically Recruited From Overseas***

The 'newly-hired-gun-for-Hong-Kong' scenario. Great care must be taken in preparing and how you present these applications. Consideration must be given to the size, scope and nature of the Hong Kong operation requiring these skills brought in from overseas specifically and the case made out that Hong Kong will very definitely benefit if the HKID approve the application. The application must be strenuously argued if the Hong Kong business is only recently established or if it is not a particularly sizeable operation. The HKID frown upon overseas recruitment so the case must be suitably presented and correctly argued.



### Preparing Your Case

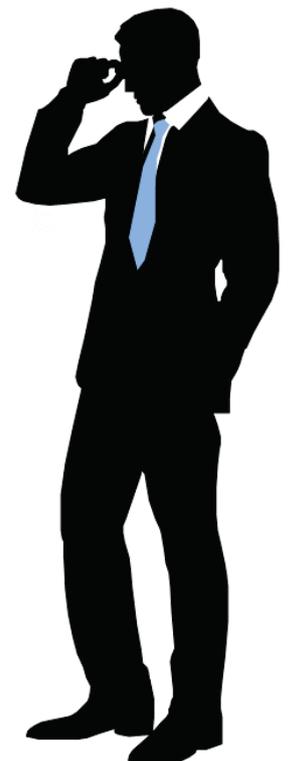
[\(Click to Watch\)](#)

### Highlights

- You must pass the employment visa Approvability Test
- Your employer has an important role to play in the process.
- You need to properly assess your application 'type' and prepare accordingly
- A strong case has a strong argument
- Top Tier status available



### Discussion



## Considering Your Argument

To ensure the best possible chance of an approval, you need to promulgate a good case argument. Good arguments are derived from a careful application of your individual circumstances as applied in the context of the job offer in hand. Moreover, the particular circumstances of your proposed employer's business and their specific need for exact skills needs to be interwoven throughout. Please refer to the following narrative for guidance on what you should be articulating to the HKID when arguing your case for an employment visa approval:

### **Special Skills, Knowledge, Experience**

'Special' as compared to other foreign nationals and also locals. 'Skills, Knowledge and Experience' in the context of the actual work to be done.

### **Of Value**

Value here can be economic, social or educational. Not all activities are deemed of value, however. It depends on the nature of the work.

### **Not Readily Available**

The HKID have their own methods of determining whether such skills are in fact available from within the local workforce. They will often interact with other government agencies to seek official guidance. Running job advertisements and stating no one/no one suitable applied can be a double edged sword. On the one hand, by virtue of the fact that you advertise locally for a candidate you are admitting that there remains the possibility of the employer finding the skills they need locally (and so its just a matter of time before a suitable candidate emerges). On the other, if you do advertise and claim that no suitable candidate has emerged, the HKID will ask to see the CV's procured in response. On balance it is advisable to be able to prove that the local market has been tested. Either way, it's a struggle. The HKID place the burden of proving that the skills in question are not available locally on the shoulders of the applicant and their proposed employer. In making the argument, this element of the approvability test must be addressed, if not directly, then certainly by implication from all the other things you will be saying in support of the application.

## Articulating Your Argument

***You have a good educational background in the relevant field but in special circumstances good technical qualifications, proven professional abilities and/or relevant experience.***

Normally, a first degree is required. In the event that you do not have a degree, it is acceptable to cite your prior qualifications and experience. Your CV is a vital document in these instances as are any testimonial and references from previous employers.

***There is a genuine job vacancy.***

Here representations need to be made which detail how the vacancy came about and where it sits within the organisational chart of the employing company as a whole. The HKID are on the look out for 'contrived employments' with a view to residence in the absence of a bona fide employment opportunity.

***You have a confirmed offer of employment.***

This requires the HKID having sight of an offer of employment a condition of which is that the employment is "subject to the approval of the Director of Immigration".

***You will be employed in a job relevant to your qualifications or working experience.***

In other words, if you are an investment banker seeking to change careers to a PR expert, the likelihood of you satisfying this limb of the approvability processes is slight,

***That job cannot be readily taken up by the local work force.***

Please see the comments above in relation to "Not Readily Available".

***The remuneration package. Including income, accommodation, medical and other fringe benefits is broadly commensurate with the prevailing market level for professionals in the HKSAR.***

In stark terms, any employment package valued at any less than HKD260,000 p.a. will likely struggle to approval.

In addition, the employer must be deemed a suitable and credible sponsor of the application.



Discussion



## Documents Required

- Application form ID990A (employee) and ID990B (employer).
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong (white visa slip).
- Copy up-to-date CV.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of prior employment references and testimonials.
- Copy Letter of Engagement or Contract of Employment detailing information about the post, emolument and term.
- Copy Business Registration Certificate.
- Copy of latest audited financial report and/or management accounts.
- Copy latest profits tax return to the Commissioner for Inland Revenue.
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1), along with Companies FORM ND2A (Notification of Changes of Secretary and Directors) if applicable, and FORM NSC1 (Return of Allotments).
- Detailed letter introducing the company, its business and list of staff (with HKID numbers).
- Company Brochure (and/or "Company Profile"), sales publications, press articles and any similar promotional type materials, which verify the business type of the company.
- General Proofs of Business - for example, trading documentation, shipping documents, invoices, contracts, agency and distribution agreements etc.
- Office tenancy arrangements documentation.
- If there is a substantial overseas parent company the following documents could also be submitted to assist in the credibility establishment process: Certificate of Incorporation of the parent company, its audited financial statement and the parent company profile or brochure (which will often suffice instead of Hong Kong corporate background information.)



Discussion

*NB — if the employing company has had a prior employment visa approved in the previous 18 months the employer documents above are mostly not required.*



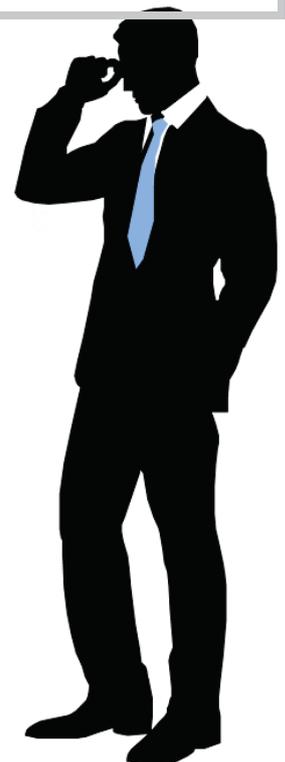
## Submitting Your Application

The application is submitted to the HKID either (a) via post from overseas or in person to the Receipt & Dispatch Unit of the Immigration Tower (2/F) or (b) via the 24/F Entry Employment Visa section of Immigration Tower or (c) via the 5/F Residents section of Immigration Tower if you are seeking to change Visa Category or Sponsorship (Employer) if you are presently in Hong Kong as a resident.



## The Consideration Process

Applications should be complete at point of submission. Once your application has been submitted, the process will play out via mail and/or fax. Occasionally the HKID will communicate with you via email. Processing time is usually 4-6 weeks but can be considerably longer in more complex cases. It is rare that a case, unless it is an Inter-company transferee type, will be approved without some element of a dialogue whereby the HKID will raise questions and requests for further information. These subsequent submissions are usually required within 14 days, although the HKID are quite flexible, proving you with sufficient time to respond. Careful consideration should be given to these requests; they can provide very real clues as to the attitude the HKID are adopting to the case. Remember, the challenge is to ensure that the Approvability Test is very properly addressed so the materials you submit in response to the request of the HKID should carry forward your substantive argument for approval. Once approved, the HKID will write to you with a notice as to the positive outcome and invite you to complete the approval formalities which will differ depending on how you submitted your application.



## Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will not afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.



## Employment Visa

- Application form ID990A (employee) and ID990B (employer).
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong (white visa slip).
- Copy up-to-date CV.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of prior employment references and testimonials.
- Copy Letter of Engagement or Contract of Employment detailing information about the post, emolument and term.
- Copy Business Registration Certificate.
- Copy of latest audited financial report and/or management accounts.
- Copy latest profits tax return to the Commissioner for Inland Revenue.
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1), along with Companies Registry FORM ND2A (Notification of Changes of Secretary and Directors) if applicable, and FORM NSC1 (Return of Allotments).
- Detailed letter introducing the company, its business and list of staff (including HKIDs)
- Company Brochure (and/or "Company Profile"), sales publications, press articles and any similar promotional type materials, which verify the business type of the company.
- General Proofs of Business - for example, trading documentation, shipping documents, invoices, contracts, agency and distribution agreements etc.
- Office tenancy agreement copy.
- If there is a substantial overseas parent company the following documents could also be submitted to assist in the credibility establishment process: Certificate of Incorporation of the parent company, its audited financial statement and the parent company profile or brochure (which will often suffice instead of Hong Kong corporate background information.)



**NB — if the employing company has had a prior employment visa approved in the previous 18 months the employer documents above are mostly not required (however the Form ID990B is required in all instances).**



Discussion

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)



## Employment Visa

### Notes



[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

**ADMISSION OF MAINLAND TALENTS & PROFESSIONALS**

# **Employment Visas for Chinese Nationals Resident on the Mainland**

**HONG KONG VISA**  
**CENTRE**

**ADMISSION OF MAINLAND TALENTS & PROFESSIONALS**

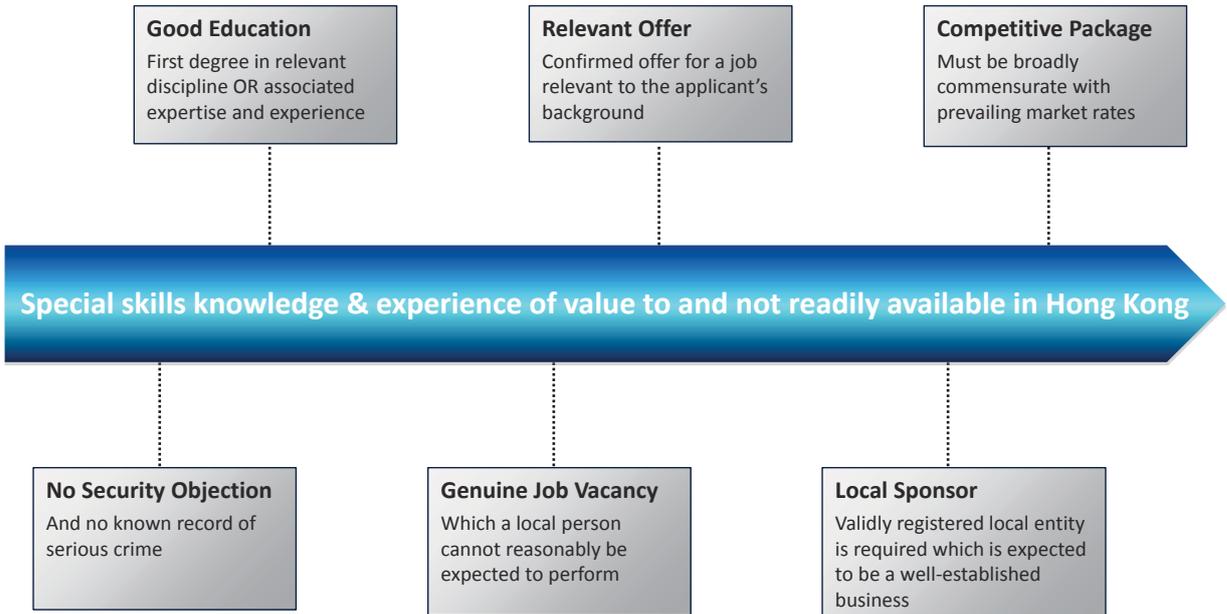
[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

To attract qualified Mainland talents and professionals who possess skills & knowledge not readily available locally.

Such talents must contribute with a view to facilitating Hong Kong's economic development, the arts, culture, sports and the culinary profession.

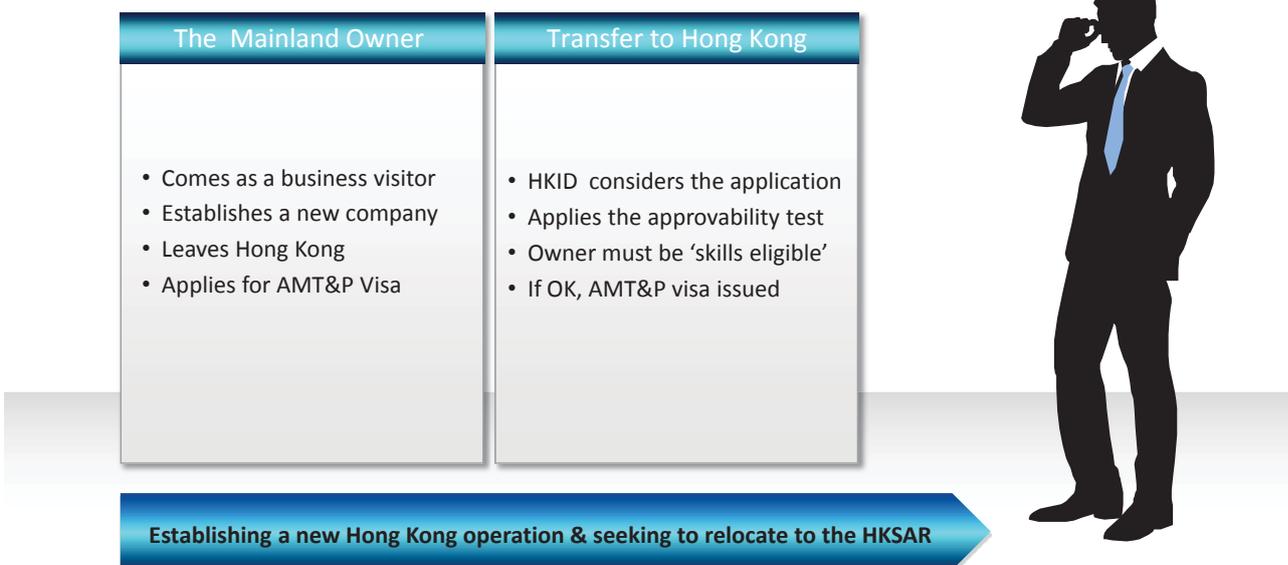
**The objective of the Scheme = to enhance HK's status as an Asian world city**

**GENERAL ELIGIBILITY CRITERIA**

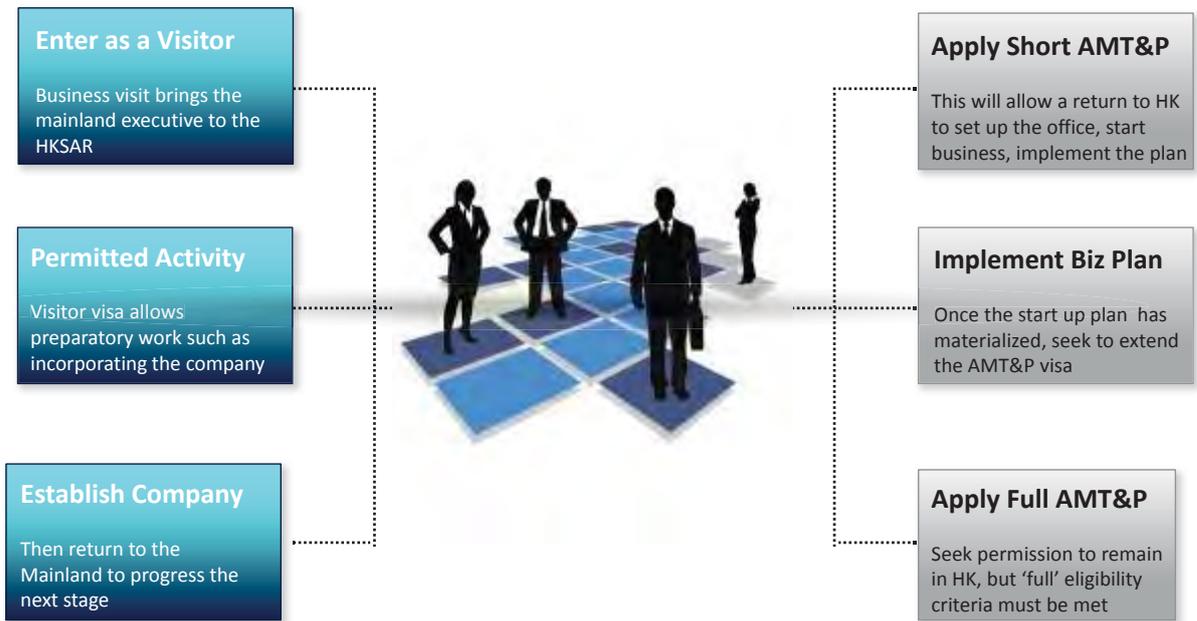


**There is no quota nor sector specificity for Admission of Mainland Talents & Professionals**

**MAINLAND BUSINESS OWNERS**

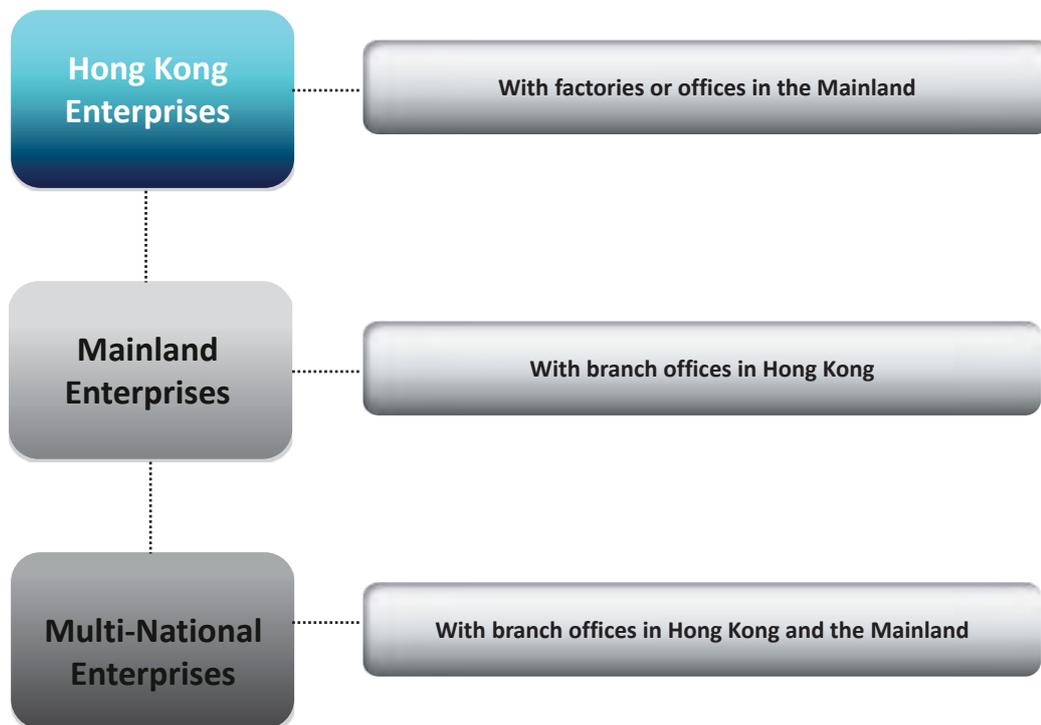


MAINLAND BUSINESS EXECUTIVES

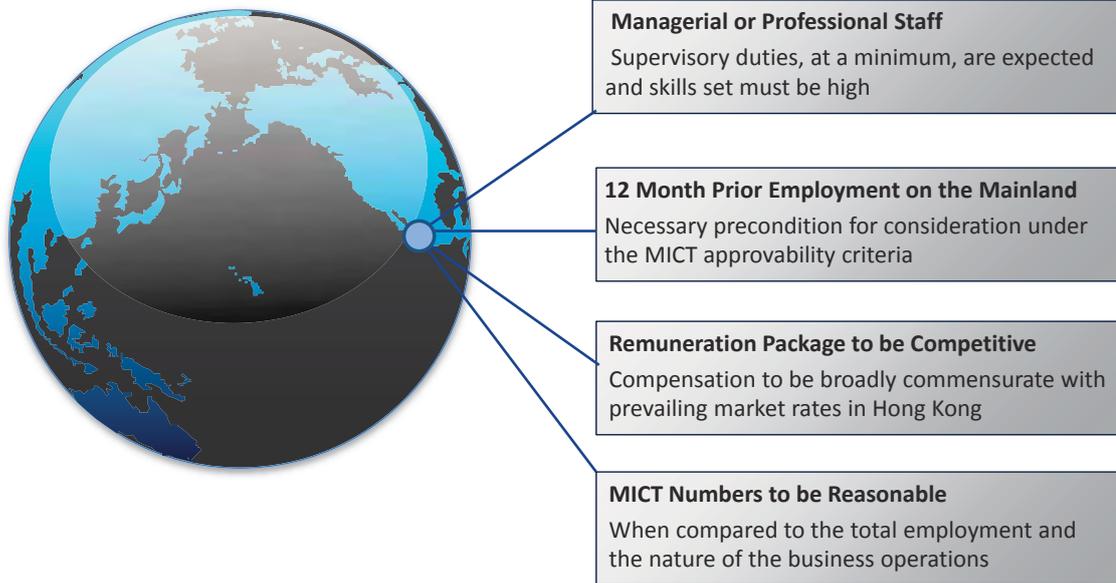


Mainland business executive seeks to set up a new operation in Hong Kong

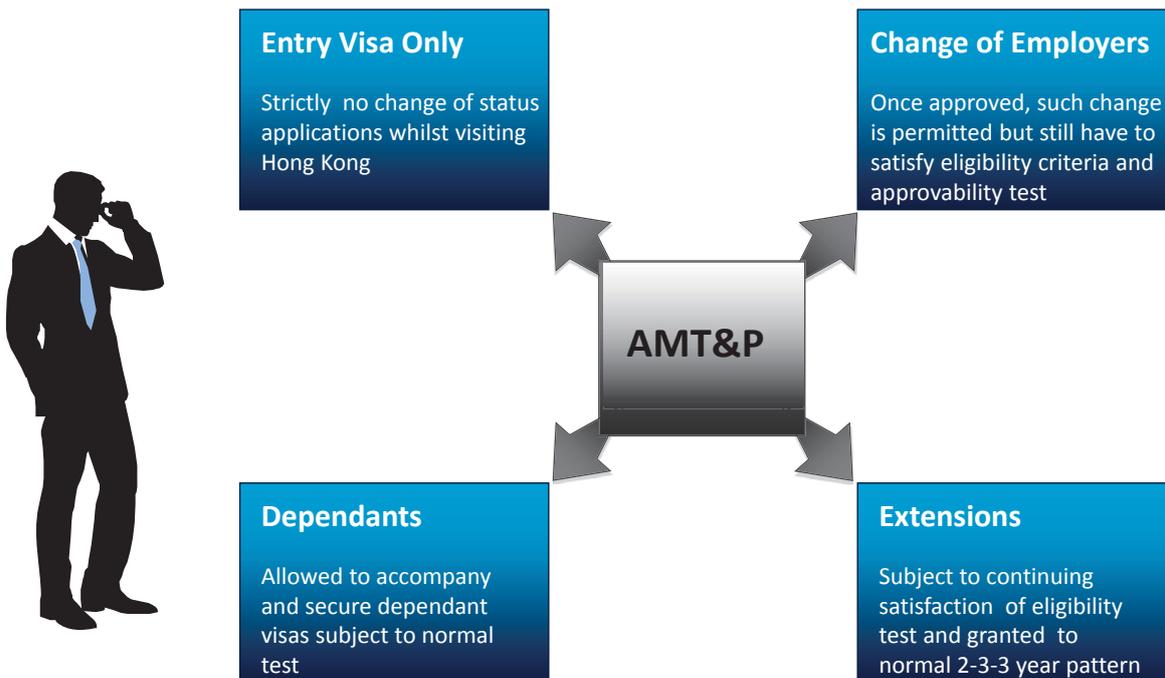
MAINLAND INTERCOMPANY TRANSFEREE 1



MAINLAND INTERCOMPANY TRANSFEREE 2



LOOSE ENDS



**TOP TIER MAINLAND TALENT OR PROFESSIONAL****Enhancement Measure May 6, 2015**

New policy designed to attract and retain Entrepreneurs, Professionals and Talents

**HKD2 million Assessable Income**

Present your tax bill showing HKD2 million in income in the previous tax year, show you are gainfully employed and you attain 'Top Tier' status

**Ticket to Ride**

Once assessed as Top Tier you get an immediate 6 year limit of stay with the only limit of stay in force being that of time and a requirement to notify ImmD of any change of employment in writing within 30 days

# Mainland Talents & Professionals

## Rationale

Hong Kong seeks to attract qualified mainland talent in order to keep Hong Kong competitive in a globalised market and to meet local manpower needs. The programme sets up an immigration mechanism for Chinese residents of the mainland separate from, but aligned to, the employment visa process which applies to other foreign nationals (or other PRC passport holders who are presently resident overseas) .

## Approvability Test

The mainland talent must possess *special skills and knowledge not readily available or otherwise in shortage in Hong Kong*. Moreover, successful candidates under the programme must be able to help to *facilitate the economic development of Hong Kong* or work in the *arts, culture, sports or culinary segments so as to enhance Hong Kong's status as an Asian world city*.

## Eligibility

An application for admission under the Mainland Talents & Professional Scheme will be successful if:

- You are a mainland resident seeking to take up employment in Hong Kong.
- There is no security objection and no known record of serious crime.
- You have a good educational background in the relevant field but in special circumstances good technical qualifications, proven professional abilities and/or relevant experience.
- There is a genuine job vacancy.
- There is a confirmed offer of employment.
- You will be employed in a job relevant to your qualifications or working experience.
- That job cannot be readily taken up by the local work force.
- The remuneration package. Including income, accommodation, medical and other fringe benefits is broadly commensurate with the prevailing market level for professionals in the HKSAR.

## Who Can Apply?

This Scheme can be used in a number of creative ways to facilitate the entry of suitably qualified mainland residents to take up employment in Hong Kong.

### **Headhunted Mainland Talent**

Needed by Hong Kong businesses for a specific employment position.

### **Mainland Business Owner**

Who seeks to transfer him or herself to their self owned Hong Kong business.

### **Mainland Business Executive**

Who works for a Mainland business seeking to establish new operations in the HKSAR.

### **Mainland Intercompany Transferee**

Who works for a substantial Hong Kong, Mainland or Multinational Enterprise with operations in both Hong Kong and on the Mainland.



Preparing Your Case

[\(Click to Watch\)](#)

## Highlights

- Applicable to PRC nationals resident on the Mainland
- Must pass the usual employment visa approvability test
- No quota or sector specificity
- Top Tier status available
- No change of status from Visitor to AMT&P



Discussion



## Mainland Talents & Professionals

### Considering Your Argument

To ensure the best possible chance of an approval, you need to promulgate a good case argument. Good arguments are derived from a careful application of your individual circumstances as applied in the context of the job offer in hand. Moreover, the particular circumstances of the proposed employer's business and their specific need for exact skills needs to be interwoven throughout. Please refer to the following narrative for guidance on what you should be articulating to the HKID when arguing your case for an approval under the Mainland Talents & Professionals Scheme:

#### **Special Skills, Knowledge, Experience**

'Special' as compared to other foreign nationals and also locals. 'Skills, Knowledge and Experience' in the context of the actual work to be done.

#### **Of Value**

Value here can be economic, the arts, cultural, sports or culinary. Not all activities are deemed of value, however. It depends on the nature of the work.

#### **Not Readily Available Locally**

The HKID have their own methods of determining whether such skills are in fact available from within the local workforce. They will often interact with other government agencies to seek official guidance. Running job advertisements and stating no one/no one suitable applied can be a double edged sword. On the one hand, by virtue of the fact that you advertise locally for a candidate you are admitting that there remains the possibility of the employer finding the skills they need locally (and so its just a matter of time before a suitable candidate emerges). On the other, if you do advertise and claim that no suitable candidate has emerged, the HKID will ask to see the CV's procured in response. On Balance, the second approach may be better. Either way, it's a struggle. The HKID place the burden of proving that the skills in question are not available locally on the shoulders of the applicant and their proposed employer. However, in making the argument, this element of the approvability test must be addressed, if not directly, then certainly by implication from all the other things you will be saying in support of the application.

### Articulating Your Argument

#### ***You have a good educational background in the relevant field but in special circumstances good technical qualifications, proven professional abilities and/or relevant experience.***

Normally, a first degree is required. In the event that you do not have a degree, it is acceptable to cite your prior qualifications and experience. Your CV is a vital document in these instances as are any testimonial and references from previous employers.

#### ***There is a genuine job vacancy.***

Here representations need to be made which detail how the vacancy came about and where it sits within the organisational chart of the employing company as a whole. The HKID are on the look out for 'contrived employments' with a view to residence in the absence of a bona fide employment opportunity.

#### ***You have a confirmed offer of employment.***

This requires the HKID having sight of an offer of employment a condition of which is that the employment is "subject to the approval of the Director of Immigration".

#### ***You will be employed in a job relevant to your qualifications or working experience.***

In other words, if you are an investment banker seeking to change careers to a PR expert, the likelihood of you satisfying this limb of the approvability processes is slight,

#### ***That job cannot be readily taken up by the local work force.***

Please see the comments above in relation to "Not Readily Available".

#### ***The remuneration package. Including income, accommodation, medical and other fringe benefits is broadly commensurate with the prevailing market level for professionals in the HKSAR.***

In stark terms, any employment package valued at any less than HKD260,000 p.a. will likely struggle to approval.



## Mainland Talents & Professionals

### Documents Required

- Application form ID990A (employee) and ID990B (employer).
- Recent photograph affixed to the form and copy of your Mainland Resident ID Card.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- Copy up-to-date CV & Letter of Consent from your current working unit/other Mainland authority.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of prior employment references and testimonials.
- Copy Letter of Engagement or Contract of Employment detailing information about the post, emolument and term.
- Copy Business Registration Certificate.
- Copy of latest audited financial report and/or management accounts.
- Copy latest profits tax return to the Commissioner for Inland Revenue.
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1), along with Companies FORM ND2A (Notification of Changes of Secretary and Directors) if applicable, and FORM NSC1 (Return of Allotments).
- Detailed letter introducing the company and its business.
- Company Brochure (and/or "Company Profile"), sales publications, press articles and any similar promotional type materials, which verify the business type of the company.
- General Proofs of Business - for example, trading documentation, shipping documents, invoices, contracts, agency and distribution agreements etc.  
Office tenancy agreement copy.
- If there is a substantial overseas parent company the following documents could also be submitted to assist in the credibility establishment process: Certificate of Incorporation of the parent company, its audited financial statement and the parent company profile or brochure (which will often suffice instead of Hong Kong corporate background information.)



Discussion

*NB — if the employing company has had a prior employment visa approved in the previous 18 months the employer documents above are not required.*



### Submitting Your Application

The application is submitted to the HKID either (a) via post from overseas or in person to the Receipt & Dispatch Unit of the Immigration Tower (2/F). It can be submitted by a local sponsor or directly by the Hong Kong entity which is seeking to employ the talent in their Hong Kong operations (they are not always the same party).



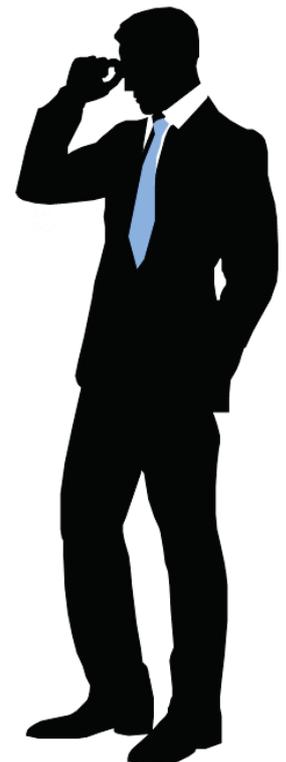
### The Consideration Process

Your application must be complete at the point of submission. Once your application has been submitted, the process will play out via mail and/or fax. Occasionally the HKID will communicate with you via email. Processing time is usually 6-8 weeks but can be considerably longer in more complex cases. It is rare that a case, unless it is an Inter-company transferee type, will be approved without some element of a dialogue whereby the HKID will raise questions and requests for further information. These subsequent submissions are usually required within 14 days, although the HKID are quite flexible, proving you with sufficient time to respond. Careful consideration should be given to these requests; they can provide very real clues as to the attitude the HKID are adopting to the case. Remember, the challenge is to ensure that the Approvability Test is very properly addressed so the materials you submit in response to the request of the HKID should carry forward your substantive argument for approval. Once approved, the HKID will write to you with a notice as to the positive outcome and invite you to complete the approval formalities.



### Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will not afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.





## Mainland Talents & Professionals

- Application form ID990A (employee) and ID990B (employer).
- Recent photograph affixed to the form and your Mainland Resident ID Card.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- Copy up-to-date CV & Letter of Consent of your Mainland working unit or other authority
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of prior employment references and testimonials.
- Copy Letter of Engagement or Contract of Employment detailing information about the post, emolument and term.
- Copy Business Registration Certificate.
- Copy of latest audited financial report and/or management accounts.
- Copy latest profits tax return to the Commissioner for Inland Revenue.
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1), along with Companies Registry FORM ND2A (Notification of Changes of Secretary and Directors) if applicable and FORM NSC1 (Return of Allotments).
- Detailed letter introducing the company and its business.
- Company Brochure (and/or "Company Profile "), sales publications, press articles and any similar promotional type materials, which verify the business type of the company.
- General Proofs of Business - for example, trading documentation, shipping documents, invoices, contracts, agency and distribution agreements etc.
- Office tenancy agreement copy.
- If there is a substantial overseas parent company the following documents could also be submitted to assist in the credibility establishment process: Certificate of Incorporation of the parent company, its audited financial statement and the parent company profile or brochure (which will often suffice instead of Hong Kong corporate background information.)





## Mainland Talents & Professionals

Additionally, further information will be requested by the Hong Kong Immigration Department where the application relates to a Mainland Inter-company Transferee, Mainland Business Owner or Mainland Business Executive. The exact make up of these documents varies from case to case and you will be advised by the HKID of their specifics at the point of their first response after you have submitted the application.

***NB — if the employing company has had a prior employment visa approved in the previous 18 months the employer documents above are not required (however the Form ID990B is required in all instances).***

### Notes



[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

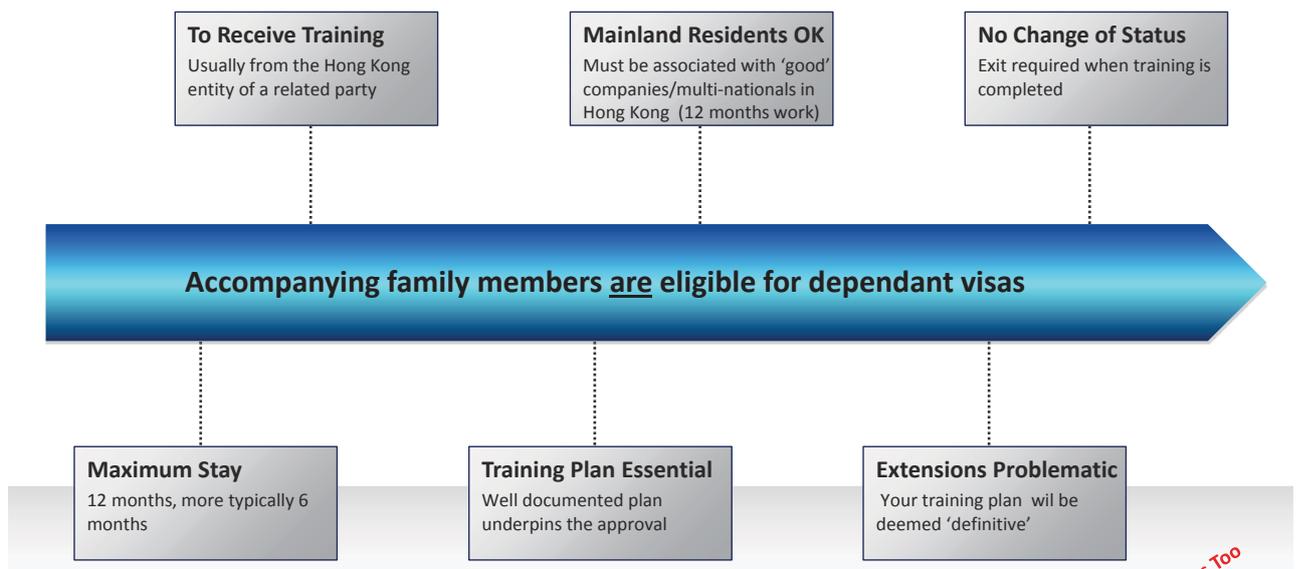
EMPLOYMENT VISAS

# A Visa to Receive Training in Hong Kong

## HONG KONG VISA CENTRE

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

TRAINING VISAS



*A Version for Interns Too*

Undergo training in Hong Kong to acquire special skills and knowledge not available in the applicant's country/territory of domicile

## Eligibility

An application to enter Hong Kong for a limited period (not more than 12 months) of training to acquire special skills and knowledge not available in the applicant's country/territory of domicile may be favourably considered if:

- There is no security objection and no known record of serious crime in respect of the applicant.
- The bona fides of the applicant and the sponsoring company are satisfied.
- The sponsoring company is a well-established company, capable of providing the proposed training.
- There is a contract signed between the sponsoring company and the applicant.
- The sponsoring company guarantees in writing the maintenance and repatriation of the applicant and that the applicant will receive training in the sponsor's premises until the end of the agreed period, after which the applicant will return to his/her place of residence; and
- The proposed duration and content of the training programme can be justified.

## Approvability Test

The essence of approvability for a training visa boils down to (a) the bona fides of the sponsoring entity providing the training (b) whether the training can be provided in the applicant's home country or not and (c) the scope and length of the training is reasonable in all the circumstances.

## The Training Plan

A detailed schedule of training which breaks down the exact activities which will go to make up the training plan is absolutely essential. It should, at the very least, include the topics to be covered, the location of the training, the number of hours of training each day/week, details of the trainer, the department involved and the like. The more information which can be provided in the make up of this plan the better.

## Documents Required

### Applicants

- Application form ID992A.
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong (white visa slip).
- If PRC national not holding travel document of any kind a photocopy of your PRC resident ID card.
- Photocopy of HKID card, if any.
- Photocopy of all graduation certificates/proof of academic qualifications
- Proof of relevant working experience..
- If Taiwan resident, copy of your household registration and Taiwan identity card.
- If Macau resident presently, a copy of your Macau ID card.



### Sponsoring Training Providers

- Application form ID992B.
- Copy of the training contract detailing work role and emoluments.
- Copy detailed training plan
- If the employing company is less than 12 months old, a detailed business plan.
- Copy sponsor-company's business registration certificate.
- Latest audited financial statements, management accounts or profits tax return
- Collection of public-facing information which details how the business operates

*NB — if the employing company has had a prior employment or training visa approved in the previous 18 months the last three listed documents are not required.*

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)



Preparing Your Case

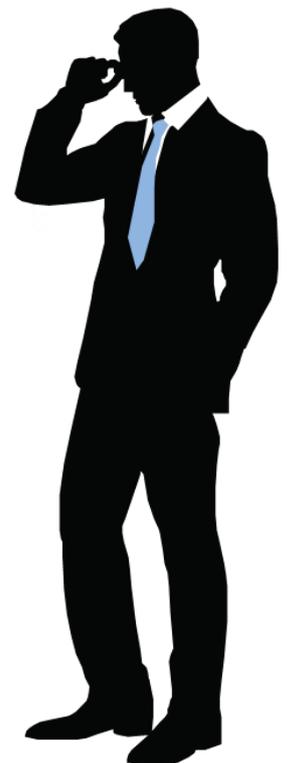
[\(Click to Watch\)](#)

### Highlights

- Good for PRC nationals who work for well-established or multi-national companies
- Training contract and training plan essential
- Maximum 12 months period of stay, non-extendable.
- Applicant must leave Hong Kong at the end of the training period
- Accompanying family members secure dependant visas



Discussion



## Submitting Your Application

The application is submitted to the HKID either (a) via post from overseas or in person to the Receipt & Dispatch Unit of the Immigration Tower (2/F) or (b) as part of an application to Change Status or Visa Category if you are presently in Hong Kong as a resident or as a visitor or (c) via the nearest Chinese diplomatic mission in your country of domicile.



## The Consideration Process

Once your application has been submitted, the process will play out via mail and/or fax. Occasionally the HKID will communicate with you via email. Processing time is usually 4-6 weeks. Once approved, the HKID will write to you with a notice as to the positive outcome and invite you to complete the approval formalities which will differ depending on how you submitted your application. Please note that applications for training visas from PRC nationals resident on the mainland will only be entertained if the applicant is an employee/associate of a well established or multinational company with operations in both Hong Kong and the Mainland.

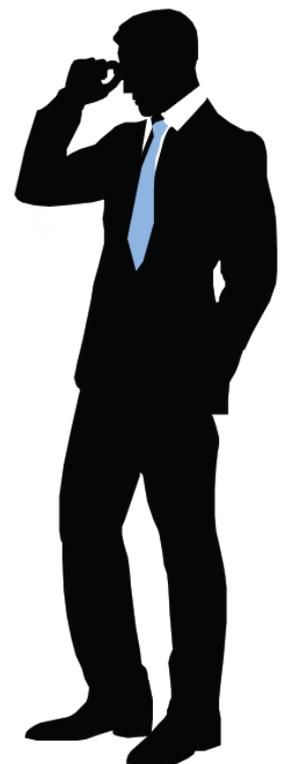
## Once Approved

Your maximum period of stay will be for 12 months which is non-extendable. The actual period of stay is tied to the formal length of the training contract.

## Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will usually afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.

## A Space for Your Notes





## Training

### **Applicants**

- Application form ID992A.
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- If PRC national not holding travel document of any kind a photocopy of your PRC resident ID card.
- Photocopy of HKID card, if any.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Proof of relevant working experience.
- If Taiwan resident, copy of your household registration and Taiwan identity card.
- If Macau resident presently, a copy of your Macau ID card.

### **Sponsoring Training Providers**

- Application form ID992B.
- Copy of the training contract detailing work role and emoluments.
- Copy detailed training plan.
- If the employing company is less than 12 months old, a detailed business plan.
- Copy sponsor-company's business registration certificate and NAR1
- Latest audited financial statements, management accounts or profits tax return.
- Collection of public-facing information which details how the business operates.



Discussion

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)



Training

Notes



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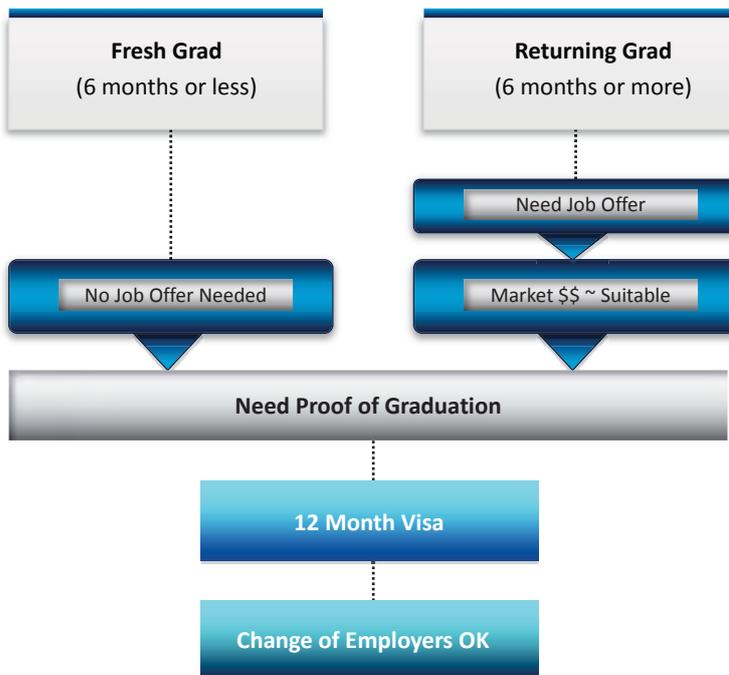
EMPLOYMENT VISAS

# Employment Visa for Non-Local Graduates of Hong Kong Universities

## HONG KONG VISA CENTRE

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

### NONLOCAL GRADUATES



Earn a degree at a HK tertiary education institute and receive Employment visa privileges

## Eligibility

Under a new visa type which was introduced in 2008, if you are a person from outside of Hong Kong and have obtained a degree or higher qualification in a full-time and locally-accredited programme in the HKSAR, you are entitled to apply for an employment visa under a liberalised approvability test.

Under the Immigration Arrangements for Non-local Graduates (IANG) such non-local graduates who submit applications to the Immigration Department within six months after the date of their graduation (i.e. the date shown on their graduation certificates) are classified as 'fresh graduates'. Fresh graduates who seek to work in Hong Kong after their studies are complete are not required to secure an offer of employment as part of their application to change from student visa status to employment visa status — which is approved, effectively, almost as of right.

Non-local graduates who submit applications after six months of the date of their graduation are classified as 'returning graduates'. Such returning graduates who wish to return to work in the HKSAR are required to secure an offer of employment in order to secure an employment visa. These applications are 'favourably considered' so long as the job is 'suitable' and the remuneration package is set at market levels.

## Approvability Test

**Fresh Graduates:** Production of proof that you have graduated (six months limit).

**Returning Graduates:** Production of proof that you have graduated (no time limit) and an offer of employment in Hong Kong commensurate with your education at an emolument set at market levels.

## Documents Required

### All Applicants

- Application form ID990A.
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- If PRC national not holding travel document of any kind a photocopy of your PRC resident ID card.
- Photocopy of HKID card, if any.
- Photocopy of all graduation certificates/proof of academic qualifications/transcripts showing graduation (and date) from a Hong Kong tertiary education institute.
- If PRC national currently resident on the Mainland, a letter of consent from your present working unit or relevant Mainland authority.
- If PRC national current resident overseas, copies of documents showing your third country immigration status and limit of stay.
- If Macau resident presently, a copy of your Macau ID card.

### Returning Graduates

- Application form ID990B.
- Offer of employment letter detailing work role and emoluments.
- Copy employing company's business registration certificate.
- Latest audited financial statements, management accounts or profits tax return
- If the employing company is less than 12 months old, a detailed business plan.

*NB — if the employing company has had a prior employment visa approved in the previous 18 months the last three listed documents are not required.*

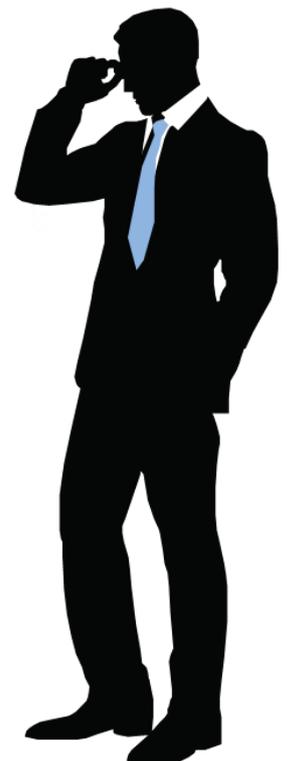


Preparing Your Case

(Click to Watch)

## Highlights

- Graduates of Hong Kong tertiary education institutes receive favourable employment visa treatment
- Fresh graduates are almost automatically approved.
- Returning graduates need only a suitable job offer paying market rates
- Subsequent change of employer permitted without undergoing a change of sponsorship
- Top Tier status available



## Non-Local Graduate

### Submitting Your Application

The application is submitted to the HKID either (a) via post from overseas or in person to the Receipt & Dispatch Unit of the Immigration Tower (2/F) or (b) as part of an application to Change Status or Visa Category if you are presently in Hong Kong as a resident or as a visitor or (c) via the nearest Chinese diplomatic mission in your country of domicile.



Following the Audit Commission report no. 66 in April 2016, supporting documents will closely scrutinised for authenticity.

### The Consideration Process

Once your application has been submitted, the process will play out via mail and/or fax. Occasionally the HKID will communicate with you via email. Processing time is usually 4-6 weeks. Once approved, the HKID will write to you with a notice as to the positive outcome and invite you to complete the approval formalities which will differ depending on how you submitted your application.

### Once Approved

Your initial period of stay will be for 12 months which is then extendable subject to the normal 2-2-3 year pattern. Holders of employment visas issued under the Immigration Arrangements for Non-Local Graduates are able to change employers without needing to seek the prior approval of the HKID but will need to demonstrate they are presently employed or engaged in a business at the point of making the application for extension.

### Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will usually afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.

### A Space for Your Notes



Discussion





## Non-Local Graduates

### **All Applicants**

- Application form ID990A.
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- If PRC national not holding travel document of any kind a photocopy of your PRC resident ID card.
- Photocopy of HKID card, if any.
- Photocopy of all graduation certificates/proof of academic qualifications/transcripts showing graduation (and date) from a Hong Kong tertiary education institute.
- If PRC national currently resident on the Mainland, a letter of consent from your present working unit or relevant Mainland authority.
- If PRC national current resident overseas, copies of documents showing your third country immigration status and limit of stay.
- If Macau resident presently, a copy of your Macau ID card.

### **Returning Graduates Only**

- Application form ID990B.
- Offer of employment letter detailing work role and emoluments.
- Copy employing company's business registration certificate.
- Latest audited financial statements, management accounts or profits tax return.
- If the employing company is less than 12 months old, a detailed business plan.





## Non-Local Graduates

### Notes



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# Overview of The Supplementary Labour Scheme (SLS)

October 29, 2016

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### About the Supplementary Labour Scheme (SLS)

The Supplementary Labour Scheme (SLS) commenced operation on 1 February 1996. It is a scheme which allows employers with genuine difficulties in finding suitable staff locally to import workers at technician level or below. There are no industry-specific quotas under the SLS. However, to ensure the priority of local workers in employment, and to safeguard their salaries and benefits, employers must accord priority to fill available job vacancies with local workers, and take active efforts to train local workers for the vacancies.

These workers are normally allowed to stay for an initial period of 12 months. They are required to return to their places of origin on completion of their employment contracts which are valid for a maximum period of 2 years.

### Who can apply

All interested employers may apply under the SLS to import workers to fill vacancies which they have genuine difficulties in finding suitable staff locally. Applications will however not normally be considered if the vacancies fall within the job categories listed below: (current as at October 2016)

Sales Representative	Presser
Sales Assistant	Hair Stylist
Waiter/Waitress	Warehouse Keeper
Receptionist	Cutter
Cashier	Cutting Room Operative
Junior Cook	Inspection Operative
Food Processing Worker	Delivery Worker
Clerical Worker	Driver
Teller	Demolition Worker
Computer/Key Punch Operator	Mason
Telephone Operator	Spray Paint Worker
Linen Attendant	Drain Layer
Washer	Leakage Worker

Imported workers admitted under this arrangement are NOT allowed to bring in their dependants. This entry arrangement does NOT apply to nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal and Vietnam.

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### Application Procedures

#### ***Stage ONE Application – (to Labour Department):***

Employers intending to import workers under the SLS need to first submit the completed application form (Form SLS-1) together with the required documents and apply to the SLS Application Office of the Labour Department for approval-in-principle.

The wages offered by the applicants should attain at least the median monthly wages.

The Application Office will inform the applicants within one week whether the wages offered are at or above the median wage level, and whether the stipulated requirements of the vacancies are acceptable. As the statutory minimum wage becomes effective on 1 May 2011, the amount of wages offered must be in compliance with the statutory minimum wage requirements.

Employers whose applications are accepted for further processing must undergo a four-week local recruitment exercise. During the period, employers should advertise the vacancies at least once in a week in each of the two local newspapers in the first two weeks. Concurrently, the Labour Department will also provide active job matching for the vacancies to identify suitable local job-seekers for referral to the employers for interview. If necessary, employers will be asked to organize training programmes with the assistance of the Employees Retraining Board for local workers.

At the end of the recruitment period, employers have to provide information on local recruitment efforts (Form SLS-9) to the Application Office. Employers who have undergone recruitment procedures before submitting applications may provide information on local recruitment for consideration of early approval by the Labour Advisory Board.

In the course of application processing, Labour Inspectors of the Labour Department will visit the employer's office premises and inspect the intended workplace(s) of the imported worker(s) to verify the information supplied by the employers concerned.

The Application Office will assess the employer's request and make a recommendation to the Labour Advisory Board comprising an equal number of employer and employee representatives.

Upon the advice of the Board, the Government will consider whether to approve or refuse each application. All applications will be considered on their own merits, such as the genuine need for importation of labour, the size of the local workforce, activeness in business and financial situation of the employers.

#### ***Stage TWO Application- (to Immigration Department)***

Upon approval, employers may apply, within three months from the date of issue of the approval-in-principle letter, to the Immigration Department of the Government of the Hong Kong Special Administrative Region (Immigration Department) which will process the visa/entry permits application of the prospective imported worker.

The approval-in-principle will automatically lapse if the visa/entry permit application is not submitted on time.

Completed application forms, i.e. ID 1001A and ID 1001B, and all supporting documents should be submitted by the applicant by post directly or through the employer in the HKSAR to Immigration Department for consideration.

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The employer may also be invited to provide additional information or to attend an interview. Decisions on individual applications will be conveyed to the imported worker through the employer.

#### **Overall Processing Times**

It will normally take 6 weeks for Immigration Department to process a visa/entry permit application for employment as an imported worker upon receipt of all the required documents, where the grant of approval-in-principle by Labour Department with a full four weeks local recruitment exercise involved takes around 5 weeks.

#### **Employer's Responsibilities and Legal Obligation**

##### ***Copy of employment contract***

The employer must give the imported worker, free of charge, one of the four original copies of the employment contract.

##### ***Briefing session***

The employer must grant leave to the imported worker to attend briefings organised by the Labour Department within eight weeks of his/her arrival.

##### ***Accommodation and meals***

Employers will be requested to arrange the accommodation for inspection by the Labour Inspectors of the Labour Department during the stay of the imported workers. The maximum amount of deduction for provision of accommodation is 10% of the worker's normal wages, or the actual cost of accommodation, whichever is less. Employers are not obliged to provide meals to imported workers but if they do, it must be free of charge and no deduction from wages may be made for the provision of meals.

##### ***Free medical care***

The employer must provide free medical care, including hospital stay and urgent dental treatment to the imported worker if he/she suffers from illness or injury, no matter whether it is attributable to the employment or not.

##### ***Passage and visa/entry permit fee***

Expenses for passage to and from Hong Kong on commencement and termination or expiry of the contract, visa/entry permit fees and subsequent extension fees should be paid by the employer.

##### ***Termination of contract prior to its expiry***

The employer or the imported worker may terminate the employment contract prior to its expiry by giving to the other party notice in writing or wages in lieu of notice as stipulated in the employment contract. The employer shall notify both Labour Department and Immigration Department upon termination of employment.

##### ***No displacement of local workers by imported workers***

The employer shall not displace local workers with imported workers. In the event of redundancies, imported workers should be the first to be retrenched.

##### ***Levy***

Successful employers are required to pay a non refundable levy that goes to the Employees Retraining Board to augment the provision of training or retraining for local workers who are vulnerable in the economic restructuring

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process to changing their employment. The levy payable in a lump sum in respect of each imported worker is HK\$400 multiplied by the number of months covered by the employment contract up to a maximum of 24 months.

*(Note: With effect from 1 August 2008, employers of imported workers are not required to pay the levy if the visas/entry permits for the imported workers are granted by the Immigration Department between 1 August 2008 and 31 July 2013.)*

**Withdrawal of approval granted to employers**

(a) Employers who breach the Laws of Hong Kong will be liable to prosecution.

(b) Administrative sanction in the form of withdrawal of approval for importation of labour will be taken against an employer who is found to have breached any statutory provision, any provision of the employment contract or any condition of the labour importation schemes, including the Supplementary Labour Scheme.

**Procedure for application for extension of stay in Hong Kong**

(a) A visa/entry permit is usually granted for an initial period of 12 months. An imported worker must apply for extension of stay if the duration of the employment contract is more than 12 months. Extension of stay beyond the employment contract period will not be granted.

(b) Under the SLS, the approval granted to an employer to import workers would not be automatically renewed. An employer who wishes to continue employing imported workers upon the expiry of their contracts are required to submit an application a fresh to the Labour Department and the application will be considered on its own merits.

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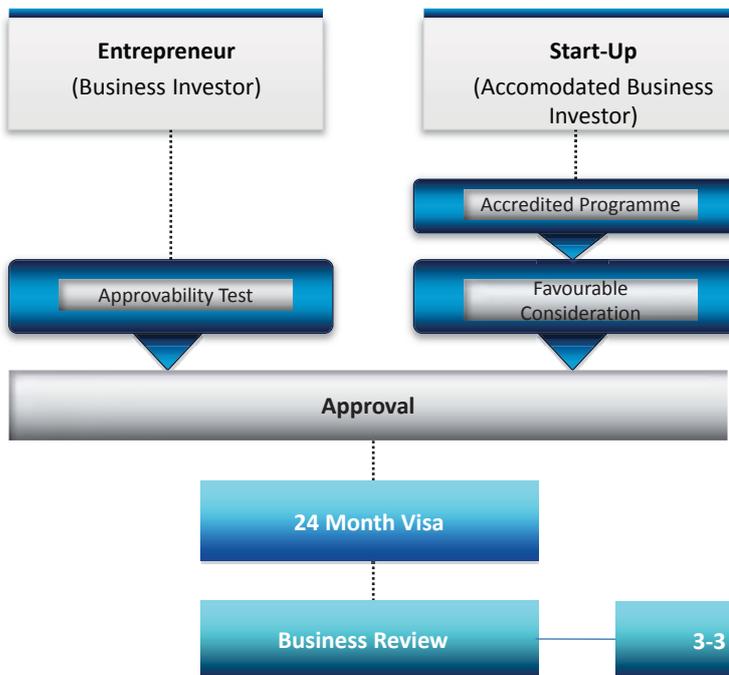
INVESTMENT VISA

# Visa to Establish or Join In a Business

## HONG KONG VISA CENTRE

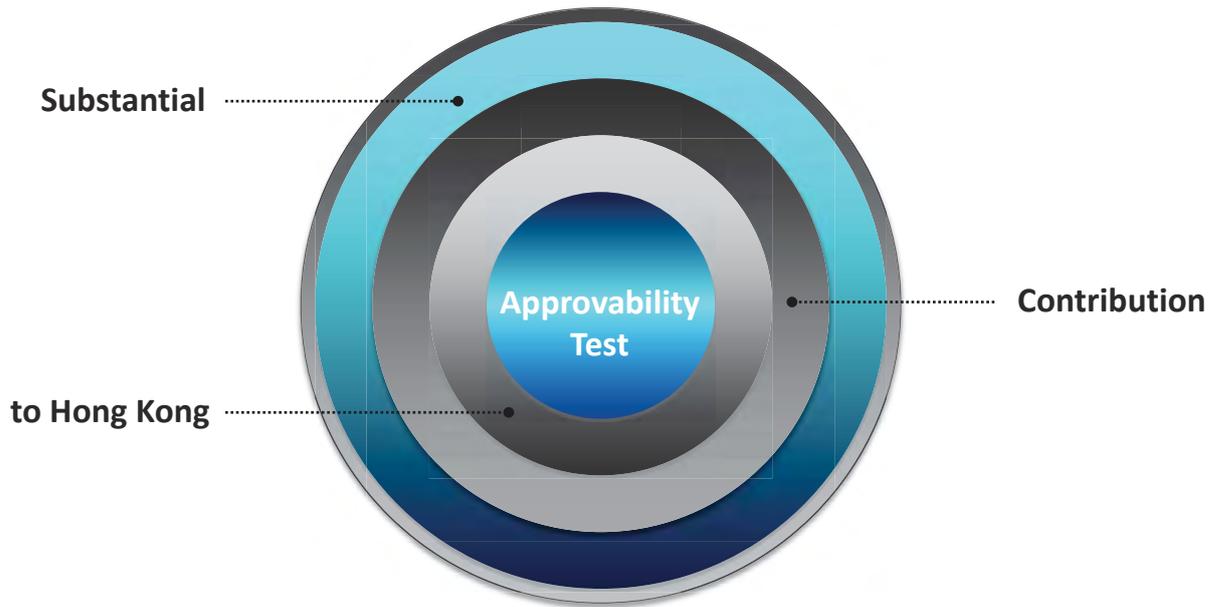
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### ENTREPRENEUR OR START-UP?



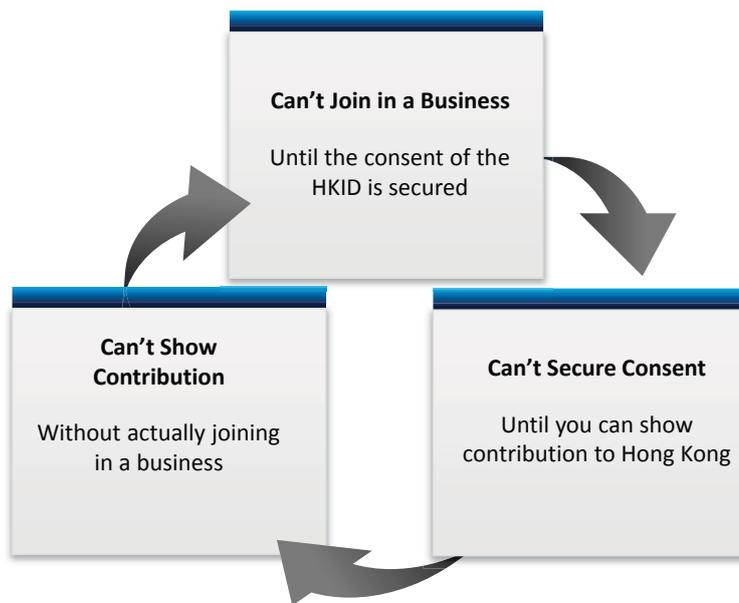
May 6, 2015 Enhancement Measures Introduced 2 Pathways...

BUSINESS INVESTMENT VISA



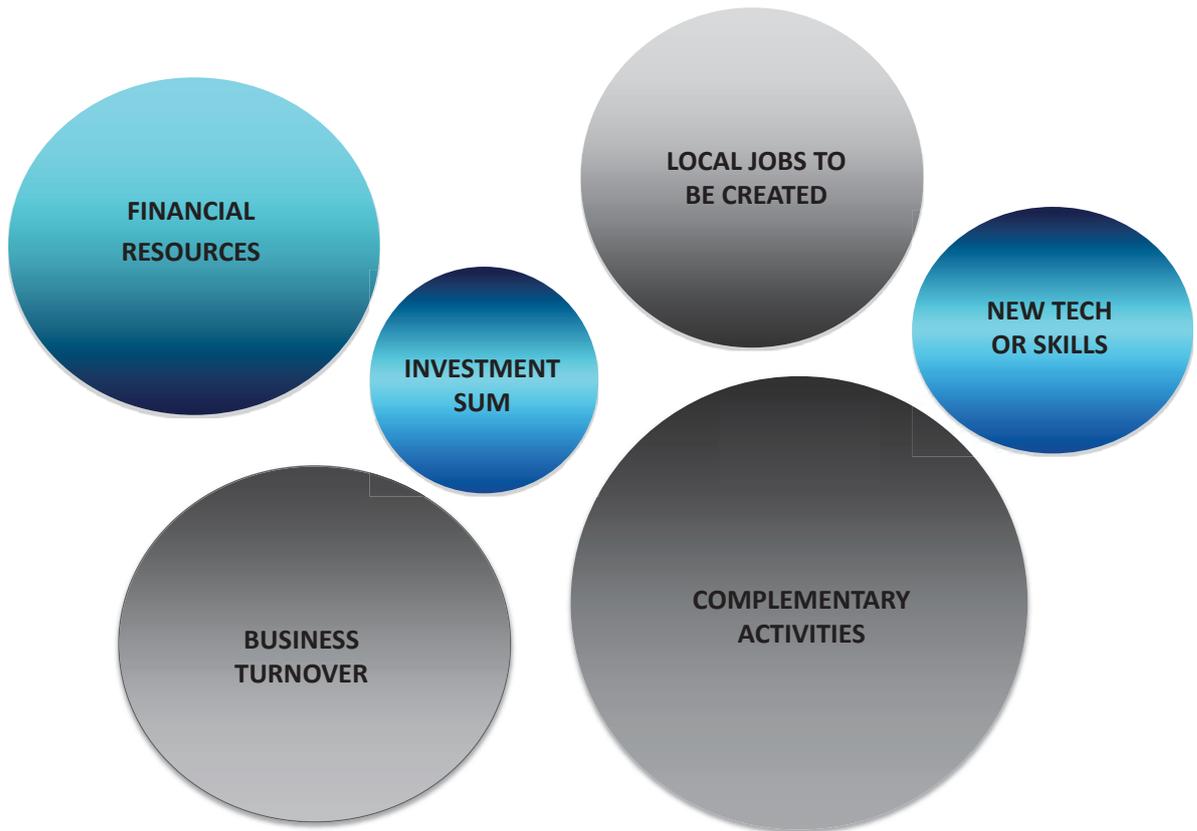
Will the applicant make a substantial contribution to the economy of Hong Kong?  
(or ..... how long is a piece of string?)

CATCH 22



Test requires showing only prospective (not immediately observable) contribution

**BUSINESS PLAN REQUIREMENTS**



**PASSING THE APPROVABILITY TEST**



**Obvious commitment to the business = manifest commitment to Hong Kong**

**RESOURCE REQUIREMENTS**



**OLD CHESTNUTS**

**“My Successful Business Will be Paying Tax”**

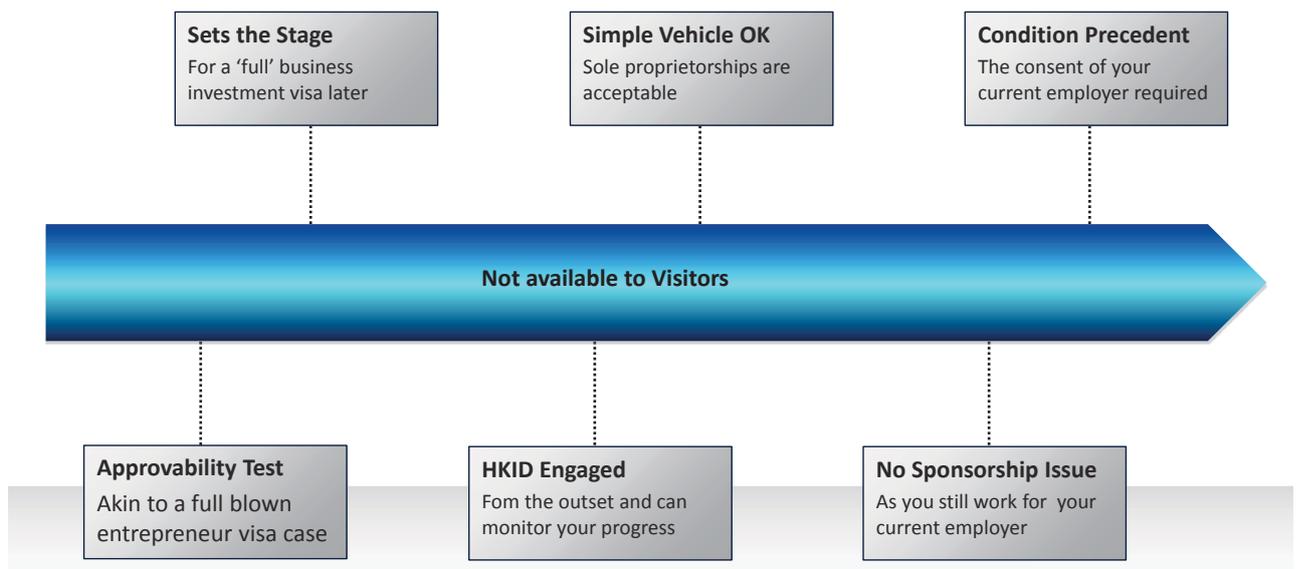
**“You Need HKD XXX,XXX Minimum”**

**“My Friend Got Approved & .....”**

**IMPROVE YOUR CHANCES**



**SIDE BUSINESS**



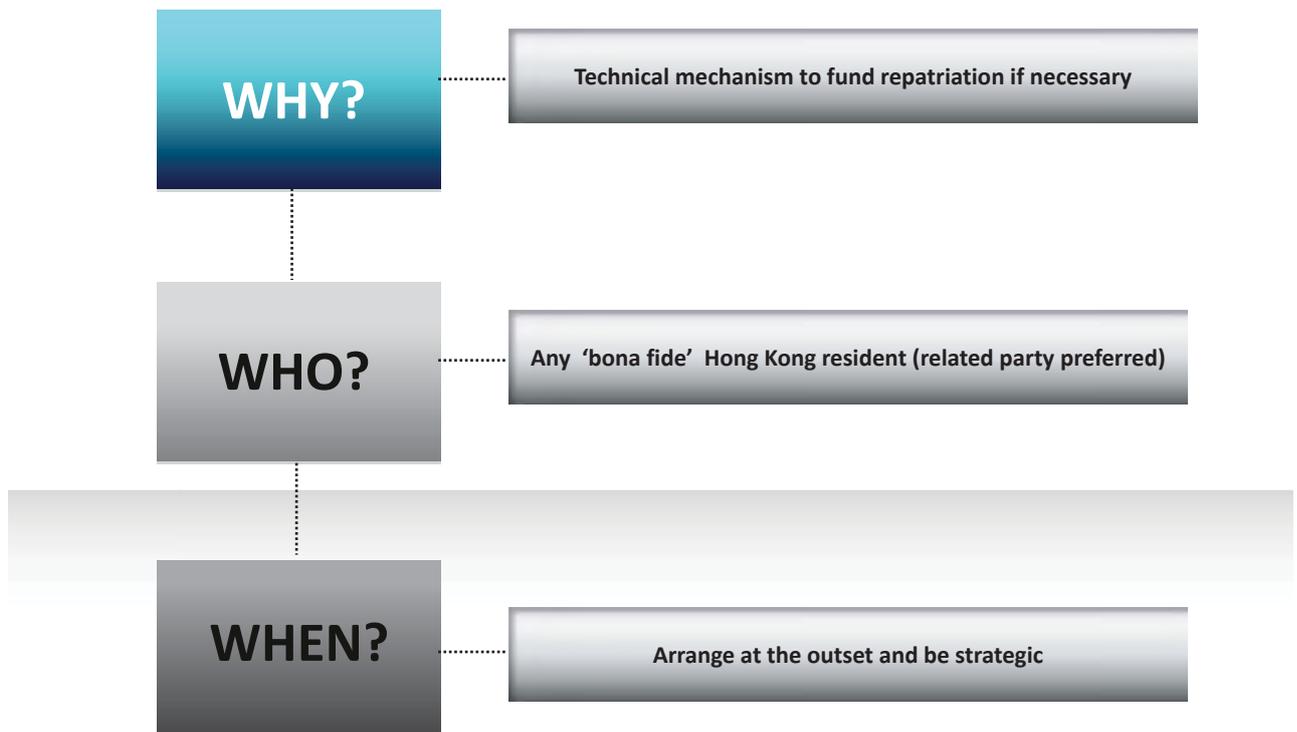
**Joining in a side business is a real solution for currently employed, one-man operations**

SPECIAL CONSIDERATIONS

- 1 Your existing employment visa is not transferrable to your new business
- 2 You must apply to change your visa category to Business Investment
- 3 The Approvability Test is just as onerous BUT given the benefit of the doubt
- 4 The Catch 22 still applies

Currently Hong Kong resident with an Employment visa sponsored by another firm?

SPONSORSHIP CONSIDERATIONS



TOP TIER BUSINESS INVESTOR

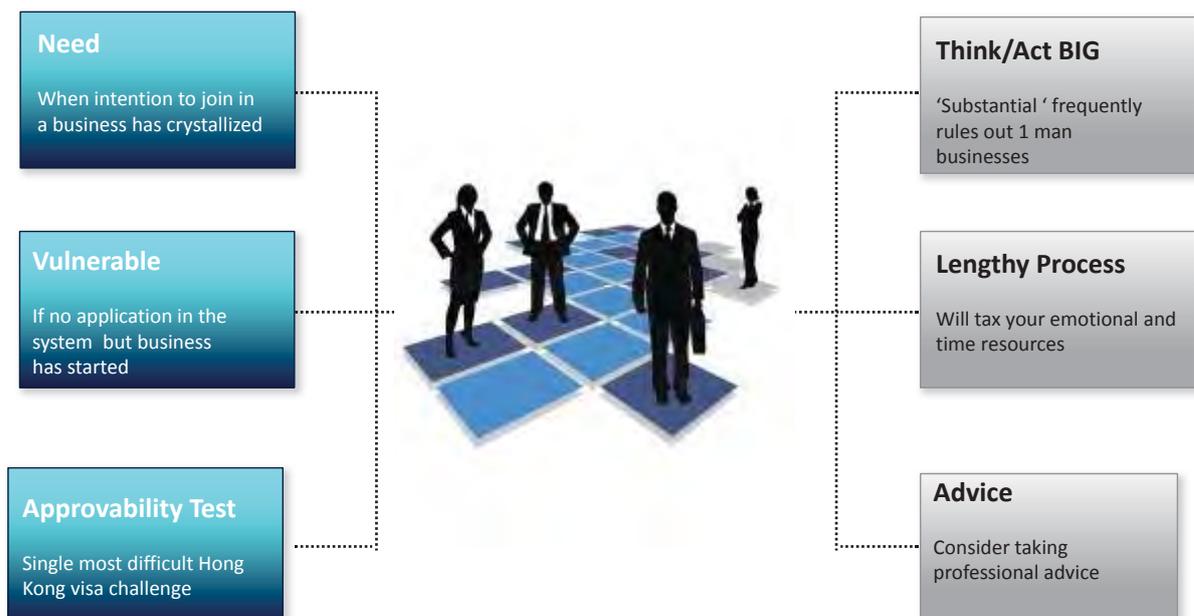
**Enhancement Measure May 6, 2015**

New policy designed to attract and retain Entrepreneurs, Professionals and Talents

**Applicability**

Does not apply to Business Investors

IN SUMMARY



START-UP SLAM DUNK



## Rationale

Somewhat surprisingly, for an entrepreneurial driven economy such as Hong Kong's, there are only relatively few business investment visas granted each year. The 300-400 approvals recorded are extremely modest compared to the 25,000 other employment visas issued annually. As the HKID do not provide statistics on the number of applications received, it does appear safe to assume that the low number of business investment visa approvals is less an indication of the interest of foreign nationals who wish to establish or join in a business in Hong Kong but more a reflection of the reality that getting a business investment visa approved is one of the most challenging of all the Hong Kong visa processes. That notwithstanding, foreign nationals arrive in droves to participate in the amazing business possibilities which Hong Kong has to offer and naturally enough, the Director of Immigration does not discourage applications from people to start up new, or join in existing, businesses in the HKSAR. In 2015, Start-Ups have been granted a leg-up if they can gain a place on a government accredited Incubator programme such as InvestHK's or that offered by Cyberport.

## Employment Visa vs. Business Investment Visa

The difference between the two types of visa lies in the nature of the approvability tests and the fundamental issue of whether the applicant has value at risk in the enterprise seeking to justify his employment in their business operations. Consequently the HKID look carefully at the ownership structure of the business vehicle in which the applicant will be engaged and, as a general guide, anything more than a 30-40% ownership in the hands of the applicant will steer the HKID towards the application of the more onerous business investment visa approvability test instead of the employment visa approvability test. Masking the shareholding in an effort to get around this general rule of thumb is fraught with difficulty as the Immigration Department will peer under every nook and cranny in an effort to fully understand the underlying ownership arrangements. Consequently, the use of nominees purely for immigration purposes is not recommended.

## Business Plan

If the enterprise is a completely new start up, a fully fledged plan for the business is mission-critical to visa approval. Business investment visas typically take between 4 and 6 months for formal approval to eventuate (compared to the maximum 4-6 weeks for out and out employment visas) and the reason for this is to allow the new business to grow a pair of legs and avail the opportunity for the HKID to assess if the business plan is a realistic one as measured by new 'facts on the ground' resulting directly from the actual implementation of business activities. Very few business investment visas are granted purely on the basis of a paper plan; indeed such approvals are usually related directly to very well resourced organisations extending their operations into Hong Kong from overseas. But where the business investor visa-applicant is in Hong Kong, typically as a visitor, though sometimes seeking to change visa status from sponsored employment, the HKID expect to see the business moving forward before they will grant the business investment visa. This creates a Catch 22 situation which is discussed below.

## Catch 22

You cannot join in a business until the consent of the HKID is secured. You can't secure the consent of the HKID without showing contribution to Hong Kong. You can't show contribution to Hong Kong without joining in a business! The Immigration Department is very well aware of this conundrum and are pragmatic in their work around. In essence, if you have made an application for a business investment visa they will close their eyes to the technical breach of conditions of stay inherent in running a new business prior to having your business investor visa approved. The risk lies in not having an application in the system. So in order to protect yourself from the risk of prosecution, you need to empower the HKID to take an early view of your activities and apply for your business investment visa right at the very outset, of your commercial endeavours, not later on after 'its all moving forward'.

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Preparing Your Case

[\(Click to Watch\)](#)

### Highlights

- The most difficult application type in the Hong Kong visa system
- Need to show substantial contribution to the economy of Hong Kong
- 4-6 months process
- Businesses on a shoe-string struggle to get approved
- Only 3-400 approvals annually
- Start-Ups can now get a leg up to approval



Discussion



## Business Investment

### Approvability Test

The business investment visa approvability test: ***“Is the applicant in a position to make substantial contribution to the economy of the HKSAR?”*** This is in many ways like asking how long is a piece of string as the test has to be applied in the context of the business in hand and no two cases are ever alike. Moreover, the state of the economy impacts (poor economic conditions = easier path to approval: robust economic outlook = the HKID can cherry pick the businesses they like.) However, years of experience has demonstrated that there are certain themes which run writ large through those applications which do get approved. In general, the applicant must be able to show that good local jobs will be created; local vendors and suppliers will play an important part of the business activity chain; overall, the business will contribute to its sector of the economy in some direct or indirect fashion and that over the long haul, the business investment activities of the applicant will result in a soundly established enterprise operation, which provides substantial benefit to Hong Kong.

### A Suitable Business Vehicle

Whilst experience has demonstrated that it **is** possible to have a partnership at will or a sole proprietorship serve as the business vehicle which underpins a successful business investment visa approval, these entities are not recommended. The HKID are seemingly geared towards the limited liability company incorporated in Hong Kong as the default business vehicle for the purposes of business investment visa consents.

### Four Cornerstones

Successful business investment visas applications tend to have four key elements present by the time the HKID approve the case. These are:

#### Local Jobs

No minimum number is expected but the potential for jobs must be manifest.

#### Suitable Business Premises

Running the business from your spare bedroom or kitchen table will simply not suffice!

#### Proof of Capital & Other Resources

These must be available, suitable in the context of the business and the capital invested beneficially owned by the applicant for at least 2 years immediately prior to funding the business.

#### Adequate Administration Arrangements

In a nutshell, one man businesses typically fail to pass the ‘substantiality’ test.

### Examples



Discussion

### Articulating Your Argument

Investment visas which get approved tend to have one thing in common; the applicants have fully committed themselves to their ventures and such commitment is manifestly evident in their business activities. Remember, the HKID do not insist that the ‘substantial contribution’ requirement of the approvability test be immediately observable or satisfied at the point of granting the visa approval. It is sufficient that the contribution be ‘potential’. In taking your argument to the HKID, it is vital that you do not hide your light under a bushel. Be confident in your assertions of business performance, but provide for the possibility that the exact outcomes may not materialise in fact. The HKID are more than realistic and appreciate that no battle plan survives first contact with the enemy, so to speak. If you do not have confidence in your business plan, it is hard to envisage that the HKID will impute their own confidence in it on your behalf. Ensure that your plan is realistic but not producing marginal business outcomes. In crafting your supporting representations, seek to impress on the Immigration Department that your business has the potential to go a long way, that you are all geared up to travel on that journey, and that you have all the resources required to get you to your destination. Do not lie (which is a criminal offence) but do not be afraid to be robust in your assertions which, so long as you can back them up with resources and facts on the ground subsequently, will carry you a long way to getting your visa approved.



## Are You A 'Start-Up'?

An applicant who wishes to establish or join in a **start-up** business may also submit an application for a Business Investment visa. The Immigration Department may consider the application favourably, if the start-up business concerned is supported by a government-backed programme with a rigorous vetting and selection process, and the applicant is the proprietor or partner of the start-up company or a key researcher of the relevant project. Examples of government-backed programmes include:

(1) **StartmeupHK Venture Programme** administered by InvestHK; (2) **Incu-App, Incu-Bio and Incu-Tech Programmes** administered by the Hong Kong Science and Technology Parks Corporation; (3) **Cyberport Incubation Programme**; (4) **Small Entrepreneur Research Assistance Programme and Enterprise Support Scheme** administered by the Innovation and Technology Commission; and (5) **Design Incubation Programme** administered by the Hong Kong Design Centre.

## 'Favourable Consideration' for Start-Ups

Every application for a Business Investment visa should be prepared on the basis that it is an application which will require the applicants to pass the Approvability Test on the strength of its own business merits. However, if an applicant is accepted on to a government-backed programme as detailed above, any shortcomings inherent in the substantive application will be overlooked and HKID will 'favourably consider' the application as a result of being accepted on to such programme.

## Contents of Your Business Plan

An applicant who wishes to establish or join in business in Hong Kong should submit a two-year business plan stating the nature of the business, market analysis, market positioning, business direction, sales targets, product marketing strategy, etc. in order to demonstrate that the business is suitable for and capable of developing in Hong Kong. The applicant should also submit a two-year forecast of the profit-and-loss account statement, cash flow statement and balance sheet to demonstrate the feasibility of the business in terms of operation, finances and development. The Immigration Department may consider whether the applicant's business belongs to or is able to complement industries that Hong Kong enjoys clear advantages, such as the four traditional pillar industries (i.e. trading and logistics, tourism, financial services, and professional and producer services) or the four clusters of sectors being explored for support measures by the Economic Development Commission (i.e. transportation, convention and exhibition industries and tourism, manufacturing industries, innovative technology and cultural and creative industries, and professional services).

If the applicant is running relevant business overseas or has joined in a business in Hong Kong, he/she should submit the profit-and-loss account statement and balance sheet showing the business turnover and profit in the previous year. Those who intend to establish business in Hong Kong should submit a two-year forecast of profit-and-loss account statement and balance sheet as mentioned above, including the anticipated business turnover in order to demonstrate the feasibility of the business operation and development. In assessing an application for entry for investment to establish business in Hong Kong, the Immigration Department will also consider whether the applicant has relevant investment or working experience in the business concerned. If needed, the Immigration Department will seek advice from relevant government departments or professional bodies in order to assess whether the business is suitable for and able to sustain a steady growth in Hong Kong, and can give impetus to the industry concerned

The applicant should submit statements of his/her personal and company bank accounts in the previous year and proof of other sources of funding, as well as the company's latest audited financial report (if any) to demonstrate that he/she has sufficient financial resources to run the relevant business in Hong Kong and also support the smooth operation and sustainable growth of the business.

The applicant should submit documentary proof showing the amount of capital investment in Hong Kong. The Immigration Department will consider whether the investment amount is able to support the operation of the business.

The applicant should set out the organisational structure of his/her business and the required number of staff and posts, based on the nature and scale of the business. He/She should indicate the number and level of actual jobs created locally (e.g. managers, administrators, professionals, clerical support staff, etc.)

The applicant should explain how the new technology or skills to be introduced can inspire creativity in the high-value-added industries in Hong Kong, and whether he/she has taken out patent, contributing to the long-term development of Hong Kong as a knowledge-based economy.

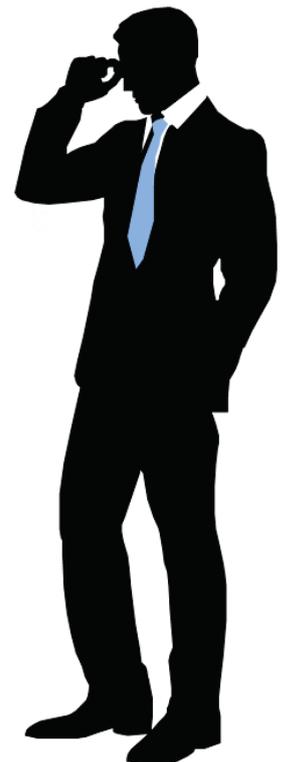
## Documents Required

- Application form ID999A (applicant) and ID999B (sponsor).
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- Copy up-to-date CV.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of prior employment references and testimonials.
- Copy Letter of Engagement or Contract of Employment detailing information about the post, emolument and term.
- Copy Business Registration Certificate.
- Copy of latest audited financial report and/or management accounts (if available).
- Copy latest profits tax return to the Commissioner for Inland Revenue (if available).
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1) or if a new company FORM NNC1.
- Company brochure (and/or "Company Profile"), sales publications, press articles and any similar promotional type materials, which verify the business type of the company.
- General proofs of business - for example, trading documentation, shipping documents, invoices, contracts, agency and distribution agreements etc.
- Office tenancy agreement copy (if any)
- If there is a substantial overseas parent company the following documents could also be submitted to assist in the credibility establishment process: Certificate of Incorporation of the parent company, its audited financial statement and the parent company profile or brochure (which will often suffice instead of Hong Kong corporate background information.)
- A color print out of company's website (if available).
- Copies of Company's bank statements for the last six month period (if available).
- Company's confirmed client list (both in suppliers/buyers in Hong Kong and Overseas).
- A chart/graph showing company's projected turnover for the next 24 months, based on the current business.
- Proof of monetary injections by the applicant into the business.
- Three colour photographs of the company's office premises.
- Copy of current staff list with name, position, nationality, salary and HK Identity card **and** a chart showing the number of staff to be employed in the coming year together with their positions.
- Copy of Mandatory Provident Fund Certificate, debit note and bank deposit receipt of contributing funds to current staff.
- Copy of Employees' Compensation Insurance Policy, debit note and receipt of current staff.
- A complete business plan if one has already been written.
- If a 'Start-Up' accepted on to a government-backed accredited programme, the letter of acceptance.



Discussion

**"An application  
for a Hong  
Kong business  
investment visa  
is more akin to  
a *Picasso* than  
a *Turner*."**



## Changing from Visitor to Business Investment

It is no doubt possible to arrive in Hong Kong as a visitor and then approach the HKID to apply to adjust your immigration status through an application for a for a business investment visa whilst you are visiting Hong Kong. Indeed, as the discussion in the section on the Catch 22 suggests, the Immigration Department are very alert to the need for intending business investment visa holders to actively get on with business during the formal application consideration process. However, the HKID will not afford you any extension to your visitor visa just by virtue of you having a business investment visa under active consideration so you will need to manage your visitor status by leaving Hong Kong before your current limit of stay expires and then returning to Hong Kong to 'refresh' your visitor status. The risk is that, even after due consideration has been given to your application, it does not meet the approval of the HKID and you now have a Hong Kong based business which you are unable to carry on without breaching your conditions of stay. If you do get denied and then work your way through the various avenues of appeal, which themselves do not result in a positive outcome subsequently, the temptation will be to remain in Hong Kong as a visitor to-ing and fro-ing across the border on a visa-run. This is fraught with difficulty, however, because sooner or later you will amass more than 180 visitor days in any one year period and on one of your visa runs you will be stopped, vigorously questioned by the examining immigration officer and then granted a 3 day non-extendable "SCL" (short conditional landing). This will effectively bring your time and your business in Hong Kong to an end. So there is a visa end point and you need to have this in mind when considering if entering into a business in Hong Kong is the right thing for you to do.

## Changing from Employment to Business Investment

This is entirely possible and will require a bit of fancy footwork if you have actually ceased working for your employer and started out in business for yourself prior to submitting your application to the HKD. The approvability test is just as onerous, however, but if you have 3 years current Hong Kong residence things are a little easier for you (but no guarantee of approval). You need to make an application to change your visa category.

## Joining in a Side Business First

If you hold an employment visa and can get your current employer to agree in writing that they consent to you running a side business in addition to the work you do for them, then the HKID are happy to receive an application from you for immigration permissions to do this and, assuming that all the paperwork is in order and your arguments make commercial sense, they will likely agree to allow you to join in that side business. You should treat your application exactly as if it were a full business investment visa application. The neat thing about this route is that it sets the scene for a full investment visa approval (upon application, subsequently) later on.

## Sponsorship

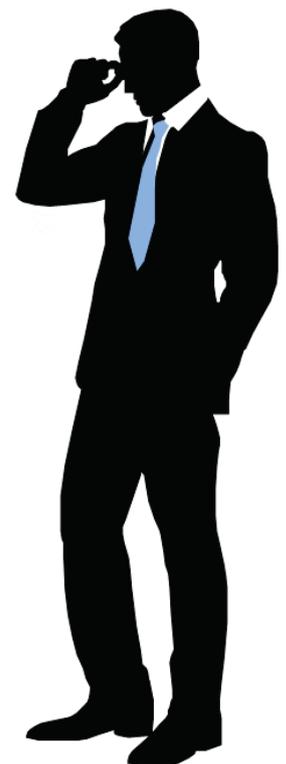
You will require a sponsor for your business investment visa. This can be any Hong Kong ID card holder but ideally it should be PHKID holder on behalf of a corporate or other business entity which has a commercial relationship with you and your business.

## The Consideration Process

Be ready to undergo 'trial by ordeal' as it takes 4-6 months (4-6 weeks for an existing resident) for a business investment visa application to be finalised. The HKID will very likely to and fro with you by correspondence all throughout this time (and you may get an occasional telephone call too). Be aware of specific requests for further information as these will shed light on the areas of weakness which the HKID believe are present in your application and actually afford a great opportunity to address them forthrightly and bring to their attention other positive developments which have occurred in the time since your paperwork was first submitted. Once approved, you will be notified, typically by letter, and invited down to Immigration Tower to complete the business investment visa approval formalities.

## Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will not afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.





## Business Investment Visa

- Application form ID999A (applicant) and ID999B (sponsor).
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- Copy up-to-date CV.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of prior employment references and testimonials.
- Copy Letter of Engagement or Contract of Employment detailing information about the post, emolument and term.
- Copy Business Registration Certificate.
- Copy of latest audited financial report and/or management accounts (if available).
- Copy latest profits tax return to the Commissioner for Inland Revenue (if available).
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1) and FORM ND2A (Notification of Changes of Secretary and Directors) if applicable, and FORM NSC1 (Return of Allotments).
- Company brochure (and/or "Company Profile"), sales publications, press articles and any similar promotional type materials, which verify the business type of the company.
- General proofs of business - for example, trading documentation, shipping documents, invoices, contracts, agency and distribution agreements etc.
- Office tenancy agreement copy (if any)
- If there is a substantial overseas parent company the following documents could also be submitted to assist in the credibility establishment process: Certificate of Incorporation of the parent company, its audited financial statement and the parent company profile or brochure (which will often suffice instead of Hong Kong corporate background information.)



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## Business Investment Visa

- A color print out of company's website (if available).
- Copies of Company's bank statements for the last six month period (if available).
- Company's confirmed client list (both in suppliers/buyers in Hong Kong and Overseas).
- A chart/graph showing company's projected turnover for the next 24 months, based on the current business.
- Proof of monetary injections by the applicant into the business.
- Three colour photographs of the company's office premises.
- Copy of current staff list with name, position, nationality, salary and HK Identity card **and** a chart showing the number of staff to be employed in the coming year together with their positions.
- Copy of Mandatory Provident Fund Certificate, debit note and bank deposit receipt of contributing funds to current staff.
- Copy of Employees' Compensation Insurance Policy, debit note and receipt of current staff.
- A complete business plan if one has already been written.

### Notes



Discussion

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## CAPITAL INVESTMENT VISA

# The Capital Investment Entrant Scheme

**HONG KONG VISA**  
CENTRE

CIES SUSPENDED

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

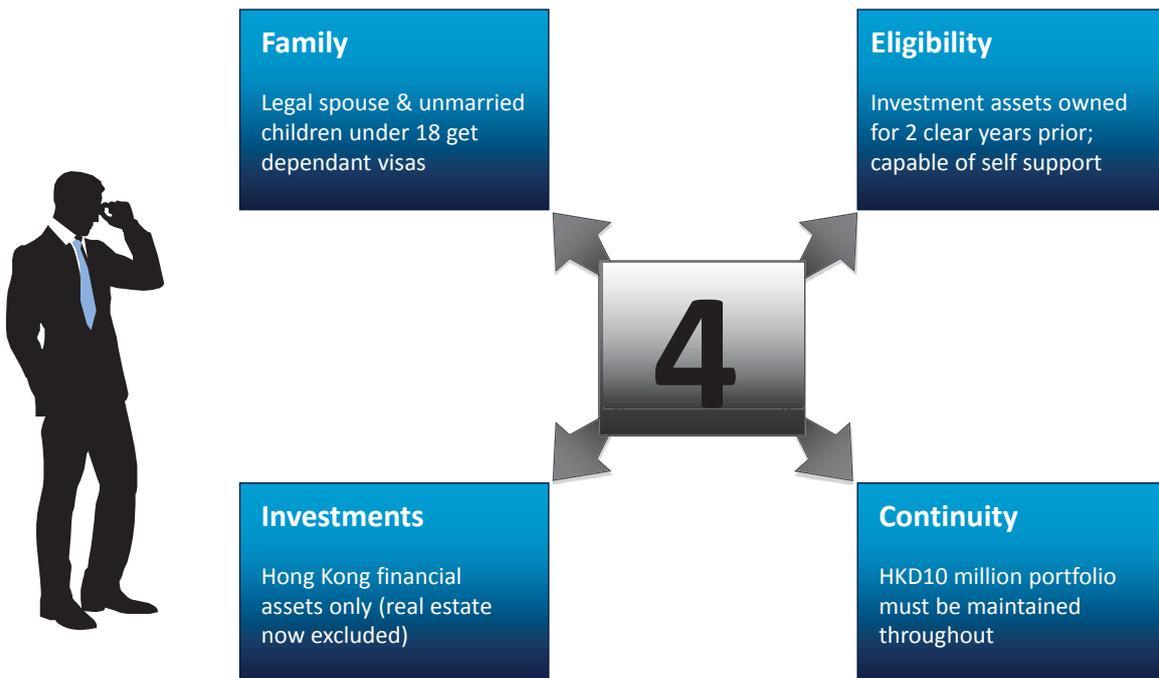
- 24,000 Approvals
- 23,000 From Mainland
- 20, 000 Applications Still Being Processed
- Unlikely to be Reinstated

### CIES OVERVIEW



**Invest hard cash in Hong Kong and secure residency permissions**

### KEY CONSIDERATIONS



## THE ORACLE

**Jake van der Kamp, Monitor, SCMP, October 1, 2004**

*“ Let us get it straight about this initiative to give foreigners Hong Kong identity cards if they bring a certain amount of money with them. It represents a complete misunderstanding of how our balance of payments system works. Foreigners who come here do not bring Hong Kong dollars. They do not have them at home. They bring their own currencies and we then exchange them for Hong Kong dollars. This results in our holding their foreign currency denominated money, which we then spend or invest in their countries ...*

*... Net gain to us?*

*... Nothing. ”*

## ELIGIBLE INDIVIDUALS

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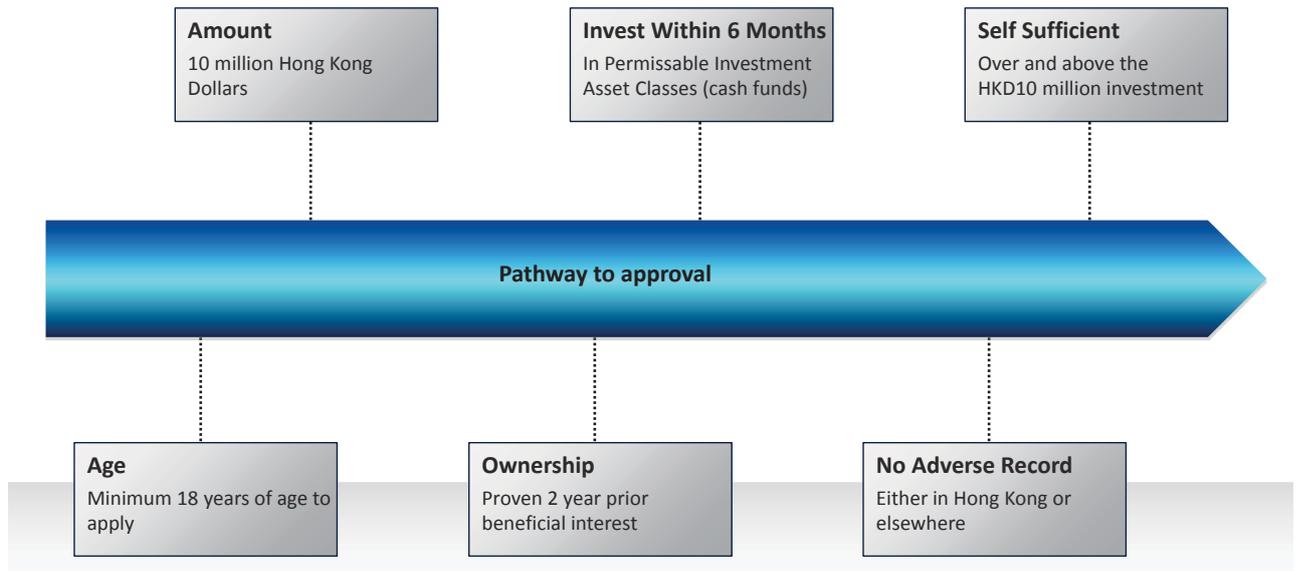
Qualifying Nationalities

- Foreign nationals (except Afghanistan, Cuba, North Korea & Albania)
- Residents of Macau & Taiwan
- Chinese nationals with PR overseas
- Stateless people holding PR overseas with proven re-entry facilities

**FX issues preclude Mainland residents from inclusion in the programme**

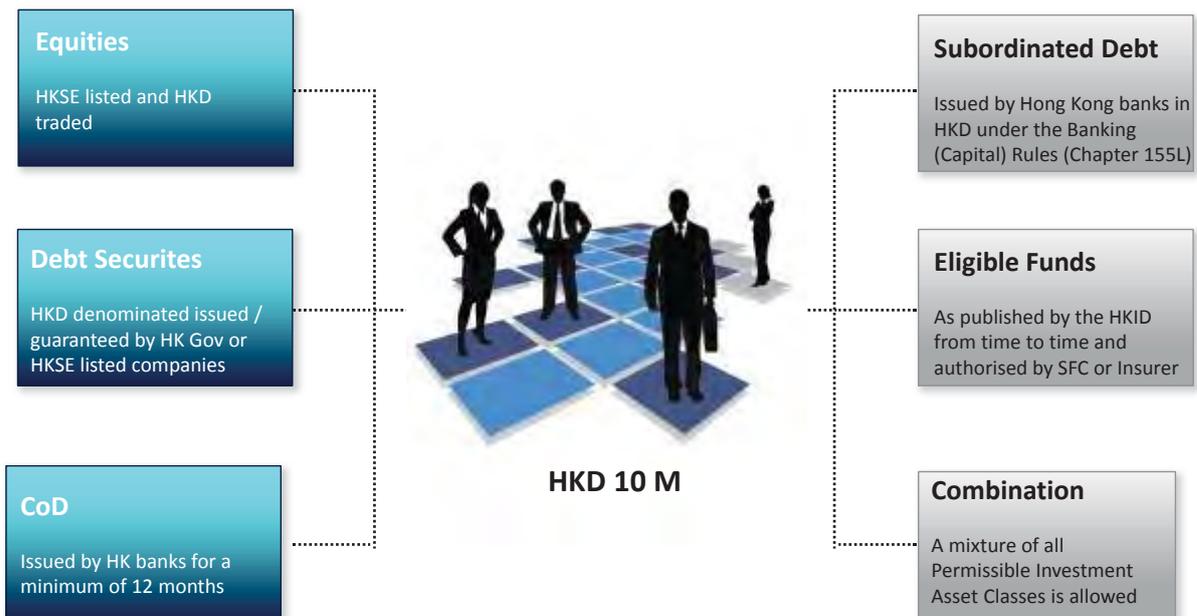


**ELIGIBILITY CRITERIA**



**A visa programme for the very well heeled**

**PERMISSIBLE INVESTMENT ASSET CLASSES**



### APPROVAL OUTCOMES



The CIES visa allows any lawful permitted activity in Hong Kong by the holder and his family

# Capital Investment

## Rationale

The Capital Investment Entrant Scheme commenced in October 2003 with the objective of allowing well-heeled people to take up residence in Hong Kong without them needing to join in or establish an operating business. The programme rules are reviewed regularly and at this time the funds required are HKD10 million with qualifying investments now excluding Hong Kong real property.

## Eligibility

An application for admission under the Capital Investment Entrant Scheme will be successful if:

- You are aged 18 or above.
- You have net assets of not less than HKD10 million to which you have been absolutely beneficially entitled for at least 2 years immediately prior to making the application.
- You have invested (within 6 months prior) or will invest (within 6 months post) not less than HKD10 million in permissible investment asset classes nominated for the CIES programme.
- You have no adverse record in Hong Kong, your country of origin and present country of domicile (if different).
- You are a Chinese national with PR overseas, a foreign national (other than citizens of Cuba, Afghanistan, Albania and North Korea), a resident of Macau or Taiwan or a stateless person with PR in a third country.

## Application Procedure

Applying for a Capital Investment visa is a matter of (a) completing the application form ID967, furnishing a referee, setting out your net worth, articulating how you intend to invest at least HKD10 million into qualifying investments (if you have not yet already) and if you are going to appoint a Hong Kong CPA to attest to your net worth (speeding up the application process generally). On the basis that all of this stacks up and the normal background checks which the HKID undertake do not reveal any security objection to you becoming resident in Hong Kong, they will issue with either (a) formal approval (if you have already invested the HKD10 million) or (b) approval in principle (giving you a period of stay in Hong Kong as a visitor for up to six months in order for you to make the HKD10 million investment) whereupon, once proof is provided to the HKID that the investment has been made, your formal approval will be issued and you can become formally resident in Hong Kong under the Capital Investment programme.

## Arrangements for Dependants

You are permitted to bring your dependant family members (legal spouse and unmarried children under the age of 18) under the Capital Investment Entrant Scheme who secure dependant visas (allowing them to work and/or study full time). Their period of stay mirrors the principal visa holder's exactly.

## Period of Stay

You will receive a 2 year period of stay in the first instance. Extensions are readily available subject to you being able to satisfy the portfolio maintenance requirements and otherwise demonstrate to the Director of Immigration that you continue to meet the eligibility criteria. The principal applicant enters into a specific Undertaking in respect of continuing beneficial ownership of the HKD 10 million which, if breached, will lead to loss of status when the current period of stay expires.



Preparing Your Case

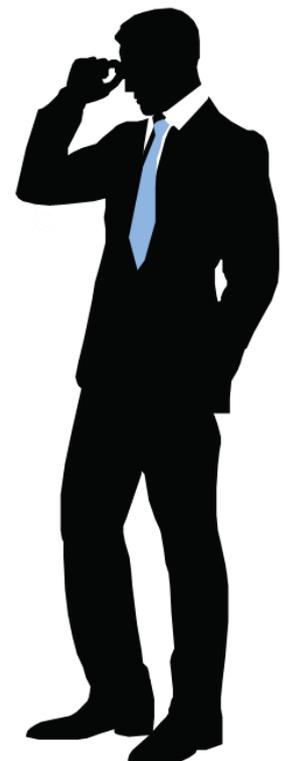
[\(Click to Watch\)](#)

### Highlights

- Scheme designed to attract new investment to Hong Kong
- HKD10 million into qualifying investments
- No longer includes real estate
- The investment funds must have been beneficially owned for at least 2 years prior
- Not available to PRC nationals resident on the Mainland



Discussion



## HKD10 Million & Permissible Investment Asset Classes

The applicant needs to invest not less than HKD10 million in one, or a combination, of the following qualifying investments:

### Equities

HKSE listed shares and traded in Hong Kong Dollars.

### Debt Securities

Issued in HKD by nominated government agencies (MTR, HK Airport etc).

### COD

Issued by Hong Kong banks in HKD and for a minimum of 12 months each deposit.

### Subordinated Debt

Issued by Hong Kong banks in HKD.

### Eligible Collective Investment Schemes

As prescribed and authorised by the HKID from time to time.

All permissible investment assets need to be held in a designated account in the applicant's own name and operated by a single financial intermediary and a contract has to be entered into between the financial intermediary and the applicant on terms which are set out by the HKID. The financial intermediary must be either an authorised institution as defined by the Banking Ordinance or a licensed corporation licensed to perform Type 1,4 or 9 regulated activities under the Securities and Futures Ordinance.

An essential element of the Capital Investment programme is that the applicant needs to be able to demonstrate that he is capable of supporting and accommodating himself and his dependants, if any, on his own without relying on any return from the HKD10 million invested. Moreover, at the point of application, he should be sufficiently well heeled such that he does not need to rely on working in Hong Kong or need to start up a business in order to finance his residence—both of which are permitted once the Capital Investment visa is issued.



Click to Access all the  
Scheme Rules

## Portfolio Maintenance

The entire HKD 10 million investment is ring fenced for the life of the Capital Investment visa status. The visa holder is not required to top up the HKD10 million if the value of his portfolio drops nor is he allowed to withdraw any increase in value. Any such increase must be reinvested if a choice is made to move between permissible asset classes.

## Scheme Rules

The Director of Immigration has set out detailed rules on the Capital Investment Entrant Scheme. These are available here:  
[http://www.immd.gov.hk/pdf/forms/id\(e\)968.pdf](http://www.immd.gov.hk/pdf/forms/id(e)968.pdf)

## Submitting Your Application

The application is submitted to the HKID either (a) via post from overseas or in person to the Receipt & Dispatch Unit of the Immigration Tower (2/F). The HKID will also entertain applications from current residents who wish to change their category of visa. Applications can also be submitted on a change of status basis, whilst a visitor in Hong Kong.



## Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will usually afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.



## Documents Required

- Application form ID967.
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- Copy up-to-date CV.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of documents which show your prior employment and/or business record for the past 5 years.
- Supporting proof of your net worth for the last 2 years showing that you have beneficially owned absolutely the HKD10 million you will be investing in Hong King under the Capital Investment programme.
- Supporting proof of the HKD10 million you have already invested (within the prior 6 months) - if applicable.
- If applying with Family Members, Form 997 and the following documents:
  1. A confirmation letter to be signed by the CIES applicant confirming that he will be responsible for meeting his dependant's financial needs in Hong Kong.
  2. Family photos evidencing the CIES applicant and the dependants relationship.
  3. Copies of birth (where applicable for dependant children) and marriage certificates.
  4. Copy passports details page of all dependants included in the application.
  5. Documentary proof indicating the CIES applicant and the dependants were living together overseas .



## After 7 Years

Once a Capital Investment visa holder and his family have been continuously resident in Hong Kong for a period of not less than 7 years and are able to declare that they have taken Hong Kong as their only place of permanent residence, they can apply for the Right of Abode. Other such persons who are not able to show 7 years continuous ordinary residence are eligible for Unconditional Stay. In either case, the HKD10 million investment is released and the residence is no longer subject to any conditions of stay.

## A Space for Your Notes





## Capital Investment

- Application form ID967.
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- Copy up-to-date CV.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of documents which show your prior employment and/or business record for the past 5 years.
- Supporting proof of your net worth for the last 2 years showing that you have beneficially owned absolutely the HKD10 million you will be investing in Hong Kong under the Capital Investment programme.
- Supporting proof of the HKD10 million you have already invested (within the prior 6 months) - if applicable.
- If applying with Family Members, HKID form ID997 and the following documents:
  - A confirmation letter to be signed by the CIES applicant confirming that he will be responsible for meeting his dependant's financial needs in Hong Kong.
  - Family photos evidencing the CIES applicant and the dependants relationship.
  - Copies of birth (where applicable for dependant children) and marriage certificates.
  - Copy passports details page of all dependants included in the application.
  - Documentary proof indicating the CIES applicant and the dependants were living together overseas.





**Capital Investment**

**Notes**



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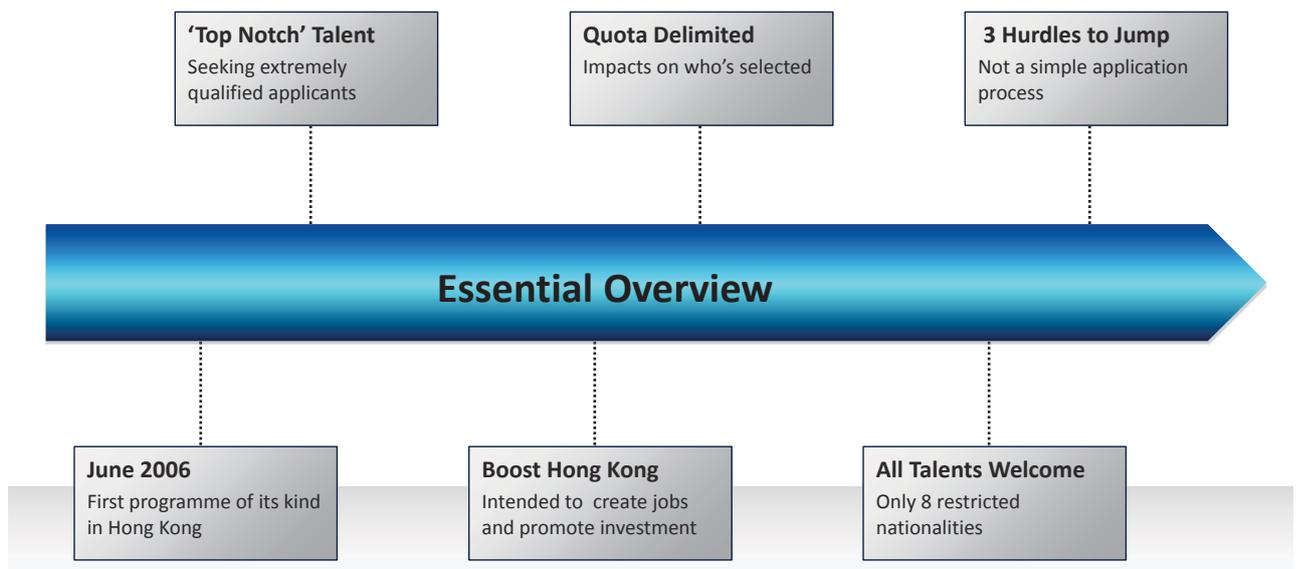
SPECIAL PROGRAMMES

# A Visa for 'Top Notch Talent' to Live & Work in Hong Kong

## HONG KONG VISA CENTRE

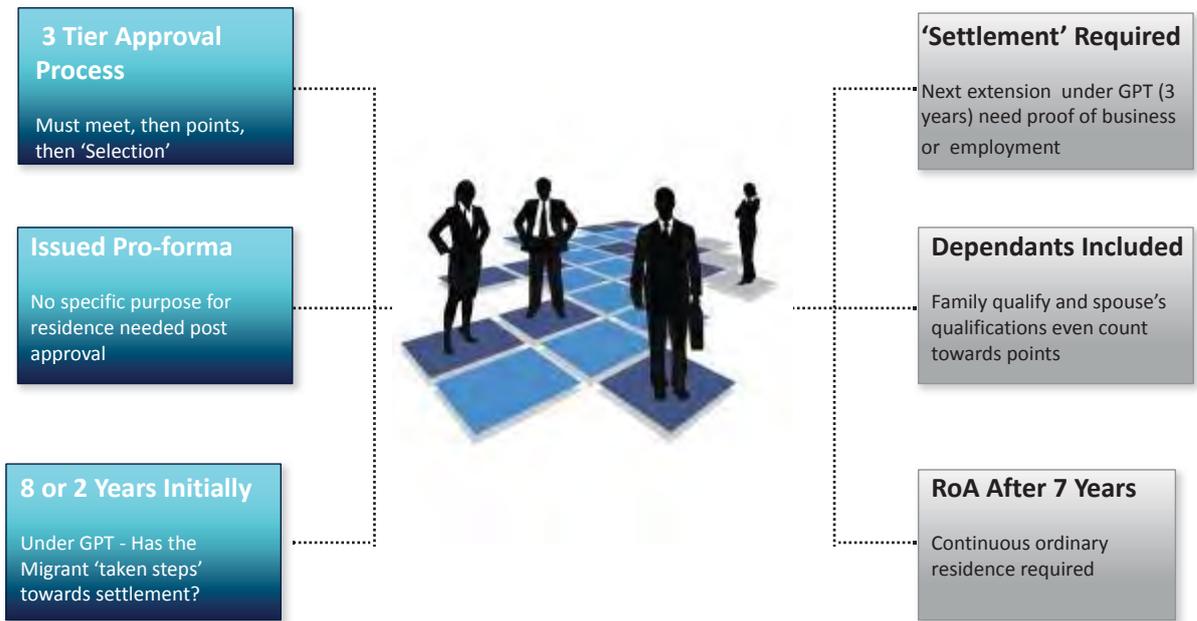
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### QUALITY MIGRANT ADMISSION SCHEME



The programme undergoes frequent review to ensure it is meeting Hong Kong's needs

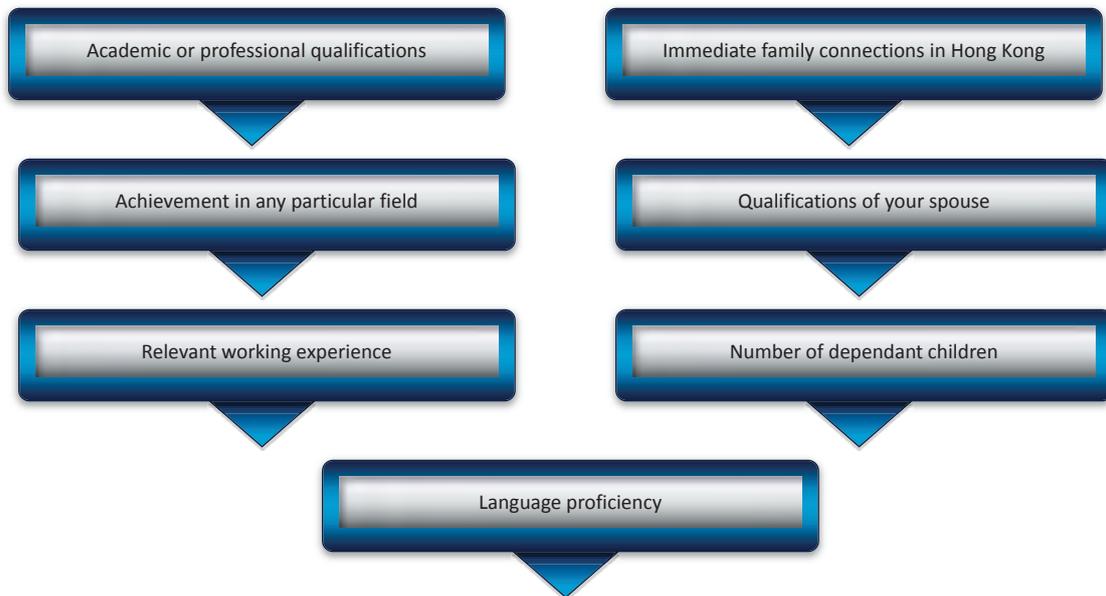
**ESSENTIAL ELEMENTS**



**MUST MEET CRITERIA**



## GENERAL POINTS TEST



*The General Points Test tallies up*

## ENHANCEMENT MEASURES 2015

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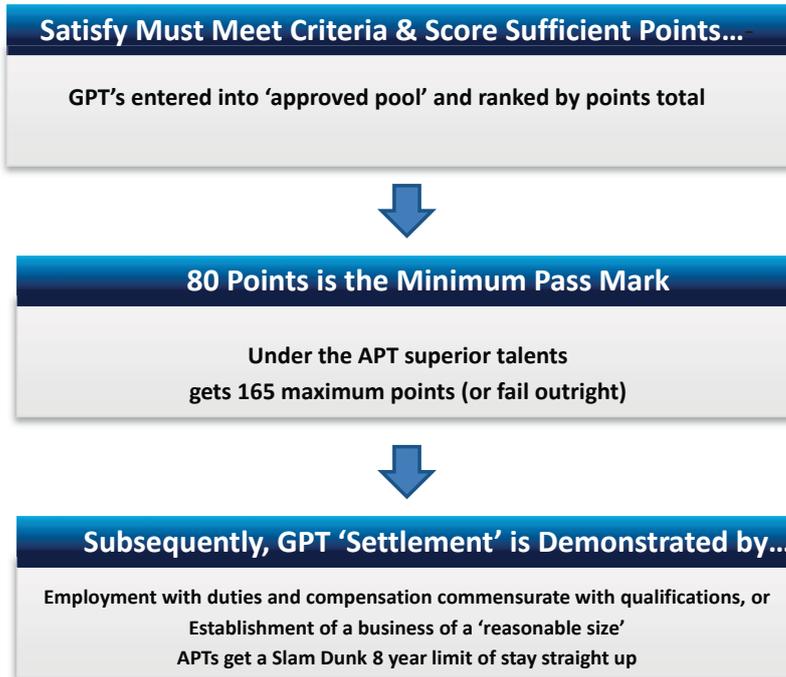
**(1)** Additional 30 points awarded to graduates of renowned institutions recognized internationally and an additional 15 points to applicants with not less than 2 years of graduate or specialist level international work experience.

**(2)** 2-3-3 Year under GPT OR 8 Year Pattern of Approval under APT

**(3)** Top Tier resident status available for HKS2 million income earners under GPT

**Programme Shake Up**

APPROVALS PROCESS & OUTCOMES



**The Achievements Test is a 165 Points 'Home Run'**

# Quality Migrant Admission Scheme

## Objective & Experience

This programme was introduced in 2006 with the intention to create a visa class for those very highly talented people who might be willing to take up residence in Hong Kong without actually having any core reason for coming here in the first place! Flexible as ever, the HKID developed the Quality Migrant Admission Scheme in order to provide a mechanism to be able to compete with other developed economies' immigration programmes established on the basis that it can only be good if you allow smart people to live in your community. The programme has been criticised due to the lack of transparency over what it actually takes to get approved. Successful applicants under the general points test ("GPT") have tended to come from esoteric backgrounds. Successful applicants under the 'home run' achievement based points test ("APT") have come mainly from the sports, arts and culture segments. The HKID receive on average more than 100 QMAS applications each month. In May 2015 adjustments were made to the programme to allocate more points to graduates from well known universities and those with international work experience.

## Prerequisites

There are 'must meet' criteria which must be satisfied in all circumstances. These are designed to prequalify the applicant pool before the allocation of points can be applied to rank each applicant amongst the others.

## 2 Types of Points Test

In simple terms, a detailed assessment is made of the applicant's background and points awarded for achievements and accomplishments across several 'desirability factors'. This is the general points test. For GPTs, the 'pass mark' is 80 out of an absolute maximum of 165—but this only gets you into the pool for selection. Only the highest scores are actively considered during the subsequent selection exercise. If an applicant has manifestly outstanding achievements to his credit he may apply under the APT. Normally you would be an Olympiad, recognised internationally or have been awarded some kind of international prize to qualify under this test. If you convince the HKID that you qualify under the achievements test, you receive 165 points straight up. If you don't, you score 0 points and your application is treated as refused with no further consideration entertained. APTs receive an 8 year limit of stay upon approval; GPTs, a 2-3-3 year pattern of approval/extension.

## Selection

High scoring applications, including all those qualifying under the achievements based test, are shortlisted for consideration during the selection exercise. The selection committee meets 3-4 times each year and is comprised of appointees of the Chief Executive who then recommend to the Director of Immigration who should be approved.

## Invitation to Hong Kong & Approval

Applicants chosen by the selection committee are invited to Hong Kong to bring all of their original documents with them for verification. There is no 'second guessing' in this interview exercise, it is just to ensure the supporting papers are not contrived and are in fact authentic. This invitation takes the form of an 'Approval in Principle' letter. The applicant will be admitted to Hong Kong as a visitor for these purposes. Once all original documents have been verified the application procedures are finalised and the applicant will be issued with an entry visa under the QMAS programme to stay in Hong Kong.



Preparing Your Case

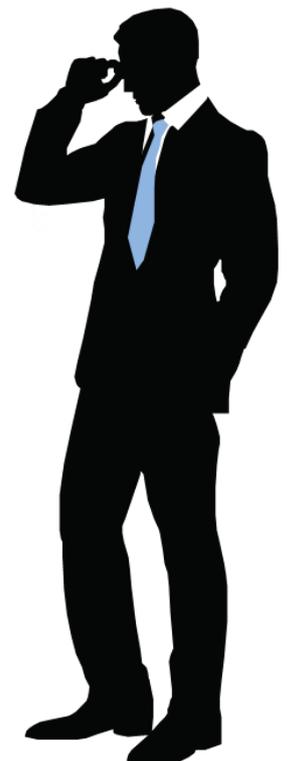
[\(Click to Watch\)](#)

### Highlights

- Very useful programme for highly talented new entrants to Hong Kong
- Competitive and subject to quota
- Application process is convoluted and needs careful preparation
- The HKID receives more than 100 applications each month
- Nobel Prize winners have an advantage!



Discussion



# Quality Migrant Admission Scheme

## Documents Required

- Application form ID981.
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if not a citizen of the country in which you live.
- Copy of PRC resident ID card (if applicable).
- Proof of your net worth.
- If you have an immediate family member who is a permanent resident of Hong Kong, copy of their HKID card, proof of the relationship between you both and proof of their residential arrangements in Hong Kong.
- Copy of you and your spouse's education certificates (if you are married).
- Copies of your educational transcripts.
- Copies of your proof of achievements.
- Proof of your professional qualifications and associated memberships.
- Copies of testimonials from every employer claimed as relevant to your application.
- Copies of all company documents claimed as relevant to your application.
- Evidence of self-employment experiences claimed.
- Detailed essay of your life plan to date and what you plan for the future.
- Proof of language proficiencies claimed.



*NB—these documents are the bare minimum required. A structured argument should be set out in the application which ties these documents together. In the process of crafting these representations other specific, relevant supporting information and documentation will be identified and will also need to be submitted in substantiation.*

## Submitting Your Application

The application is submitted to the HKID via post or in person to the Quality Migrants and Mainland Residents Section of the Immigration Tower (6/F).



## Official QMAS Guide

The Quality Migrant Admission Scheme is one of the rare programmes in Hong Kong immigration where the HKID have actually produced a very detailed step-by-step Official Guide as to what is required to successfully promulgate an application under a Hong Kong immigration programme. This guide is an excellent source of information and rather than repeat its contents in the Hong Kong Visa Handbook, we recommend that the reader consult the Official QMAS Guide directly. It can be found here. [http://www.immd.gov.hk/pdforms/id\(e\)982.pdf](http://www.immd.gov.hk/pdforms/id(e)982.pdf)



**Click to Access all the Scheme Rules**

## A Space for Your Notes





## Quality Migrant Admission Scheme

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- Copy passport details page and current visa/period of stay if not a citizen of the country in which you live.
- Copy of PRC resident ID card (if applicable).
- Proof of your net worth.
- If you have an immediate family member who is a permanent resident of Hong Kong, copy of their HKID card, proof of the relationship between you both and proof of their residential arrangements in Hong Kong.
- Copy of you and your spouse's education certificates (if you are married).
- Copies of your educational transcripts.
- Copies of your proof of achievements.
- Proof of your professional qualifications and associated memberships.
- Copies of testimonials from every employer claimed as relevant to your application.
- Copies of all company documents claimed as relevant to your application.
- Evidence of self-employment experiences claimed.
- Detailed essay of your life plan to date and what you plan for the future.
- Proof of language proficiencies claimed.

***NB — these documents are the bare minimum required. A structured argument should be set out in the application which ties these documents together. In the process of crafting these representations other specific, relevant supporting information and documentation will be identified and will also need to be submitted in substantiation.***



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Scheme Rules

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## Quality Migrant Admission Scheme

### Notes



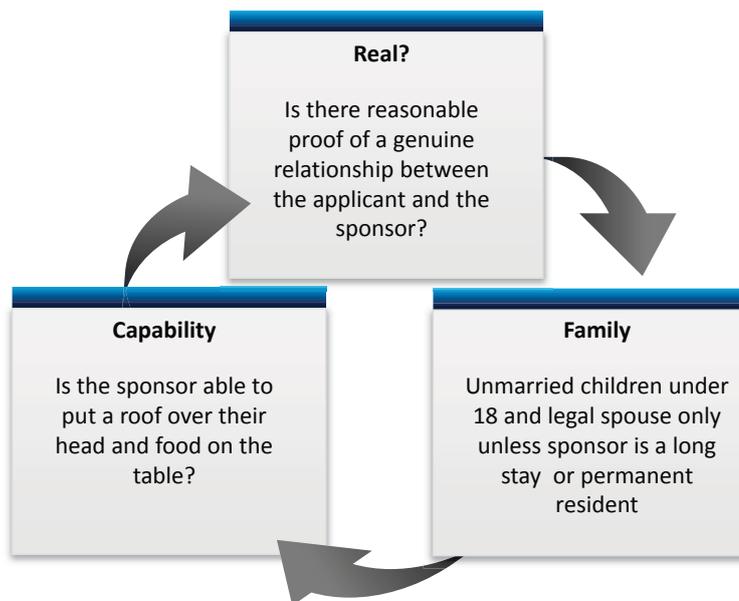
[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

# Visa to Join Your Heterosexual Married Partner or Your Parents in Hong Kong

**HONG KONG VISA CENTRE**

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

## LEGAL DEPENDANTS



**Approval Criteria**

# Legal Dependants

## Eligibility

If you hold the Right of Abode, Right to Land or unconditional stay, you are eligible to sponsor dependant visas for your legal spouse, unmarried dependant children under the age of 18 and your dependant parents who are aged 60 or older. If you hold any other kind of visa (employment, investment., training, capital investment, business investment, Quality Migrant Admission Scheme or student) you are eligible to sponsor dependant visas for your legal spouse and unmarried dependant children under the age of 18 only.

## Approvability Test

This type of application is all about being able to demonstrate that the sponsor can put food on the table and a roof over the head of the sponsored dependants. The HKID state that an application for admission of a dependant may be favourably considered if:

- There is reasonable proof of a genuine relationship between the applicant and the sponsor.
- There is no known record to the detriment of the applicant; and
- The sponsor is able to support the dependant's living at a standard well above the subsistence level and provide him/her with suitable accommodation in the HKSAR.

## Satisfying the Approvability Test

These cases tend to be merely administrative in nature. Once you have been able to establish the legal family connections through birth and marriage certificates and can show proof of income, at least a modest bank balance, copies of your tenancy agreement/property ownership certificates and proof that you are a genuine family, the applications are approved with little fuss. Problems can emerge where the official certifications are not in either English or Chinese and thus official translations issued by the consulate of the issuing country will be required.

## How to Apply

You can apply for dependent visas either as part of the sponsor's principal application (if you are applying for an employment visa, Admission of Mainland Talents, non-local graduates, training, study or business investment visa) or as a stand alone application. If the former, you include the details of your dependants on the principal application form, if the latter on form ID997. Applicants under the Quality Migrants Admission Scheme and the Capital Investment Entrant Scheme should complete the separate ID997 for their dependants. Applications can be submitted via the Receipt & Dispatch counter (2/F) of Immigration Tower, either by post or in person, for those who are visitors to Hong Kong as part of a change of status application, and for those who are currently resident as part of change of category application.



## Approval Formalities

The process of approval will depend on how the application was submitted. If you are overseas, you will be provided with an entry visa sticker to place on a new page in your passport so that your dependant visa status will be activated when you enter Hong Kong. If you have applied whilst in Hong Kong your new dependant visa status will be endorsed directly into your passport and your previous status cancelled. Other than dependants sponsored by student visa holders, all dependants are permitted to work on their dependants visa permissions. The period of stay granted will mirror exactly that which your sponsor holds.



Preparing Your Case

[\(Click to Watch\)](#)

### Highlights

- Dependant visas tend to be administrative in nature
- The family sponsor needs to be able to show he/she can put food on the table/roof over heads
- Marriage and birth certificates are essential
- The period of stay granted mirrors the principal sponsors



Discussion



## Documents Required

1. Application forms fully completed and executed by both the applicant and sponsor.
2. A confirmation letter to be signed by the sponsor confirming that he/she will be responsible for meeting the applicant's financial needs in Hong Kong.
3. A letter from the sponsor's employer/company in Hong Kong and/or a copy of the Employment Contract showing the sponsor's financial package.
4. Copy of current residential tenancy agreement in Hong Kong where the family will live (or proof of ownership).
5. Copy of the both the sponsor's and applicants' bank statements for the past three months and/or other supporting documents as proof of financial stability of the family.
6. Family photos evidencing the sponsor and the applicant(s)' relationship.
7. Copies of birth (where applicable for dependant children) and marriage certificates
8. Copy passports details page of both the sponsor and the applicant(s).
9. Copy of the sponsor's Hong Kong Identity Card, if any.
10. Documents indicating the sponsor and the applicant(s) were living together overseas prior to their arrival in Hong Kong, (eg phone bills, bank statements/other utility bills, letters addressed to the same address to both of the sponsor and the applicant separately) - if applicable.



## Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will not afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.

## A Space for Your Notes



Discussion





## Legal Dependants

- Application forms fully completed and executed by both the applicant and sponsor.
- A confirmation letter to be signed by the sponsor confirming that he/she will be responsible for meeting the applicant's financial needs in Hong Kong.
- A letter from the sponsor's employer/company in Hong Kong and/or a copy of the Employment Contract showing the sponsor's financial package.
- Copy of current residential tenancy agreement in Hong Kong where the family will live (or proof of ownership).
- Copy of the both the sponsor's and applicants' bank statements for the past three months and/or other supporting documents as proof of financial stability of the family.
- Family photos evidencing the sponsor and the applicant(s)' relationship.
- Copies of birth (where applicable for dependant children) and marriage certificates
- Copy passports details page of both the sponsor and the applicant(s).
- Copy of the sponsor's Hong Kong Identity Card, if any.
- Documents indicating the sponsor and the applicant(s) were living together overseas prior to their arrival in Hong Kong , (eg phone bills, bank statements/other utility bills, letters addressed to the same address to both of the sponsor and the applicant separately) - if applicable.

## Notes



Discussion

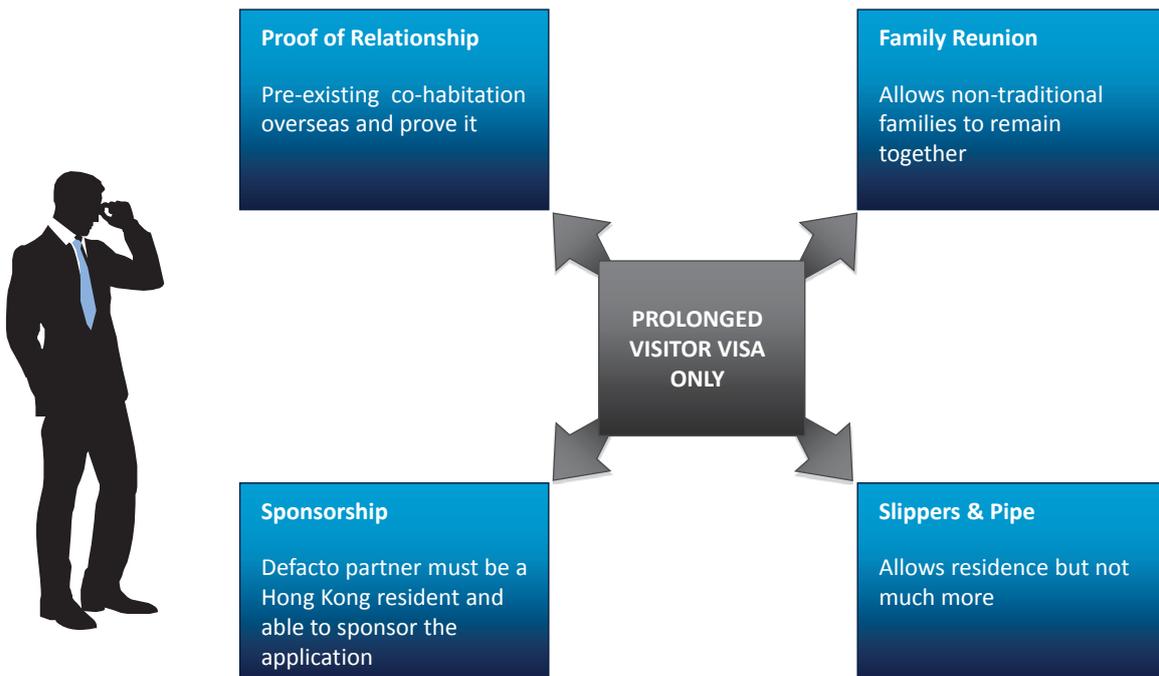
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# Visa to Join Your Hong Kong Resident Defacto Spouse



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## DEFACTO SPOUSE ARRANGEMENTS



## Eligibility

Unfortunately, Hong Kong only recognises traditional 'legal dependants' (heterosexual spouse and unmarried children under the age of 18) in the issuance of dependant visas. Consequently, 'defacto spouse' partner family members need to be creative in their circumstances. For example, will you qualify for permissions under one of the other visa categories in your own right? If not, and your partner as principal visa holder is able to demonstrate capacity to support you whilst you remain in Hong Kong, the only real option is to apply for a prolonged visitor visa. This status is what we have coined a 'slippers and pipe' visa in so much as it allows the holder to remain in Hong Kong for an extended period of time to avail 'residency' but does not provide permissions to work, join in or establish a business nor undertake a formal course of study. Unmarried children of the defacto relationship under the age of 18 will be treated as legal dependants, and therefore able to secure dependant visas.

## Approvability Test

This type of application is all about demonstrating a pre-existing relationship prior to coming to Hong Kong and the capacity of the sponsoring partner to put food on the table and a roof over the head of the sponsored partner.

## Structuring Your Argument

This type of application requires detailed documentation and explanatory narrative as to the extent of the pre-existence of the relationship and the financial ability of the sponsoring partner to fund the prolonged visit to Hong Kong. Detailed financial information on both partners should be prepared setting out the mutual means of support. The HKID are concerned that the prolonged visitor visa holding partner might engage in activities not commensurate with permitted activity (i.e. a temptation to work or join in a business illegally) so the financial aspects of the application are critical.

## Complicating Factors

In cases where the relationship has only commenced after arrival in Hong Kong, the case can be an uphill struggle to approval.

## How to Apply

The application together with all of the supporting documentation is submitted to the Visitors section at Immigration Tower. The application will not be decided 'on the spot' and it can take between 6-8 months for the final outcome to be notified. In the interim the applicant will be contacted by the examining officer by fax, phone or occasionally by email, if not by letter through the post. If the applicant's current period of stay is set to expire whilst the HKID formally consider the application, an interim extension to the current period of stay will not be available to allow the applicant to remain in Hong Kong pending determination of the outcome.

## Approval Formalities

Once notified of the approval, the applicant will be asked to go along to the Visitors section of the Immigration Tower for prolonged visitor visa issuance which is usually six months in the first instance. Extensions will be granted routinely (upon application) thereafter. If you are planning to exit Hong Kong within that time frame you are advised to seek a re-entry permit so that your prolonged visitor visa consents are not cancelled when you leave Hong Kong and upon your return to the HKSAR the examining officer will grant you a period of stay with an expiry date of six months after the date of the original approval.

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Preparing Your Case

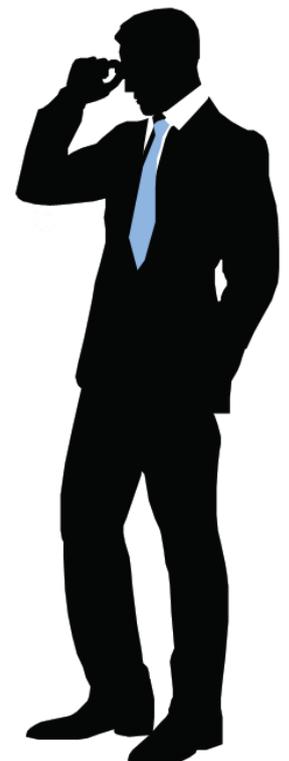
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### Highlights

- Dependant visa not available
- Only prolonged visitor visa
- Proof of relationship and cohabitation prior to arrival in Hong Kong essential
- Six month period of stay in the first instance



Discussion



## Documents Required

1. Application, Family Background and Sponsorship forms fully completed and executed by both the applicant and sponsor.
2. A declaration letter signed by the applicant declaring that he/she will not take up employment, join in a business or study whilst holding prolonged visitor visa status.
3. A confirmation letter to be signed by the sponsor confirming that he/she will be responsible for meeting the applicant's financial needs in Hong Kong.
4. A letter detailing the sponsor's relationship with the applicant and to be signed by both parties.
5. A letter from the sponsor's employer/company in Hong Kong and/or a copy of the Employment Contract showing the sponsor's financial package.
6. Copy of current residential tenancy agreement in Hong Kong where the couple will live (or proof of ownership).
7. Copy of the both the sponsor's and applicants' bank statements for the past three months and/or other supporting documents as proof of financial stability of both partners.
8. Original photos evidencing the sponsor and the applicant's long-term relationship (ideally with dates printed on the photos and split over the period of the long-term relationship).
9. Original passports of both the sponsor and the applicant.
10. Copy of the sponsor's Hong Kong Identity Card.
11. Letters or other supporting communications written by persons/friends (in Hong Kong & overseas) proving that the long-term relationship is/was known widely in Hong Kong & overseas; and
12. Documents indicating the sponsor and the applicant were co-habiting overseas prior to their arrival in Hong Kong, (eg phone bills, bank statements/other utility bills, letters addressed to the same address to both of the sponsor and the applicant separately.)

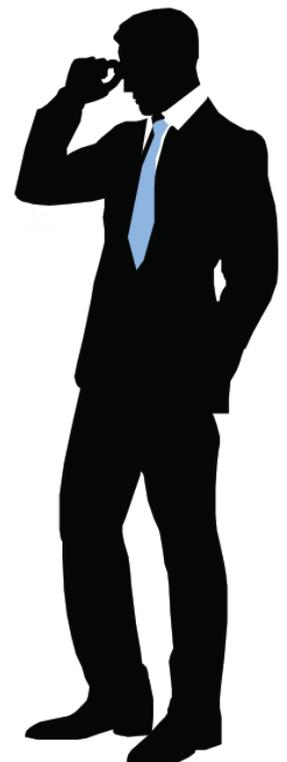


Discussion

## Refusal & Appeal

There is no right nor process to appeal the refusal of a prolonged visitor visa application.

## A Space for Your Notes





## Defacto Spouse

- Application, Family Background and Sponsorship forms fully completed and executed by both the applicant and sponsor.
- A declaration letter signed by the applicant declaring that he/she will not take up employment, join in a business or study whilst holding prolonged visitor visa status.
- A confirmation letter to be signed by the sponsor confirming that he/she will be responsible for meeting the applicant's financial needs in Hong Kong.
- A letter detailing the sponsor's relationship with the applicant and to be signed by both parties.
- A letter from the sponsor's employer/company in Hong Kong and/or a copy of the Employment Contract showing the sponsor's financial package.
- Copy of current residential tenancy agreement in Hong Kong where the couple will live (or proof of ownership).
- Copy of the both the sponsor's and applicants' bank statements for the past three months and/or other supporting documents as proof of financial stability of both partners.
- Original photos evidencing the sponsor and the applicant's long-term relationship (ideally with dates printed on the photos and split over the period of the long-term relationship).
- Original passports of both the sponsor and the applicant.
- Copy of the sponsor's Hong Kong Identity Card.
- Letters or other supporting communications written by persons/friends (in Hong Kong & overseas) proving that the long-term relationship is/was known widely in Hong Kong & overseas; and
- Documents indicating the sponsor and the applicant were co-habiting overseas prior to their arrival in Hong Kong , (eg phone bills, bank statements/other utility bills, letters addressed to the same address to both of the sponsor and the applicant separately.)





**Defacto Spouse**

**Notes**



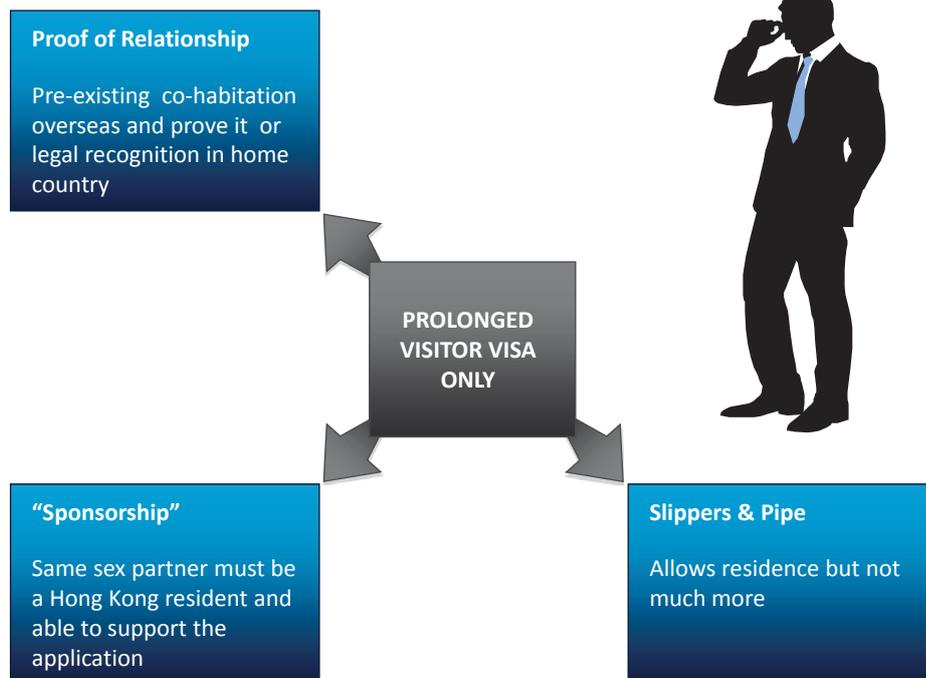
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# Visa to Join Your Same Sex Hong Kong Resident Life Partner

**HONG KONG VISA**  
CENTRE

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## SAME SEX PARTNERS TODAY



## SAME SEX PARTNERS TOMORROW?

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF APPEAL  
CIVIL APPEAL NO 117 OF 2016  
(ON APPEAL FROM HCAL NO 124 OF 2014)

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BETWEEN

QT

Applicant  
(Appellant)

and

DIRECTOR OF IMMIGRATION

Respondent  
(Respondent)

---

Before: Hon Cheung CJHC, Lam VP and Poon JA in Court

Dates of Hearing: 15 and 16 June 2017

Date of Judgment: 25 September 2017

## SAME SEX PARTNERS TOMORROW?

Mr Justice Andrew Cheung Kui-nung said the Immigration Department's differential treatment for same-sex spouses was not "rational".

"Excluding the foreign worker's lawfully married (albeit same-sex) spouse or civil partner under a civil partnership lawfully entered into in a foreign country from coming to Hong Kong to join the worker is, quite obviously, counterproductive to attracting the worker to come to or remain in Hong Kong to work in the first place," he wrote.

"Equally plainly, excluding such a spouse or civil partner from entering or remaining in Hong Kong does not advance or help maintain our strict, stringent immigration policy."

**SAME SEX PARTNERS OPEN QUESTIONS**

- Will ImmD appeal?
- Does it include civil partnerships as well as legal marriages?
- If including civil partnerships will it extend to same sex spouses?

## Same Sex Partners

### Eligibility

Unfortunately, Hong Kong only recognises traditional 'legal dependants' (heterosexual spouse and unmarried children under the age of 18) in the issuance of dependant visas. Consequently, same sex partner family members need to be creative in their circumstances. For example, will you qualify for permissions under one of the other visa categories in your own right? If not, and your partner as principal visa holder is able to demonstrate capacity to support you whilst you remain in Hong Kong, the only real option is to apply for a prolonged visitor visa. This status is what we have coined a 'slippers and pipe' visa in so much as it allows the holder to remain in Hong Kong for an extended period of time to avail 'residency' but does not provide permissions to work, join in or establish a business nor undertake a formal course of study.

### Approvability Test

This type of application is all about demonstrating a pre-existing relationship prior to coming to Hong Kong and the capacity of the sponsoring partner to put food on the table and a roof over the head of the sponsored partner. Prolonged visitor visa applications for same sex partners mirror almost identically those for Defacto heterosexual partners.

### Structuring Your Argument

This type of application requires detailed documentation and explanatory narrative as to the extent of the pre-existence of the relationship and the financial ability of the sponsoring partner to fund the prolonged visit to Hong Kong. Detailed financial information on both partners should be prepared setting out the mutual means of support. The HKID are concerned that the prolonged visitor visa holding partner might engage in activities not commensurate with permitted activity (i.e. a temptation to work or join in a business illegally) so the financial aspects of the application are critical.

### Complicating Factors

In cases where the relationship has only commenced after arrival in Hong Kong, the case can be an uphill struggle to approval.

### How to Apply

The application together with all of the supporting documentation is submitted to the Visitors section at Immigration Tower. The application will not be decided 'on the spot' and it can take between 6-8 months for the final outcome to be notified. In the interim the applicant will be contacted by the examining officer by fax, phone or occasionally by email, if not by letter through the post. If the applicant's current period of stay is set to expire whilst the HKID formally consider the application, an interim extension to the current period of stay will not be available to allow the applicant to remain in Hong Kong pending determination of the outcome. 

### Approval Formalities

Once notified of the approval, the applicant will be asked to go along to the Visitors section of the Immigration Tower for prolonged visitor visa issuance which is usually six months in the first instance. Extensions will be granted routinely (upon application) thereafter. If you are planning to exit Hong Kong within that time frame you are advised to seek a re-entry permit so that your prolonged visitor visa consents are not cancelled when you leave Hong Kong and upon your return to the HKSAR the examining officer will grant you a period of stay with an expiry date of six months after the date of the original approval.



Preparing Your Case

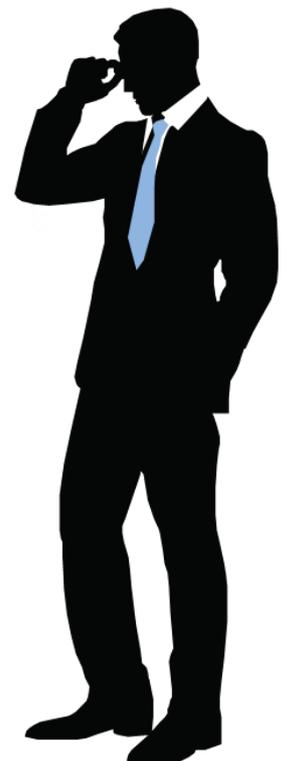
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#### Highlights

- Dependant visa not available
- Only prolonged visitor visa
- Proof of relationship and cohabitation prior to arrival in Hong Kong essential
- Civil union or same sex marriage overseas not recognised
- Six month period of stay in the first instance



Discussion



## Documents Required

1. Application, Family Background and Sponsorship forms fully completed and executed by both the applicant and sponsor.
2. A declaration letter signed by the applicant declaring that he/she will not take up employment, join in a business or study whilst holding prolonged visitor visa status.
3. A confirmation letter to be signed by the sponsor confirming that he/she will be responsible for meeting the applicant's financial needs in Hong Kong.
4. A letter detailing the sponsor's relationship with the applicant and to be signed by both parties.
5. A letter from the sponsor's employer/company in Hong Kong and/or a copy of the Employment Contract showing the sponsor's financial package.
6. Copy of current residential tenancy agreement in Hong Kong where the couple will live (or proof of ownership).
7. Copy of the both the sponsor's and applicants' bank statements for the past three months and/or other supporting documents as proof of financial stability of both partners.
8. Original photos evidencing the sponsor and the applicant's long-term relationship (ideally with dates printed on the photos and split over the period of the long-term relationship).
9. Original passports of both the sponsor and the applicant.
10. Copy of the sponsor's Hong Kong Identity Card.
11. Letters or other supporting communications written by persons/friends (in Hong Kong & overseas) proving that the long-term relationship is/was known widely in Hong Kong & overseas; and
12. Documents indicating the sponsor and the applicant were co-habiting overseas prior to their arrival in Hong Kong, (eg phone bills, bank statements/other utility bills, letters addressed to the same address to both of the sponsor and the applicant separately.)
13. If the partnership has been recognized at civil law in any jurisdiction, original and copies of that certification.



Discussion

## Refusal & Appeal

There is no right nor process to appeal the refusal of a prolonged visitor visa application.

## QT vs The Director of Immigration

The Court of Appeal ruled that it was a form of indirect discrimination for the Immigration Department to base its definition of "spouse" on a marriage between a man and a woman, but making clear that granting a dependant visa to QT was not an official validation of same-sex unions. In a 68-page ruling, the three appeal court judges said the department had failed to demonstrate the visa scheme had been put in place "rationally", which amounted to indirect discrimination. While the Immigration Department had argued that it was obliged to follow the city's matrimonial law providing only for heterosexual unions, Mr Justice Thomas Au Hing-cheung, the presiding judge at the lower court, ruled that QT's request was effectively asking the department for "backdoor" recognition of same-sex marriage. The appeal judges disagreed, saying the dependant visa was no more than a "privilege", and had nothing to do with the director of immigration having to follow marital status as defined by Hong Kong law. If anything, they argued, the department would have already contradicted itself by recognising overseas polygamous marriages here, as long as the person involved brought only one spouse to the city through a dependant visa. Appeal court vice-president Mr Justice Johnson Lam Man-hon said it could not be suggested that granting dependant visas to gay couples would endanger the institution of marriage. Against the department's argument that it might be more difficult to vet homosexual couples, the judges countered that those who had entered same-sex marriages or civil partnerships overseas should be able to produce the same proof of relationship – a certificate – as heterosexual couples do. "So excluding them by reason of administrative workability and convenience is not rational," Justice of Appeal Jeremy Poon Shiu-chor wrote. "The director [of immigration] has therefore failed to justify the indirect discrimination on account of sexual orientation that QT suffers."



## Same Sex Partners

- Application, Family Background and Sponsorship forms fully completed and executed by both the applicant and sponsor.
- A declaration letter signed by the applicant declaring that he/she will not take up employment, join in a business or study whilst holding prolonged visitor visa status.
- A confirmation letter to be signed by the sponsor confirming that he/she will be responsible for meeting the applicant's financial needs in Hong Kong.
- A letter detailing the sponsor's relationship with the applicant and to be signed by both parties.
- A letter from the sponsor's employer/company in Hong Kong and/or a copy of the Employment Contract showing the sponsor's financial package.
- Copy of current residential tenancy agreement in Hong Kong where the couple will live (or proof of ownership).
- Copy of the both the sponsor's and applicants' bank statements for the past three months and/or other supporting documents as proof of financial stability of both partners.
- Original photos evidencing the sponsor and the applicant's long-term relationship (ideally with dates printed on the photos and split over the period of the long-term relationship).
- Original passports of both the sponsor and the applicant.
- Copy of the sponsor's Hong Kong Identity Card.
- Letters or other supporting communications written by persons/friends (in Hong Kong & overseas) proving that the long-term relationship is/was known widely in Hong Kong & overseas; and
- Documents indicating the sponsor and the applicant were co-habiting overseas prior to their arrival in Hong Kong , (eg phone bills, bank statements/other utility bills, letters addressed to the same address to both of the sponsor and the applicant separately.)
- If the partnership has been recognized at law in any jurisdiction, original and copies of that certification.





## Same Sex Partners

### Notes



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A Austria (2011) 53 EHRR 20; X v Austria (2013) 57 EHRR 14; Gas v  
B France (2014) 59 EHRR 22; Hamalainen v Finland (2014) 37 BHRC 55;  
C Chapin et Charpentier v France, Request No 40183/07, 9 June 2016;  
D Aldeguer Tomás v Spain, Application No 35214/09, 14 September 2016.  
E At least, that is still the position in Europe; certainly, it is the position in  
F Hong Kong.

G *Differentiation based on the status of marriage*

H 4. Given the unique importance of marriage as a social and legal  
I institution in society, it is natural to find many laws in Hong Kong which  
J use the status of marriage as a qualifying condition or differentiating  
K criterion, carrying with it legal consequences that treat married couples  
L differently (– very often, but not always, more favourably) than others; for  
M instance, housing benefits, social welfare benefits, immigration, taxation,  
N pensions, inheritance, life insurance policies, criminal law: see *Bellinger v*  
O *Bellinger* [2003] 2 AC 467, para 42, where the analogous position in the  
P United Kingdom at the time was described. In other words, married  
Q (heterosexual) couples are treated differently from all others – including,  
R relevantly, (unmarried) same-sex couples.

S 5. Indeed, this difference in treatment in many areas of life  
T between heterosexual couples who are married and unmarried couples,  
U including gay couples who cannot, as a matter of domestic law, get married,  
V has been a fact of life in Hong Kong for so many years that one almost  
takes the position for granted. However, times have changed and an  
increasing number of people are no longer prepared to accept the status  
quo without critical thought.

A *Traditional explanation*

B 6. Traditionally, the explanation for the difference in treatment  
C is simply that in one case, the couple is lawfully married to each other and  
D in the other, the couple is not. After all, like cases should be treated alike,  
E and different cases should be treated differently. However, as  
F Baroness Hale pointed out in *Rodriguez v Minister of Housing of the*  
G *Government* [2009] UKPC 52, para 17, the very differentiating criterion  
H under challenge is used here to explain why the cases are different. Put  
I another way, this traditional explanation simply appeals to one’s intuition,  
J commonsense or belief, rather than giving any reasons. Some may say it  
K is an answer which begs the question.

L *Constitutional explanation*

M 7. Is there a better answer? At first blush, the fact that first,  
N heterosexual marriage is something singled out for constitutional  
O protection in the Basic Law (which, in this regard, draws the bottomline  
P for the protection of heterosexual people), and secondly, our legislature,  
Q which is free to go beyond the Basic Law protection and grant gay people  
R equal access to marriage, has instead chosen to restrict marriage to  
S heterosexual marriage in the various matrimonial laws it has made,  
T provides the perfect and complete explanation for the difference in  
U treatment. In other words, the difference in treatment is constitutionally  
V backed and legislatively endorsed, and therefore, by definition, it cannot  
possibly be regarded by the courts as discriminatory in Hong Kong. No  
justification, or further justification beyond the constitution itself, is  
required.

A B C D E F G H I J K L M N O P Q R S T U V

8. On the face of it, this is a most attractive argument. After all, the European Court, in rejecting access by same-sex couples to marriage, has repeatedly said that marriage carries with it a special legal and social status, and a corpus of rights and obligations under the national laws. In other words, married heterosexual couples are, by definition, favoured by society in many aspects; likewise, by entering into this State-sanctioned privileged relationship, they also assume various obligations unknown to unmarried couples (heterosexual or same-sex). For instance, our law on divorce and ancillary relief, which creates rights as well as obligations, only covers married couples.

*The swimming pool example*

9. However, does this constitutional and legal position in Hong Kong that I have just described provide a satisfactory answer in *each and every case*, that is, in all areas of life where different treatments are meted out to married couples and unmarried couples depending on their status of marriage? Ms Rose forcefully submitted in the negative. Her example of charging different entrance fees to a public swimming pool based on one's marital status is, in my view, instructive. In the absence of good justification, it is difficult to see why a lower entrance fee should be required of people who are married, than that charged on those who are not, including same-sex couples who simply cannot get married even if they want to. Ms Rose cited to us a number of comparable cases arising from the different pensionable ages for men and women in the United Kingdom in the context of sex discrimination to illustrate her point: *James v Eastleigh Borough Council* [1990] 2 AC 751; *R v Secretary of State for*

A B C D E F G H I J K L M N O P Q R S T U V

*Health* [1995] 3 CMLR 376; *R v Secretary of State for Social Security, ex parte Taylor* [2000] ICR 843.

10. How then do we explain this swimming pool example? The answer, in my view, is that barring any good justification that can be offered by the authority running the swimming pool, there is simply no or no apparent connection between the use of a swimming pool and the marital status of the intending swimmer, or, in other words, whether the intending swimmer is married to a person of the opposite sex, or is someone who is living like a married couple with a person of the same-sex, whom he or she cannot legally marry. Indeed the same objection can be raised in relation to unmarried heterosexual couples. In the absence of justification, the law should and does regard the differential treatment as discriminatory.

11. However, even Ms Rose accepted that the logic of her example cannot be carried too far. She accepted the suggestion from the Bench during submission that to give meaning and substance to the repeated acceptance by the European Court that marriage carries with it a special status and a corpus of rights and obligations, there must be certain core rights and obligations concerning some areas of life going with the legal status of marriage, which, almost by definition, require no justification or, can be easily justified – and it does not matter which way one analyses it. She gave the examples of rights and obligations of married couples regarding divorce, adoption and inheritance as falling within this group of core rights and obligations. At one stage, she also included tax.

*“Obvious, relevant difference” and context*

12. In *R (Carson) v Secretary of State for Work and Pensions* [2006] 1 AC 173, para 3, Lord Nicholls explained the core question to answer in a case of alleged discrimination :

“ the essential question for the court is whether the alleged discrimination, that is, the difference in treatment of which complaint is made, can withstand scrutiny. Sometimes the answer to this question will be plain. There may be such an obvious, relevant difference between the claimant and those with whom he seeks to compare himself that their situations cannot be regarded as analogous. Sometimes, where the position is not so clear, a different approach is called for. Then the court’s scrutiny may best be directed at considering whether the differentiation has a legitimate aim and whether the means chosen to achieve the aim is appropriate and not disproportionate in its adverse impact.”

13. Whether there is an “obvious, relevant difference”, depends to a large extent on the context. When the context is the use of a swimming pool, there is little if any conceivable relevant difference between a married swimmer and an unmarried one. But if the context, or area of life concerned, is, say, divorce and ancillary relief, the difference between a married couple and an unmarried one (heterosexual or same sex) must, in my view, be “obvious”.

*A group of core rights and obligations*

14. This brings me back to the suggestion made to Ms Rose during submission described above which counsel accepted. There are certainly areas of life which are, whether by nature or by tradition or long usage, closely connected with marriage such that married couples should and do enjoy rights and shoulder obligations which are unique to them as

married people. The rights and obligations in these areas of life which go with the status of marriage must be regarded as core rights and obligations unique to a relationship of marriage, so much so that the entailing privileged treatments to married couples as compared with unmarried couples (including same-sex couples) should simply be considered as treatments that require no justification because the difference in position between the married and the unmarried is self-obvious. Divorce, adoption and inheritance are obvious examples of these areas of life regarding which the status of marriage carries rights and obligations unique to married couples. Without these core rights and obligations, the legal status of marriage simply has little if any substance in law. And the court must be most slow, if ever, to empty marriage of its legal content and meaning. When the context involved is one of those areas of life, the status of marriage provides the obvious, relevant difference between a married couple and one that is not (heterosexual or same-sex).

15. However, when a case falls outside these areas of life involving core rights and obligations unique to the status of marriage, and therefore there is no obvious, relevant difference, using the status of marriage to differentiate people for treatment requires justification. Depending on the facts and depending on the area involved, some treatments would be easier to justify than others. In some cases, the status of marriage would be more relevant to the subject matter than in others. The swimming pool example provides an extreme case where quite plainly barring very strong justification, it would be difficult to imagine how the status of marriage could justify the differential treatment

A B C D E F G H I J K L M N O P Q R S T U V

in terms of entrance fees. If the differentiation by reference to the status of marriage cannot be justified, the differential treatment must be regarded as discriminatory, a matter prohibited under article 25 of the Basic Law and article 22 of the Hong Kong Bill of Rights. It would also fall foul of the common law principle of equality.

*Why not justification in all cases?*

16. One might well ask why not require every difference in treatment based on the status of marriage to undergo the justification test then? It is not difficult to see the attraction of this alternative approach. First, the concept of a group of core rights/privileges (as well as obligations) unique to the relationship of marriage which require no justification is problematic. The membership of this core group is uncertain. Likewise, the criteria for membership in this core group are ill-defined – they are based more on intuition and usage rather than any elaborate, critical thought process. Secondly, it follows from the first point that this concept of a group of core rights and obligations unique to the relationship of marriage requiring no justification would in practice lead to uncertainty in the law, as well as an unfruitful digression of legal attention to the question of labels and categorisation, when efforts could and should be better spent on the question of justification. Thirdly, it follows from the first two points that in the end, the court may still have to resort to some sort of justification analysis in order to decide the question of labels and categorisation.

17. These are valid and indeed weighty conceptual as well as practical considerations. However, there are still other considerations to

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take into account. First, as a matter of concept, to accept, as the European Court of Human Rights does, that marriage, or the status of marriage, carries with it a group of core legal rights and obligations unique to married people must be correct. For it accords with society's understanding of marriage as a social and legal institution, carrying with it a special social and legal status, and hence a corpus of rights/privileges as well as obligations in accordance with society's own culture, traditions, history and usage. To require everything to undergo, formally or otherwise, the test of justification may be more straight forward, practical and indeed expedient. However, for so long as society regards marriage and the status of marriage as having some *real* legal and social significance and meaning, this approach of requiring justification in each and every case must, in my view, be resisted on conceptual grounds. By definition, justification presupposes that one is dealing with *comparable* situations. And by definition, marriage means, at least in some essential aspects, there is no comparison between marriage and all other relationships. As a matter of concept, therefore, requiring justification in *every case* is a self-contradicting proposition.

18. Secondly, the court here is not expounding legal principles in a vacuum. We are not here designing the law of marriage (used in a wide sense here) from scratch. This is not a brand-new society where one is free from pre-existing culture, traditions, core values and beliefs, or society's own history. Whilst none of this is static, and fundamental human rights enjoy an overriding status in terms of the protection of individual's freedom and liberty, the court must, when enunciating and developing legal principles, have proper regard to society's own history,

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traditions, culture, core values and beliefs. Given their nature, the relevance and significance of these matters are very often as broad, general and abstract as they are subtle and incapable of much elaboration. Often they would point towards a particular direction which is simply described as “obvious” or “commonsense”, a direction which many would frankly admit as representing nothing other than one’s “intuition” or “instinct”. The court need not shy from, or be ashamed of, this when what it is doing (where it is appropriate to do so) is simply to reflect society’s history, traditions, culture, core values and beliefs – these matters, after all, do mould – albeit to varying extents and degrees and in different ways – all members of society including the court. This is nothing new and indeed it is a major underlying premise for the modern call for diversity on the Bench (in Hong Kong, this must be subject to the requirements in article 92 of the Basic Law).

19. Thirdly, the retention of this group of core rights and obligations in the analysis serves at least one important, albeit incidental, function. That is, it reminds us that it is not every differential treatment that is actionable. Only one that results in less favorable treatment to the complainant may be sued on. The group of core rights and obligations reminds one that in considering whether unfavorable treatment is involved, depending on the facts and context, very often one should not only focus on individual rights/privileges, but must also look at the associated or corresponding obligations; in other words, one must consider all relevant rights, privileges and obligations as a whole package.

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20. As to practical considerations, first, justification involves reversing the burden from the applicant to prove a case of differential treatment in relevantly comparable situations (or a prima facie case of indirect discrimination), to the authority to justify the differentiation. Depending on the facts, this may make a difference in the litigation outcome and could be unfair and detrimental to good administration. Secondly, the argument of labels and categorisation cuts both ways. If something is obvious and commonsense, and not capable of much elaboration, saying it at the filtering stage based on the concept of a group of core rights and obligations or at a later stage of justification does not matter. Calling it justification would not per se improve the quality of the reasoning. Thirdly, many of the perceived problems of retaining this concept of a group of core rights and obligations unique to the status of marriage would disappear if one were to adopt, as I think one should, the approach that unless the position is obvious, that is, unless a particular right or privilege conferred on a married couple clearly falls within this group of core rights and obligations, one should proceed on the basis that it does not and requires justification for its lawfulness. In my view, a right balance is thereby struck between giving marriage and the status of marriage a real significance in law in terms of the rights/privileges and obligations that are unique to that status, and upholding the fundamental human right to equality, in an administratively and practically feasible way.

21. As for the cases, *Rodriguez* involved housing benefits in Gibraltar where, like Hong Kong, the law only allows heterosexual marriage. *Preddy v Bull* [2013] 1 WLR 3741 was a case where the right to book a double-bedded room at a private hotel in England was in issue.

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In *Taddeucci and McCall v Italy*, Application No 51362/09, 30 June 2016, the European Court of Human Rights had to deal with Italy's refusal to grant a residence permit to the unmarried same-sex partner from New Zealand of an Italian national. In these cases, the courts all regarded the questions of discrimination based on sexual orientation raised as ones requiring justification. As I read them, although in none of these cases did the courts dwell on the content of the group of core rights and obligations associated with the special status of marriage, it is plain that they all considered the subject matters involved in their respective cases as not, or not obviously, falling within that core group, and thus required the differences in treatment, based directly or indirectly on sexual orientation, to be justified.

*Is immigration within this core group?*

22. The workability of this approach that I prefer is illustrated by how I would approach the subject matter involved in the present case, namely, immigration, when deciding whether a prima facie case of differential treatment has been made out, and whether, therefore, the second stage of justification is engaged.

23. The present case concerns immigration. Does immigration belong to this group of areas of life in relation to which the status of marriage carries with it special and privileged rights (and obligations) unique to married couples, which are not open to all other people, including relevantly, unmarried gay couples who cannot get married, and which, therefore, require no justification?

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24. A monogamous marriage involves the voluntary union of two individuals otherwise regarded by law (and society) as two different, separate and distinct persons. Marriage provides the means to join together and unite as one the two individuals for many purposes legally and socially. In other words, one-ness, together-ness, joint-ness, mutuality are all hallmarks of marriage. In the context of immigration, it is, therefore, not difficult to see why the status of marriage is often accorded importance in deciding a relevant immigration matter (used in a broad sense here to include all types of entry and stay applications). Thus viewed, one could argue that immigration must belong to this special group of areas of life carrying with it core rights and obligations unique to the status of marriage, and is therefore exempted from the requirement of justification for the entailing difference in treatment between married couples and unmarried couples respectively.

25. However, this analysis overlooks several important facts. First, whilst one-ness, together-ness, joint-ness and mutuality are hallmarks of a heterosexual marriage relationship, they are not, or no longer, exclusive to such a relationship. A same-sex marriage relationship or a civil partnership relationship such as the one involved in the present case, allowed in an increasing number of countries including the United Kingdom, also carries with it such hallmarks. Immigration, by definition, requires one to consider not only the local, but also the relevant overseas situation(s). Furthermore, immigration, particularly immigration in Hong Kong, involves the exercise of a very wide discretion on the part of the authorities, which is typically informed by the unique requirements and prevailing circumstances of the country or place in

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question. Immigration, also by definition, is affected by many factors beside the status of marriage, and very often, the net result is that people of all sorts of relationships, including unmarried couples as well as couples regarded as unmarried under domestic matrimonial law, are, for a variety of reasons, allowed to enter and stay on various conditions.

26. For instance, in the present case, there is simply no legal impediment to the Director expanding his dependant visa policy to cover married same-sex couples or couples under a civil partnership, or even people who are parties to polygamous marriages (in fact, it does – to a limited extent). It all depends on the needs and circumstances of Hong Kong, which are of course not static.

27. On the other hand, even for married heterosexual couples, in immigration matters, their marriage status may assume a varying degree of importance, all depending on the facts and the relevant policy of the Director, who enjoys a wide discretion in formulating and implementing his policies.

28. In other words, in my view, there is no inherent or otherwise necessary or obvious link between immigration and the status of marriage that requires exempting the differential treatment under a particular immigration policy of married same-sex couples or couples under a civil partnership from the requirement of justification.

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*Justification*

29. The result in this appeal must, therefore, turn on the justification put forward by the Director for the differential treatment of someone like the applicant under his dependant visa policy. Since the differential treatment is based (indirectly) on an inherently “suspect” ground, that is, sexual orientation (which falls within “other status” in article 22(1) of the Hong Kong Bill of Rights), the court adopts a strict approach to justification : *Fok Chun Wa v Hospital Authority (2012) 15 HKCFAR 409, para 77*. The justification in the present case, or more precisely, the legitimate aim of the policy, as Ms Monica Carss-Frisk QC for the Director rephrased it during submission, is to strike a balance between maintaining Hong Kong’s continued ability to attract people of the right talent and skills to come to Hong Kong to work, and the need for a system of effective, strict and stringent immigration control.

30. Excluding the foreign worker’s lawfully married (albeit same-sex) spouse or civil partner under a civil partnership lawfully entered into in a foreign country from coming to Hong Kong to join the worker is, quite obviously, counter-productive to attracting the worker to come to or remain in Hong Kong to work in the first place.

31. Equally plainly, excluding such a spouse or civil partner from entering or remaining in Hong Kong does not advance or help maintain our strict, stringent immigration policy either. Maintaining a strict, stringent immigration policy means, in the present context, controlling both the quantity and quality of the entrants to Hong Kong. In terms of quantity, under the policy, each foreign worker is only entitled to apply to

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A bring one spouse to join him or her in Hong Kong. Whether that spouse  
B is of the same sex or different sex is neither here nor there. In terms of  
C quality, whether the spouse is heterosexual or gay cannot possibly be  
D relevant. Thus analysed, the restriction to heterosexual spouses does not  
E advance the aim of maintaining a strict or stringent immigration policy  
F either.  
G  
H 32. Yet those two considerations are the only reasons or  
I justification put forward by the Director for the relevant part of the  
J dependant visa policy under challenge. Quite plainly, the challenged part  
K cannot be justified on those two grounds. There is simply no rational  
L connection between the legitimate aim put forward and the means adopted.  
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A is otherwise discriminatory in nature or effect on the basis of a core-value  
B relating to personal or human characteristics, can be drawn.  
C  
D 34. Given what has been put forward as justification, and  
E therefore, what has *not* been put forward as such, I say nothing about a  
F policy with a legitimate aim to, for instance, uphold and maintain the  
G traditional concept of (heterosexual) marriage, or the traditional family  
H constituted by traditional (heterosexual) marriage, and the associated  
I values. No such justification or legitimate aim was relied on. None was  
J asserted in the evidence. Learned counsel did not put forward any such  
K justification whether at the hearing below or on appeal before us.  
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*Conclusion*

35. For these reasons and for those given by Poon JA which I  
have not otherwise covered, I agree this appeal must be allowed in terms  
of the orders and directions that he proposes.

Hon Lam VP :

36. I respectfully agree with the judgments of the Chief Judge and  
Poon JA. As explained by the Chief Judge, it is important that the law  
should recognize that there are core characteristics (be it called rights,  
privileges or even obligations) pertaining to a marriage. For matters related  
to such core features, difference in treatment for unmarried persons  
(including those who could not marry under the laws in Hong Kong due to

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one's sexual orientation) cannot be regarded as discriminatory. It is simply the application of the tenet that different cases should be treated differently.

37. On the other hand, in respect of a measure in other areas of life or subject matters that does not fall into the core sphere of a marriage, the mere use of marriage as a criterion cannot *per se* justify unequal treatment. The justification test has to be applied to assess if the measure is constitutionally sound.

38. This is not the proper occasion for the Court to attempt a definition of the core characteristics of a marriage as we do not have the benefit of very in-depth submissions in this regard. In the circumstances, I refrain from saying more than is necessary. For present purposes, it suffices for us to hold that in the context of Hong Kong as a pluralistic city with high mobility of international population (some of them coming from countries giving legal recognition to same sex marriage or civil partnership) the eligibility of an overseas couple for dependant visa does not fall within the core sphere of a marriage. Hence, the difference in treatment has to be justified.

39. For the reasons given by my Lords, the Director's application of the policy cannot be justified. I therefore agree that the appeal should be allowed.

40. The Basic Law protects freedom of marriage (generally understood as a reference to heterosexual marriage for common law as well as constitutional purposes, see *W v Registrar* (2013) 16 HKCFAR 112

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at [63]) under article 37 and the right of equality under article 25. Both rights are constitutionally entrenched and, in the eyes of the lawneither right has priority over the other. In the present case, the right of equality is clearly more relevant and it cannot be suggested (and the Director has not suggested) that the institution of marriage as practised in Hong Kong would be endangered simply because a dependant visa could be granted to a person who has undergone a legally recognized same sex marriage or civil partnership overseas. Hence, in the absence of cogent grounds to justify the differential treatment, the policy is in breach of art 25.

Hon Poon JA :

A. INTRODUCTION

41. This appeal raised an important question : whether the Policy,<sup>1</sup> as applied by the Director of Immigration ("the Director"), constitutes discrimination based on sexual orientation against the appellant, QT, who is a same-sex partner of her sponsor, SS, in a civil partnership which they contracted in England under the Civil Partnership Act 2004 ("CPA 2004") because of the differential treatment concerning eligibility by reason of marital status.

42. It arose in this way.

<sup>1</sup> As set out in section A1 below.

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*A1. The Policy*

43. The Policy is couched in these terms:<sup>2</sup>

“ 4. For a sponsor who has been admitted into the HKSAR to take up employment ... the following dependants may apply to join him/her for residence in the HKSAR:

- a. his/her spouse; and
- b. his/her unmarried dependent child under the age of 18.

5. An application for admission of a dependant may be favourably considered if:

- a. there is reasonable proof of a genuine relationship between the applicant and the sponsor;
- b. there is no known record to the detriment of the applicant; and
- c. the sponsor is able to support the dependant's living at a standard well above the subsistence level and provide him/her with suitable accommodation in the HKSAR.”

44. In applying the Policy, the Director maintains that “spouse” in [4] refers only to husband and wife in a heterosexual and monogamous marriage as it is the only form of valid marriage recognized under the law of Hong Kong. (I will refer to this as “the Eligibility Requirement” below.) So applied, the Policy excludes all unmarried couples, irrespective of whether they are heterosexual or homosexual partners, or in the latter case, whether their relationship is one that is legalized elsewhere either as civil partnership or same-sex marriage. As they are

<sup>2</sup> See the Guidebook for Entry for Residence as Dependants in Hong Kong issued by the Immigration Department (“the Guidebook”).

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not married in the sense as understood in the law of Hong Kong, they simply do not meet the Eligibility Requirement.

45. The Director justifies the Eligibility Requirement thus :

“ The difference in treatment pursues the legitimate aim of striking a balance between (1) maintaining Hong Kong's continued ability to attract people with the right talent and skills to come to Hong Kong to work (by giving them the choice of bringing in their closest dependants to live with them in Hong Kong and to care for and support them in Hong Kong); and (2) the need for a system of effective, strict and stringent immigration control in the light of Hong Kong's small geographical size, huge population, substantial intake of immigrants, relatively high per capita income and living standard, and local living and job market conditions, which bring constant and high pressure on Hong Kong's society as a whole in particular the labour market, social benefits system, housing, education and infrastructure.

To achieve the said legitimate aim, the Director adopts a bright-line rule, based on marital status as defined by Hong Kong's matrimonial law and which the Director is obliged to follow and give effect to, and which provides for legal certainty and administrative workability and convenience, which is rationally connected with the said aim and is no more than necessary to accomplish the said aim.”

*A2. QT's application*

46. QT is a British national. Her same-sex partner, SS, is a dual national of South Africa and Great Britain. They met in 2004 and had since developed a stable relationship. In May 2011, they entered into a civil partnership in England pursuant to the CPA 2004. They have since been living as a family. They do not have any children.

47. In mid-2011, SS was offered employment by a company in Hong Kong. She then applied for an employment visa with the Immigration Department on 17 June 2011, including QT as her accompanying dependant. Later on 2 August 2011, QT's application for a dependant visa was withdrawn. SS was issued an employment visa on 26 August 2011. On 23 September 2011, they moved to Hong Kong. SS came on the employment visa whereas QT came as a visitor. SS continues to stay in Hong Kong on the strength of the employment visa extended from time to time. QT remains as a visitor with her stay extended whenever required.

48. On 25 April 2013, QT applied for an employment visa which was refused on 19 August 2013.

49. On 29 January 2014, QT made a fresh application for a dependant visa with SS as her sponsor. Correspondence between the Immigration Department and QT's solicitors ensued. Eventually by a letter dated 18 June 2014, the Director rejected QT's application on the ground that she was not a "spouse" within the meaning of the Policy, stating effectively that she did not meet the Eligibility Requirement ("the Decision").<sup>3</sup>

<sup>3</sup> In February 2015, the Director wrote to QT's solicitors, indicating that on humanitarian considerations relating to her health, he was prepared to issue an entry visa permitting her to remain in Hong Kong for 12 months, provided that her travel document is valid without being subject to the conditions of stay currently applicable to her under the "visitor" status. QT however declined to accept it and continued to pursue her application for judicial review. It is because as a visitor, QT will receive less favourable treatments than as a dependant. Ms Rose explained. For example, a dependant who has ordinarily resided in the HKSAR for a continuous period of not less

*JUDICIAL REVIEW*

50. QT complained that the Policy, as applied by the Director, constituted discrimination against her on account of her sexual orientation. In October 2014, she took out proceedings below to judicially review the Decision.

*BI. Grounds of review*

51. In her Form 86, QT raised three grounds of challenge :

(1) The Decision is discriminatory and unjustified, and accordingly is *Wednesbury* unreasonable;

(2) The Director has misapplied the Policy by construing "spouse" in the way as he does;

(3) The Decision is unconstitutional because it is inconsistent with articles 25, 39 and 41 of the Basic Law and articles 1, 14 and 22 of the Hong Kong Bill of Rights.

52. She sought the relief of quashing the Decision and declarations that :

(1) To the extent that sections 11(2)(a) and 11(5A) of the Immigration Ordinance, Cap 115 ("the Ordinance") and/or the Policy purport to authorize the imposition of less favourable conditions of stay on the ground only of the sexual orientation of the persons concerned, they are unconstitutional;

than 7 years may apply for the right of abode in the HKSAR in accordance with the law : see [20] of the Guidebook. A visitor does not enjoy similar treatments.

A

B (2) The word “spouse” within the prevailing immigration policy applicable to the dependants includes a party to settled, marriage-like same-sex relationship.

C

D *B2. Au J’s judgment*

E 53. By a judgment handed down on 11 March 2016, Au J dismissed QT’s application for judicial review, rejecting all three grounds of review.

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H 54. The learned Judge prefaced his analysis with five basic principles.<sup>4</sup> First, he adopted the general approach to discrimination as enunciated by Ma CJ in *Fok Chun Wa v Hospital Authority* (2012) 15 HKCFAR 409, at [58] – [59]. Second, he noted the Director is entitled to adopt a strict immigration policy but the court would nevertheless subject a challenged decision which is said to have offended the core values including sexual orientation to a severe scrutiny, again citing *Fo Chun Wa*, per Ma CJ at [77] – [78]. Third, he acknowledged the widely recognized notion that marriage confers upon the married couple a special legal status with new legal rights and obligations, giving rise to social, personal and legal consequences which could well be different from civil partnership. Fourth, under common law, “spouse” means husband and wife of a heterosexual marriage and excludes same-sex couples. Lastly, he noted that under the law of Hong Kong, marriage is monogamous and heterosexual. He further noted that QT did not seek to

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T <sup>4</sup> Judgment [22]–[28].

U

V

A contend that the non-recognition of same-sex marriage or civil partnership under the existing Hong Kong laws was unlawful or unconstitutional.

B

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D 55. For the reasons that he gave, the Judge took the view that QT or those who are parties to a homosexual (or heterosexual) relationship who are not married on the one hand and married persons on the other are in a sufficiently relevant different position to justify the differential treatment under the Policy.<sup>5</sup> He reasoned that :

E

F (1) Immigration control is the proper context in which the question whether the differences in status between married and unmarried persons are sufficient to justify the complained differential treatment.<sup>6</sup>

G

H (2) The Director is entitled to draw a bright line in immigration control. He must also be entitled to take into account considerations relating to clarity, certainty of the line and administrative convenience of implementation.<sup>7</sup>

I

J (3) The Director has to lawfully apply the Policy.<sup>8</sup> He must be entitled to have regard to the consideration that its implementation and application have to be regarded as lawful in Hong Kong.<sup>9</sup> To apply the Policy lawfully, the Director should adopt the legal meaning of marriage as recognized in Hong Kong, that is a heterosexual and monogamous marriage. The Director is obliged to follow and give effect to marital status as defined by Hong Kong’s matrimonial laws.<sup>10</sup> Thus

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S <sup>5</sup> Judgment [29] – [48], in particular [41].

T <sup>6</sup> Judgment [31] – [33].

U <sup>7</sup> Judgment [36].

V <sup>8</sup> Judgment [35].

<sup>9</sup> Judgment [36].

<sup>10</sup> Judgment [39].

A the Director is entitled to draw a bright line between married  
B and unmarried persons and under that it is only the sponsor's  
C spouse of a marriage validly recognized in Hong Kong who  
D may apply to join the sponsor in Hong Kong as a dependant.<sup>11</sup>  
E  
F (4) While the Policy will inevitably limit the eligible applicants  
G for dependant visa and hence the potential number of skilled  
H and talented foreigners who may be prepared to come to work  
I in Hong Kong, the Director is entrusted with the discretion to  
J draw the bright line in order to strike the balance to have room  
K in his tight immigration control to attract foreigners to come  
L to work in Hong Kong, and having regard to the lawfulness  
M of the implementation of the Policy.<sup>12</sup>  
N  
O 56. In his analysis, the Judge placed particular reliance on *Gas v*  
P *France* (2014) 59 EHRR 22, noting that the analyses and observations by  
Q the European Court of Human Rights are equally applicable in the present  
R case with reference to the context of immigration control.<sup>13</sup>  
S  
T 57. The Judge then dealt with the submissions of Mr Timothy  
U Parker, counsel for QT, as to why the differential treatment under the  
V Policy was not based on marital status but on sexual orientation.<sup>14</sup> For  
the reasons that he gave, the Judge rejected each of counsel's submissions.  
He also distinguished the cases that Mr Parker cited in support, that is,  
*National Coalition for Gay and Lesbian Equality v Minister of Home*  
*Affairs* [1999] ZACC 17; *Ghaidan v Godin-Mendoza* [2004] UKHL 30

<sup>11</sup> Judgment [40].  
<sup>12</sup> Judgment [37].  
<sup>13</sup> Judgment [42] – [48].  
<sup>14</sup> Judgment [50] – [96].

A and *Preddy and Hall v Bull* [2013] UKSC 73. He concluded that there is  
B no question of discrimination (direct or indirect) based on sexual  
C orientation.<sup>15</sup>  
D  
E 58. The Judge then dealt with the second and third grounds of  
F review very briefly. In light of his conclusion on the first ground of  
G judicial review, he rejected the second ground.<sup>16</sup> Since there was no  
H discrimination, the third ground did not arise for his consideration.<sup>17</sup>  
I  
J C. OVERVIEW OF THE PARTIES' STANCE BEFORE THE COURT  
K  
L C1. QT's submissions  
M  
N 59. In her notice of appeal, QT raised three grounds of appeal,  
O mirroring her three grounds of judicial review:  
P (1) The Judge erred in finding that she, by reason only of her  
Q being in a civil partnership with her same-sex partner, was in  
R a relevantly different position to a straight applicant married  
S to an opposite-sex partner.  
T (2) The Judge erred in rejecting her contention that the Director  
U misapplied the Policy and that she falls within it.  
V (3) The Judge erred in declining to consider her constitutional  
challenge.  
60. In her oral submissions, Ms Dinah Rose, QC (appearing with  
Mr Parker) only focused on the first ground of appeal. She simply

<sup>15</sup> Judgment [97].  
<sup>16</sup> Judgment [98] – [99].  
<sup>17</sup> Judgment [100] – [102].

A adopted her written submissions for the other two grounds though without  
B abandoning them. Ms Rose’s approach is, with respect, realistic. For  
C as she rightly acknowledged, the first ground of appeal is determinative of  
D this appeal. If she succeeds on the first ground, the Decision is  
E discriminatory based on sexual orientation and is accordingly *Wednesbury*  
F unreasonable. She does not need the other two grounds. If she fails on  
G the first ground, the other two grounds would not take her any further.

61. Ms Rose submitted that the Policy and its application in the  
Decision is discriminatory on three alternative bases :

(1) According to the interpretation the Director gives to “spouse”,  
all heterosexual married couples benefit from the Policy but  
all same-sex married couples and civil partners, who are in a  
relevantly similarly situation, are less favourably treated.  
This constitutes discrimination on the ground of sexual  
orientation.

(2) Alternatively, if the Policy is viewed as treating all those who  
are recognized as married for the purposes of the law of Hong  
Kong more favourably than those who are not, the Policy  
treats “unmarried” same-sex couples, who cannot be married  
under Hong Kong law, in the same way as unmarried  
heterosexual couples, who can choose to marry or not as they  
please. The circumstances of a same-sex couple whose  
marriage or civil partnership cannot be recognized in Hong  
Kong are significantly different from those of a heterosexual  
couple who have the choice to marry or not as they please.  
It is accordingly discriminatory to treat them in the same way.

(3) Alternatively, if the Policy of granting dependant visas only  
to spouses as defined in the Policy is regarded as a  
factually-neutral policy of general application, it places  
same-sex couples at a serious and disproportionate  
disadvantage by comparison with heterosexual couples and is  
accordingly indirectly discriminatory.

62. From a series of international authorities, Ms Rose drew the  
conclusion that in a situation in which same-sex couples are not permitted  
to marry or in which their partnerships are not legally recognized, it is  
discriminatory for the State to make access to benefits, such as the  
dependant visa, conditional on marriage because the effect of such a policy  
is to exclude same-sex people, who cannot marry, from the benefit entirely  
because of their sexual orientation, and that would be unlawful unless it  
can be objectively justified.

63. The burden therefore falls on the Director to show  
justification. That he has failed to do, Ms Rose argued.

64. Ms Rose made it clear in her oral submissions that despite  
what was pleaded in the Form 86, her arguments did not extend to cover a  
same-sex couple settled in a marriage-like relationship. She was content  
to limit her case to civil partnership and same-sex marriage.

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C2. *The Director's submissions*

65. Ms Carss-Frisk, QC (appearing with Mr Stewart Wong, SC and Ms Grace Chow) for the Director, argued that the Policy is not discriminatory for two reasons :

- (1) It is not directly discriminatory as it does not target same-sex couples and applies equally to unmarried opposite sex couples.
- (2) It is not indirectly discriminatory because for the purpose of marriage and the incidence of marriage including dependant status under the Policy, QT and SS are not in a comparable position to a married couple or opposite couple.

66. The main plank of Ms Carss-Frisk's submission is that the Policy is not discriminatory because it draws the bright line on marriage and not on sexual orientation. She anchored her submission on the well-established proposition that marriage confers a special status on the married couple with a bundle of rights and obligations. Since the law of Hong Kong does not grant same-sex couples access to marriage, it follows that they do not have access to the core rights that go with marriage, including dependant status which underlies the application for a dependant visa under the Policy.

67. As a fallback position, Ms Carss-Frisk submitted that even if the Policy is discriminatory, it is justified in the way as the Director has done.

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D. *IDENTIFYING THE PROPER APPROACH*

68. This is the first occasion where the question of the Eligibility Requirement in the Policy constitutes discrimination on account of sexual orientation arises for appellate determination. It is, in my view, imperative to identify at the outset a principled approach to be adopted in examining the issues involved to enable one to arrive at the correct answer. And I derive the proper approach from the following analysis.

D1. *The principle of equality*

69. Discrimination based on sexual orientation, like any other form of discrimination, offends the cardinal principle of equality. Embedded in the rule of law, the principle of equality underpins the exercise of power by any public authority in a democratic society aiming at good administration and responsible governance : see *Matadeen v Pointu* [1999] 1 AC 98, per Lord Hoffmann at p 109C – D.

70. The principle of equality prohibits discrimination. In *Ghaidan*, supra, Lord Nicholls at [9] condemned discrimination thus :

“ Discrimination is an insidious practice. Discriminatory law undermines the rule of law because it is the antithesis of fairness. It brings the law into disrepute. It breeds resentment. It fosters an inequality of outlook which is demeaning alike to those unfairly benefited and those unfairly prejudiced.”

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71. In like vein, Li CJ said in *Secretary for Justice v Yau Yuk Lung* (2007) 10 HKCFAR 335 :

- “ 1. Equality before the law is a fundamental human right (the right to equality). Equality is the antithesis of discrimination. The constitutional right to equality is in essence the right not to be discriminated against. It guarantees protection from discrimination. The right to equality is enshrined in numerous international human rights instruments and is widely embodied in the constitutions of jurisdictions around the world. It is constitutionally protected in Hong Kong.
2. Discriminatory law is unfair and violates the human dignity of those discriminated against. It is demeaning for them and generates ill-will and a sense of grievance on their part. It breeds tension and discord in society.”

72. While both Lord Nicholls and Li CJ referred to “discriminatory law” because of the context of the particular case before them, discrimination by way of a government decision or policy in different contexts may also arise. When it does, the principle of equality will apply to it with full force.

73. Here, the Director enjoys wide statutory powers on immigration control for Hong Kong under the Ordinance.<sup>18</sup> The Policy is evidently formulated and implemented as part of the overall, stringent immigration control by the Director. While the Policy has its statutory underpinning, for the reasons set out above, the Director must apply it in

<sup>18</sup> See for example, section 7 on general provisions as to immigration control and section 11 on permission to land and conditions of stay.

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accordance with the principle of equality. This the Director has very fairly accepted. With respect, he must be correct.

D2. *The legal definition of marriage and its impact on a claim of discrimination based on sexual discrimination*

74. It is common ground that the only form of marriage recognized by the law of Hong Kong is a heterosexual and monogamous marriage. Section 40 of the Marriage Ordinance, Cap 181 provides that marriage is the voluntary union of a man and a woman for life to the exclusion of all others. The same statutory meaning of marriage applies on the constitutional level as well as a matter of common law. In *W v Registrar* (2013) 16 HKCFAR 112, Ma CJ and Ribeiro PJ at [25] after reciting the statutory definition of marriage in section 40 of the Marriage Ordinance, said :

“ Everyone agrees that ‘marriage’ in art.37 [of the Basic Law]<sup>19</sup> and ‘marry’ in art.19(2) [of the Hong Kong Bill of Rights]<sup>20</sup> bear the same meaning.”

75. Their Lordships further observed :

“ 61. The right to marry is accordingly addressed both in our statute-law and in our constitutional instruments. While we accept that the definition of marriage is the same under both regimes...

...

<sup>19</sup> Article 37 of the Basic Law protects the freedom of marriage of Hong Kong residents and their right to raise a family freely.  
<sup>20</sup> Article 19(2) of the Hong Kong Bill of Rights provides that the right of men and women of marriageable age to marry and to found a family shall be recognized.

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63. ...It is common ground that a marriage for constitutional as for common law purposes is the voluntary union for life of one man and one woman to the exclusion of all others.”

76. In the Strasbourg and English cases discussed below, the same definition of marriage, that is, a heterosexual and monogamous marriage, is also used.

77. The authorities universally recognize that marriage confers a special status to the married couple, carrying with it a corpus of rights and obligations. As Lord Hoffmann put it in *In re G (Adoption: Unmarried Couple)* [2009] 1 AC 173 at [7]:

“ It is clear that being married is a status. In *Sølvesen or von Lorange v Administrator of Austrian Property* [1927] AC 641, 653 Viscount Haldane said: ‘the marriage gives the husband and wife a new legal position from which flow both rights and obligations with regard to the rest of the public. The status so acquired may vary according to the laws of different communities.’”

78. Lord Nicholls gave some examples of the rights and obligations that a marriage may entail in *Bellinger v Bellinger* [2003] 2 AC 467 at [42] :

“ Marriage has legal consequences in many directions: for instance, housing and residential security of tenure, social security benefits, citizenship and immigration, taxation, pensions, inheritance, life insurance policies, criminal law (bigamy).”

79. Recognizing the special status of marriage, the European Court of Human Rights (“ECtHR”) has consistently held that article 12 of the European Convention on Human Rights (“ECHR”) (right to marry)

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does not impose an obligation on the States to grant same-sex couples access to marriage : see for example *Schalk and Kopf v Austria* (2011) 53 EHRR 20, [49] – [64]. Nor can a right to same-sex marriage be derived from article 14 of ECHR (right to equality on enjoyment of rights) taken in conjunction with article 8 (right to family) : *Schalk*, supra, [101].

80. Similarly in England, it was held in *Wilkinson v Kitzinger* [2006] HRLR 36 that by withholding from same-sex partners the actual title and status of marriage under the CPA 2004 while by the same statute effectively according to them all the rights, responsibilities, benefits and advantages, thereby removing the perceived inequality of treatment of long term monogamous same-sex relationships, was justified : per Sir Mark Potter at [116] – [122].

81. In short, the Strasbourg and English authorities establish the proposition that a same-sex couple cannot validly complain that they have been discriminated against on the ground of sexual orientation because they are not legally granted the right or access to marry.

82. In Hong Kong, Ma CJ and Ribeiro PJ noted in *W*, supra, at [2] that it was no part of W’s case that same-sex marriage should be permitted. As noted, their Lordships proceeded on the common position of the parties that marriage for the constitutional as well as common law purposes is the voluntary union for life of one man and one woman to the exclusion of all others. For the reasons that they articulated, they held that the statutory provisions prohibiting W, a female transsexual person, from marrying a male, was unconstitutional because they unjustifiably infringed her

A constitutional right to marry. Their Lordships thus made it clear at the outset of their judgment at [2] that nothing in their judgment was intended to address the question of same-sex marriage.

83. As the law in Hong Kong is now understood, same-sex marriage or civil partnership is not legally recognized on all the constitutional, statutory and common law levels. Consistently with the proposition established by the international case law, it would appear that in Hong Kong no claim of discrimination based on such denial of access to marriage on account of sexual orientation can be mounted. That being the position, Ms Rose readily accepted that Hong Kong does not recognize same-sex marriage or civil partnership. And she did not submit that Hong Kong is under any obligation to do so. The matter of course does not stop there.

84. Ms Rose went on to argue that even if in Hong Kong the denial of the right to marriage to a same-sex couple is entrenched in the Basic Law or authorized by statute, differential treatments based on marital status may still constitute discrimination on account of sexual orientation in other contexts if not justified. She cited *James v Eastleigh Borough Council* [1990] 2 AC 751 and *R v Secretary of State for Health, ex parte Richardson* [1995] 3 CMLR 376 in support.

85. In *James*, the Social Security Act 1975 fixed the pensionable age at 60 for women and 65 for men. The defendant council provided free admittance to its leisure center to people who had reached the pensionable age. The plaintiff, who had retired, and his wife, both of

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whom were 61, went to the defendant's leisure center. Under the defendant's policy, the wife was admitted free of charge but the plaintiff had to pay an admission fee. He brought proceedings alleging unlawful sex discrimination under the Sex Discrimination Act 1975. He lost in the courts below. The House of Lords however allowed his appeal. The majority held that since the pensionable age fixed by the Social Security Act itself directly discriminated between men and women by treating women more favourably than men on the ground of their sex, any other differential treatment of men and women adopting that criterion equally involved discrimination on the ground of sex. Relevantly for present purposes, Lord Bridge said at p 766F – H :

“ Statutory pensionable age is still used in some other statutory contexts... But it is impossible to infer from these or any other specific statutory provisions requiring or authorizing discrimination in defined circumstances the existence of a general exception to the prohibition of sex discrimination in the provisions of goods, facilities and services imposed by section 29 of the Sex Discrimination Act 1975 such that discrimination in favour of women and against men between the ages of 60 and 65 is always permitted. In the absence of express statutory authority derived from some other enactment, such discrimination is prohibited.”

In *James*, the House of Lords did not consider the question of justification because under the English statute no direct discrimination could ever be justified.

86. As noted by Lord Bridge in *James*, statutory pensionable age was used in some other statutory contexts at the time. One of such contexts was access to free medicines on prescription. Under the relevant UK regulations those who were of pensionable age did not have to pay a

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charge to get prescribed medicine. Accordingly, women of 60 could get free prescribed medicine when men could not until they reached 65. A challenge based on sex discrimination in breach of the EU directive 79/7 that prohibited sex discrimination in relation to certain forms of benefits was made to the Court of Justice of the European Communities in *Richardson*. The Court at [16]–[28] held that (1) while the EU directive 79/7 allowed the States to exclude from the sex discrimination provisions different statutory pensionable ages and the possible consequences thereof for other benefits, the exclusion was limited to those other benefit schemes which were necessarily and objectively linked to the difference in retirement age; but (2) the discrimination in question was not necessarily linked to the difference between the pensionable ages for men and women, thus falling outside the scope of permitted discrimination authorized by the directive.

87. So, as seen from *James* and *Richardson*, even where an encroaching measure in relation to access to certain rights or benefits is lawful or authorized in a defined context, it does not necessarily follow that the same measure may be used as the benchmark to deny access to other rights or benefits in all other contexts without causing discrimination. Depending on the circumstances, it may still constitute discrimination if not justified.

88. Extrapolating the proposition derived from *James* and *Richardson* to the present context, although in Hong Kong denial of the right to marry to same-sex couples alone does not constitute discrimination on account of sexual orientation, it does not necessarily follow that using

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marital status as a condition to access to other rights or benefits can never be discriminatory. In other words, the Basic Law as well as the statutory and common law position for marriage in Hong Kong is not necessarily an absolute bar to a claim of discrimination on account of sexual orientation when the differential treatment is based on marital status in all contexts.

89. This brings me to the next stage of my analysis : how to assess whether a particular differential treatment by reason of marital status is discriminatory because of sexual orientation in a given context?

*D3. Assessing differential treatment*

90. It is well-settled that discrimination can take three forms.

91. In *Ghaidan*, supra, Lord Nicholls at [9] famously observed :  
“ Like cases should be treated alike, unlike cases should not be treated alike.”

His Lordship’s remark encapsulates two forms of discrimination.

92. The first form of discrimination arises where those whose relevant circumstances are analogous are, without justification, treated differently.

93. The second form of discrimination arises where those whose relevant circumstances are different are, without justification, treated in the same way. Under this form of discrimination, people whose circumstances are relevantly different are simply lumped together and

A treated in the same way without justification : *Thlimmenos v Greece* (2001)  
 B 31 EHRR 411, at [42] and [44].  
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D 94. The third form of discrimination occurs when a general policy  
 E or measure has disproportionately prejudicial effects on a particular group  
 F although it is couched in neutral terms and is not specifically aimed at that  
 G group : *DH v Czech Republic* (2008) 47 EHRR 3, at [175]; see also  
 H *Leung v Secretary for Justice* [2006] 4 HKLRD 211, per Ma CJHC (as the  
 I Chief Justice then was) at [46] to [49]. This is indirect discrimination.  
 J It may overlap factually with the second form of discrimination but  
 K remains a distinct form of discrimination conceptually. It does not  
 L necessarily require a discriminatory intent : *DH*, supra, [184].

M 95. I will discuss the justification test in greater detail in the next  
 N section. At this juncture, I will focus on how to assess a particular  
 O differential treatment by reason of marital status which is said to be  
 P discriminatory based on sexual orientation absent justification. In this  
 Q regard, a commonly used approach is to first identify the comparators with  
 R whom the complainant's situation is compared to see if their situations are  
 S analogous or relevantly different. It is only when the situations are  
 T analogous will the justification test be engaged.

U 96. Before Au J, Mr Wong adopted this approach.<sup>21</sup> So did  
 V Ms Carss-Frisk before us when she submitted that since QT is in effect  
 seeking the same benefits enjoyed by a married couple, she should be

<sup>21</sup> Judgment [20].

A compared with them accordingly. Based on a number of Strasbourg  
 B cases, she submitted that unmarried couples including same-sex couples  
 C cannot be relevantly comparable with married couples. Thus, the  
 D Eligibility Requirement, which draws the bright line on marriage, does not  
 E involve a difference in treatment on the ground of sexual orientation.

F 97. For my part, I have reservations if this two-stage approach  
 G should be adopted for present purposes.

H (a) In *Fok Chun Wa*, supra, Ma CJ at [58] cautioned that while  
 I the two-stage approach is useful, it must not give rise to  
 J complex and unnecessary arguments. He had no objection  
 K in adopting it as long as one firmly bears in mind :

“ (1) The object of the exercise ... ‘is there enough of a  
 relevant difference between X and Y [the comparators] to justify  
 differential treatment?’

(2) In the majority of cases where equality issues are  
 involved, it will be necessary for the Court to look at the  
 materials which go to the three facets of the justification test  
 before this crucial question is answered. It will be a rare case,  
 I daresay, where the court will comfortably be able to answer  
 this question without any recourse to the issue of justification at  
 all. Seen in this way, it may matter not at all whether the  
 court’s approach is seen as a two-stage one or not.”

Here, as rightly predicted by the Chief Justice, for my part I  
 cannot comfortably be able to determine if there is  
 discrimination based on sexual orientation under the  
 Eligibility Requirement without going through the  
 justification analysis.

(b) Regarding marriage as different from civil partnership in the  
 present context may suffer from the problem identified by

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Baroness Hale in *Rodriguez v Minister of Housing of the Government & Another* [2009] UKPC 52, at [17] :

“ The problem with that analysis is that the ground for the difference in treatment ... is also the reason why the person treated differently is said not to be in an analogous situation. This can be dangerous. If the ground for the difference in treatment were a difference in sex, it would not be permissible to say that a man and a woman are not in an analogous situation because men and women are different.”

(c) Sexual orientation is now regarded as a personal characteristic inherent in an individual which cannot or should not be changed. And it may not be permissible to use the differences inherent in an individual's personal characteristics to determine analogy : *Wilkinson v Kitzinger*, supra, per Sir Mark Potter at [102]. As Baroness Hale explained in *AL (Serbia) v Home Secretary* [2008] 1 WLR1434, at [27] :

“ There are... dangers in regarding differences between two people, which are inherent in a prohibited ground and cannot or should not be changed, as meaning that the situations are not analogous. For example, it would be no answer to a claim of sex discrimination to say that a man and a woman are not in an analogous situation because one can get pregnant and the other cannot. This is something that neither can be expected to change. If it is wrong to discriminate between them as individuals, it is wrong to focus on the personal characteristics which are inherent in their protected status to argue that their situations are not analogous. That is the essential reason why, in *Ghaidan v Godin-Mendoza* [2004] 2 AC 557 the argument that same sex couples were not in an analogous position to opposite sex couples, because they could not have children together, did not succeed.”

98. What then is the preferred approach for present purposes?

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99. I find what Ma CJ said in *Fok Chun Wa*, supra, instructive. After eschewing a rigid application of the two-stage approach, his Lordship at [58(3)] associated himself with the principled approach of Lord Nicholls in *R (Carson) v Secretary of State for Works and Pensions* [2006] 1 AC 173, at [3] :

“ the essential question for the court is whether the alleged discrimination, that is, the difference in treatment of which complaint is made, can withstand scrutiny. Sometimes the answer to this question will be plain. There may be such an obvious, relevant difference between the claimant and those with whom he seeks to compare himself that their situations cannot be regarded as analogous. Sometimes, where the position is not so clear, a different approach is called for. Then the court's scrutiny may best be directed at considering whether the differentiation has a legitimate aim and whether the means chosen to achieve the aim is appropriate and not disproportionate in its adverse impact.”

100. I also derive guidance from Baroness Hale's judgment in *Rodriguez*, supra. There, it was the policy of the Gibraltar government to grant joint tenancies of government housing to couples only if they were married to one another or have a child in common. The policy excluded same-sex couples who could not marry nor have children together. The Privy Council held that the differential treatment imposed by the policy was unconstitutional under the equality provision in the Gibraltar Constitution. After pointing out the danger of being bogged down in the problems of identifying the proper comparator (which is the first step of the two-stage approach referred to above), Baroness Hale adopted Lord Nicholls's approach in *Carson* cited above : [17] – [18]. She further said at [25] :

“ The benefit of a justification analysis is that it encourages structured thinking. A legitimate aim of the

A difference in treatment must first be identified. There must then be a rational connection between the aim and the difference in treatment. And the difference must be proportionate to the aim.”

D 101. Guided by Ma CJ’s and Baroness Hale’s judgments, I would also adopt the principled and structured approach of Lord Nicholls’s in *Carson* in assessing if the differential treatment by reason of marital status under the Eligibility Requirement constitutes discrimination on account of sexual orientation as contended by QT.

H *D4. Other Strasbourgh cases*

I 102. Having identified the proper approach for assessing the differential treatment under the Policy, I only need to very briefly deal with the other Strasbourgh cases relied on by Ms Carss-Frisk to make good her submission that same-sex couples as unmarried couples cannot be relevantly comparable with married couples in various contexts. Those cases include *Lindsay v United Kingdom*, Application No. 11089/84, 11 November 1986; *Shackell v United Kingdom*, Application No. 45851/99, 27 April 2000; *Stec v United Kingdom* (2006) 43 EHRR 47; *Burden v United Kingdom* (2008) 47 EHRR 38; *Serife Yiğit v Turkey* (2011) 55 EHRR 25; *Gas v France*, supra; *X v Austria* (2013) 57 EHRR 14; *Boeckel v Germany* (2013) 57 EHRR SE3; *Aldeguer Tomás v Spain*, Application No. 35214/09, 12 September 2016. *Lindsay, Shackell, Burden, Serife Yiğit* and *Aldeguer Tomás* all concerned property rights such as taxation, pensions and statutory tenancies. *Gas*, X and *Boeckel* concerned adoption of children.

103. For those cases on property rights, they all fell within article 1 of Protocol 1 of the ECHR. While the ECtHR in those cases held that unmarried couples and married couples were not in an analogous situation, the Court’s reasoning was largely based on the margin of appreciation given to Member States in conferring the rights in issue to married couples in light of the special status of marriage. On a closer look, it was in substance a justification analysis. As Baroness Hale observed in *Rodriguez*, supra, at [22] :

“ Mr Singh [for the appellant] rightly points out that all these cases concerned taxation and similar benefits within the ambit of article 1 of Protocol 1 rather than within the ambit of article 8. There is a much wider margin of appreciation for Member States in the former context than in the latter. He also points out that the concept of a margin of appreciation has no relevance to a national court interpreting its own laws. However, the Board would observe that the Strasbourg Court’s reliance on the margin of appreciation suggests that, despite the references to married and unmarried couples not being in an analogous situation, the Court was in reality finding that to privilege marriage in the context in question could readily be justified. For the reasons given earlier, the Board also considers it more logical to ask whether distinctions between married and unmarried couples can be justified than to regard the discriminatory status itself as placing them in different situations.”

104. The ECtHR had in effect also conducted a justification analysis in *Gas* and *Boeckel*. In *Gas*, the Court prefaced its discussion by reciting at [58] – [60] the principles on justification and margin of appreciation. X followed and applied *Gas*. In *Boeckel*, the Court at [28] – [31] relied on justification and margin of appreciation in arriving at the decision as it did. What Baroness Hale said in *Rodriguez* above is therefore also applicable to *Gas*, X and *Boeckel*.

A Thus understood, the Strasbourg cases relied on by  
 B Ms Carss-Frisk does not detract from the adoption of Lord Nicholls's  
 C approach in *Carson* in the present appeal. I would echo Baroness Hale's  
 D observation that it would be more logical to ask whether under the  
 E Eligibility Requirement the differential treatment based on marital status  
 F can be justified than to regard the difference in status itself as placing  
 G married couples and same-sex couples in non-analogous situations.

D5. *Justification analysis*

H 106. This brings me to the justification analysis, the crux of  
 I Lord Nicholl's approach.

J 107. Ms Rose proposed as the correct test for justification thus :  
 K where marriage may lawfully be restricted to members of the opposite sex,  
 L the criterion of marriage may be used as the basis for access to benefits  
 M only where those benefits pursue objects which are objectively and  
 N necessarily linked to the legal status of marriage itself or the rights and  
 O obligations that are unique to and inherent in marriage in the sense that  
 P they are not shared with other forms of status. In this regard, I agree with  
 Q the judgment of the Chief Judge at [9] – [21]. I would only add one  
 R observation of my own. It seems that according to Ms Rose's test, all  
 S differential treatments said to be encroaching on those rights which are not  
 T linked to the legal status of marriage itself or the rights and obligations that  
 U are unique to and inherent in marriage can never be justified in any context.  
 V But whether the encroaching measure can satisfy the justification test must  
 depend on the actual circumstances and context in which the justification  
 analysis is undertaken. Ms Rose's test seems to me to be too sweeping

A and too wide. As such, it may pose the risk of eroding the special status  
 B of marriage by emptying its contents.

C *D5.1 A four-step test*

D 108. The principle of equality does not invariably require exact  
 E equality. Differences in treatment may be justified if it passes the  
 F proportionality test :

G (1) The difference in treatment must pursue a legitimate aim.  
 H (2) The difference in treatment must be rationally connected to  
 I the legitimate aim;  
 J (3) The difference in treatment must be no more than is necessary  
 K to accomplish the legitimate aim.

L See *Yau Yuk Lung*, supra, per Li CJ at [20].

M 109. Recently in *Hysan Development Co Ltd v Town Planning*  
 N *Board* (2016) 19 HKCFAR 372, the Court of Final Appeal held that in line  
 O with the Strasbourg and English jurisprudence a fourth step is to be  
 P incorporated into the proportionality test. Where an encroaching  
 Q measure had passed the three-step test, the analysis should incorporate a  
 R fourth step asking whether a reasonable balance has been struck between  
 S the societal benefits of the encroachment and the inroads made into the  
 T constitutionally protected rights of the individual, asking in particular  
 U whether pursuit of the societal interest results in an unacceptably harsh  
 V burden on the individual : per Ribeiro PJ at [64] – [79] and [135].

A What has to be justified is not the encroaching measure in  
 B question which puts in place the differential treatment but the  
 C discriminatory aspects of the measure. *A v Secretary of State for the Home*  
 D *Department* [2005] 2 AC 68, per Lord Bingham at [68]; *AL (Serbia)*, supra,  
 E per Baroness Hale at [38]. And the burden is always on the government  
 F to satisfy that the justification test is met: *Yau Yuk Lung*, supra, per Li CJ  
 at [21].

G *D.5.2 Standard of scrutiny*

H 111. The standard of scrutiny to be applied to the third step of the  
 I justification test varies according to contexts. It has generated much case  
 J law. In *Hysan*, supra, Ribeiro PJ in section G conducted an admirable  
 K study of the relevant cases. In conclusion, his Lordship said:

“ 136. At the third stage, assessing the permissible extent of the  
 L incursion into the protected right, two main standards have been  
 M applied. The first is the test of whether the intruding measure  
 N is “no more than necessary” to achieve the legitimate aim in  
 O question. This must be understood to be a test of reasonable  
 P necessity. If the Court is satisfied that a significantly less  
 Q intrusive and equally effective measure is available, the  
 R impugned measure may be disallowed.

137. An alternative standard which may be applied at the third  
 stage is one which asks whether the encroaching measure is  
 “manifestly without reasonable foundation”, being a standard  
 closely related to the concept of “margin of appreciation” in  
 ECtHR jurisprudence.

138. At the supra-national level of the ECtHR, the margin of  
 appreciation doctrine involves the recognition that on certain  
 issues, the Court should allow Member State latitude to decide  
 on the legitimacy of their societal aims and the means to achieve  
 them since they are better placed to make the  
 assessment. Similar considerations have led the Court at a  
 domestic level to allow the legislative and executive authorities

A latitude or a “margin of discretion” to do the same, applying the  
 B “manifestly without reasonable foundation” standard in such  
 C cases.

139. The “manifest” standard has been used in cases where  
 the Court recognizes that the originator of the impugned  
 D measure is better placed to assess the appropriate means to  
 E advance the legitimate aim espoused. This has occurred in  
 F cases involving implementation of the legislature’s or  
 G executive’s political, social or economic policies but the  
 H principle is not confined to such cases.

140. The location of the standard in the spectrum of  
 reasonableness depends on many factors relating principally to  
 I the significance and degree of interference with the right: the  
 J identity of the decision-maker; and the nature and features of the  
 K encroaching measure relevant to setting the margin of discretion.

141. The difference between the two standards is one of  
 degree, with the Court in both cases, scrutinising the  
 L circumstances of the case and the factual bases claimed for the  
 M incursion.”

112. Most recently in *Kwok Cheuk Kin v Secretary for*  
*Constitutional and Mainland Affairs*, FACV 12/2016, 11 July 2017,  
 unreported, Ma CJ after referring to the principles set out in Ribeiro PJ’s  
 judgment in *Hysan* quoted above, emphasized:

“ 37. As can be seen therefore, the difference in approach of  
 the courts at the third stage varies depending on the particular  
 O circumstances of any given case and this is critical to bear in  
 P mind when looking at the impugned measure to see whether (a)  
 Q the stricter test of the measure being “no more than necessary”  
 R to deal with its legitimate aim; or (b) the test of the measure  
 S merely being “manifestly without reasonable foundation”, ought  
 T to be applied. One should not of course be pre-occupied with  
 U labels and instead adopt a flexible, though principled and  
 V structured, approach. Paragraphs 140 to 141 in the passage  
 quoted in the previous paragraph are instructive here.

38. Though a matter of degree, there are three aspects to  
 consider:-

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- B (1) The nature of the right in question and the degree to which it has been encroached on.
- C (2) The identification of the relevant decision-maker (in the case of legislation, this will be the Legislature).
- D (3) Relevance of the margin of appreciation.”
- E 113. I will examine more closely the three aspects identified by the
- F Chief Justice in the present context.
- G (1) *Nature of right and extent of encroachment*
- H 114. What QT alleged here is that she has been discriminated on
- I account of her sexual orientation. It firmly suggests that the stricter test
- J of “no more than necessary” should be adopted as the standard of scrutiny.
- K (a) Sexual orientation is now well established by the case law, both
- L international and local, as part of an individual’s personal characteristics like race, colour and sex:
- M *AL (Serbia)*, supra, per Baroness Hale at [29]; *Carson*, supra, per
- N Lord Hoffmann at [15] – [17]; *Fok Chun Wa*, supra, per Ma CJ at [77].
- O (b) Discrimination on account of sexual orientation, like any other
- P form of discrimination on account of personal characteristics, offends the notions of the respect due to the
- Q individual. It offends the notion that everyone is entitled to be treated as an individual and not a statistical unit: *Carson*,
- R ibid, per Lord Hoffmann. It seriously invades one’s dignity: *National Coalition for Gay and Lesbian Equality*, supra, per
- S Ackermann J at [54]; *Preddy*, supra, per Baroness Hale at [52]. It cannot be justified merely on utilitarian grounds:
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- A
- B *Carson*, ibid, per Lord Hoffmann. Justification thus
- C requires weighty reasons: *Preddy*, supra, per Baroness Hale at [53], noting that this is what Strasburg cases do;
- D *AL (Serbia)*, ibid, per Baroness Hale.
- E (c) Similarly, in Hong Kong, it is well settled that where the
- F encroaching measure is discriminatory on one of the suspect
- G grounds as identified in article 22 of the Hong Kong Bill of Rights, there would have to be “very weighty” reasons
- H justifying the incursion, obviously resulting in a much narrower margin of discretion: *Hysan*, supra, per Riberio PJ
- I at [11]. And sexual orientation falls within one of the suspected grounds in article 22: *Yau Yuk Lung*, supra, per
- J Li CJ at [11]. Thus, an encroaching measure based on sexual orientation is subject to the court’s severe scrutiny:
- K *Fok Chun Wa*, supra, per Ma CJ at [77] – [78].
- L 115. It is true that QT does not have a right to be granted a
- M dependant visa because it is, on true analysis, a privilege. But the Director accepts that he must administer the Policy in accordance with the
- N principle of equality. So even in considering if QT is eligible to be granted the privilege to remain in Hong Kong as SS’s dependant, the
- O Director must not discriminate her on the ground of sexual orientation.
- P Put another way, QT has a right not to be discriminated on account of her
- Q sexual orientation when the Director considers if she is eligible under the Policy. If she were so discriminated, she would be unjustifiably counted
- R as ineligible simply because of her sexual orientation. She would be unjustifiably denied of the opportunity to be considered by the Director if
- S she might be granted the privilege to remain in Hong Kong as SS’s
- T
- U
- V

dependent simply because of her sexual orientation. Viewed in this light, the extent of encroachment on QT’s right based on sexual orientation under the Policy is not unsubstantial.

(2) *The Director as the decision maker and the margin of appreciation*

116. These two aspects can be conveniently dealt with together.

117. It has been consistently held by the courts that the Director is entitled to exercise stringent control over immigration matters and he enjoys a wide margin of appreciation as to how to formulate and administer immigration policies. As Elias LJ in *AM v Entry Clearance Officer* [2009] UKHRR 1073 observed :

“ 65. ...This is an area of social policy concerning control of who should be allowed to enter into the country and in what circumstances. As I have noted, the courts are particularly reluctant to interfere in such areas.

66. ...[The] courts have frequently recognized that ‘bright line’ rules are generally acceptable in such cases notwithstanding that they might produce some hardship.”

118. The Policy is self-evidently part of the Director’s overall immigration policies. However, that does not detract from the adoption of a stricter test of “no more than necessary” in the present context.

(a) Although the court usually accords a wide margin of appreciation to the government on socio-economic policies, which as seen include immigration policy, where the encroaching measure imposed by such policies offends Hong Kong’s core values including differential treatment on

account of sexual orientation, the court will still scrutinize it with intensity. As Ma CJ explained in *Fok Chun Wa*, supra :

“ 77. ...The proposition that the courts will allow more leeway when socio-economic policies are involved, does not lead to the consequence that they will not be vigilant when it is appropriate to do so or that the authorities have some sort of carte blanche. After all, the courts have the ultimate responsibility of determining whether acts are constitutional or lawful. It would be appropriate for the courts to intervene (indeed they would be duty-bound to do so) where, even in the area of socio-economic or other government policies, there has been a disregard for core-values. This requires a little elaboration. Where, for example, the reason for unequal treatment strikes at the heart of core-values relating to personal or human characteristics (such as race, colour, gender, *sexual orientation*,<sup>22</sup> religion, politics, or social origin), the courts would extremely rarely (if at all) find this acceptable. These characteristics involve the respect and dignity that society accords to a human being. They are fundamental societal values....”

78. Where core values relating to personal characteristics are involved, the court will naturally subject the relevant legislation or decision to a particularly severe scrutiny....”

(b) The concept of margin of appreciation refers to that area of discretion which the courts will accord to the legislature or a decision-maker. It reflects the separate constitutional and institutional responsibilities of the judiciary and other organs of the government : *Hysan*, per Ribeiro PJ at [117]; *Fok Chun Wa*, supra, per Ma CJ at [40]. However, when it comes to the right of an individual to equal respect, including not to be discriminated on account of sexual orientation, the courts are the guardians of such rights. The courts will examine the

<sup>22</sup> Emphasis supplied by me.

A issues of justification very carefully : *Carson*, supra, per  
 B Lord Hoffmann at [16]. In fact, the courts are duty bound to  
 C do so : *Fok Chun Wa*, supra, per Ma CJ at [77].  
 D  
 E 119. Ms Carss-Frisk submitted that the lesser degree of scrutiny,  
 F namely, “manifestly without reasonable foundation” should be adopted.  
 G She took two points.  
 H  
 I 120. First, as part of his stringent immigration policy overall, the  
 J Director should be given a wide margin of appreciation in formulating and  
 K administering the Policy. I have just explained why notwithstanding that,  
 L a stricter test of “no more than necessary” should be adopted.  
 M  
 N 121. Second, the Policy as applied by the Director at worst  
 O amounts to indirect discrimination. A laxer degree of scrutiny would  
 P suffice. However, that is flatly contradicted by authorities, which show  
 Q that even for indirect discrimination based on sexual orientation, the courts  
 R will subject the encroaching measure to severe scrutiny : see for example,  
 S *Rodriguez*, supra, and *Preddy*, supra, per Baroness Hale at [53]. For my  
 T part, I cannot see any logical basis to render the scrutiny of the invasion of  
 U rights relating to personal characteristics, such as sexual orientation,  
 V dependent on the form of discrimination. If it is discrimination, be it  
 direct or indirect, the gravamen of the encroachment and the offense it  
 caused to the complainant’s dignity would just be the same. The same  
 standard of scrutiny must apply.

A  
 B E. THE PRESENT CASE  
 C  
 D 122. Applying Lord Nicholls’s approach to the present case, I now  
 E come to the differential treatment in the Eligibility Requirement.  
 F  
 G E1. Indirect discrimination  
 H  
 I 123. It is the Director’s case that the Policy enables a sponsor to  
 J bring in his/her closest dependants to live in Hong Kong and to care for  
 K and support them in Hong Kong. Of all the dependants that a sponsor  
 L may have, only two categories are eligible for consideration if a dependant  
 M visa should be granted. The sponsor’s spouse is one category. The  
 N sponsor’s unmarried dependant child under the age of 18 is the other.  
 O Both of them are regarded by the Director as the sponsor’s closest  
 P dependants for the purpose of the Policy. Whether a spouse or a  
 Q dependant child under 18, dependency on the sponsor underlies the  
 R applicant’s eligibility for the purpose of the Policy.  
 S  
 T 124. In the case of a spouse, interdependency is part and partial of  
 U his/her marriage with the sponsor. As a married couple, the applicant and  
 V his/her sponsor are engaged in the closest form of interpersonal  
 relationship. It is characterized by love, intimacy, stability,  
 companionship, the sense of belonging to each other, mutual care and  
 support.  
 125. An unmarried couple, whether heterosexual or homosexual,  
 in a stable, long term and committed relationship can have exactly the

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same sort of interdependent relationship as a married couple. In terms of dependency, their situation is analogous to that of a married couple. They are however excluded under the Eligibility Requirement because the Director draws the bright line at marriage. Since all unmarried couples, heterosexual or homosexual, are similarly excluded, the Director has not singled out same-sex couples for differential treatment. I accordingly reject Ms Rose's argument that the Policy, as applied by the Director, amounts to direct discrimination on the ground of sexual orientation.

126. However, under the Eligibility Requirement, a heterosexual unmarried couple may make themselves eligible by getting married if they so wish. But a homosexual unmarried couple cannot do so because they cannot marry in the sense as understood according to the law of Hong Kong. They will never be able to meet the Eligibility Requirement, however much they want to avail themselves of the Policy. In this way, the Eligibility Requirement puts homosexual unmarried couples as a group at a serious disadvantage as compared to heterosexual unmarried couples. As demonstrated by authorities, this may constitute indirect discrimination on the ground of sexual orientation if not justified.

127. In *Preddy*, supra, the defendants, who owned and ran a private hotel, believed that it was sinful for persons, whether homosexual or heterosexual, to have sexual relations outside marriage and that, if they permitted unmarried couples to share a double bed, they themselves would be involved in promoting what they believed to be sin. Based on those principles, they operated a policy to restrict occupancy of the three double-bedded rooms in their hotel to married couples. The defendants

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refused to honour a booking for a double-bedded room made by the claimants, a homosexual couple in a civil partnership. The claimants brought proceedings complaining direct discrimination on the ground of sexual orientation or indirect discrimination. The Supreme Court held that as a civil partnership was indistinguishable from the status of marriage in the United Kingdom and the defendants' policy of letting double-bedded rooms only to heterosexual couples who were married and not to same-sex couples who were in a civil partnership therefore applied a criterion which was based solely on sexual orientation and amounted to direct discrimination. The Court also held that if the discrimination were not direct the policy would (per Baroness Hale, Lord Kerr and Lord Toulson) or did (per Lord Neuberger and Lord Hughes) amount to indirect discrimination because, although it applied to all unmarried couples, it put homosexual couples as a group at a serious disadvantage as compared with heterosexual couples since the former could not enter together into a status which the defendants would regard as a marriage, when the defendants failed to justify.

128. *Rodriguez*, supra, is another authority on the point. To recap, it was the policy of the Gibraltar government to grant joint tenancies of government housing to couples only if they were married to one another or have a child in common. The policy excluded same-sex couples who could not marry nor have children together. The Privy Council held that the differential treatment imposed by the policy was unconstitutional under the equality provision in the Gibraltar Constitution. Baroness Hale said at [19] :

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“ In this case we have a clear difference in treatment but not such an obvious difference between the appellant and others with whom she seeks to compare herself. The appellant and her partner have been denied a joint tenancy in circumstances where others would have been granted one. They are all family members living together who wish to preserve the security of their homes should one of them die. The difference in treatment is not directly on account of their sexual orientation, because there are other unmarried couples who would also be denied a joint tenancy. But even if...these are the proper comparator, the effect of the policy upon this couple is more severe than on them. It is also more severe than in most cases of indirect discrimination, where the criterion imposed has a disparate impact upon different groups. In this case, the criterion is one which this couple, unlike other unmarried couples, will never be able to meet. They will never be able to get married or to have children in common. And that is because of their sexual orientation. Thus it is a form of indirect discrimination which comes as close as it can to direct discrimination. Indeed, Mr Singh puts this as a Thlimmenos case: they are being treated in the same way as other unmarried couples despite the fact that they cannot marry or have children in common...”

129. Ms Rose also relied on *Taddeucci and McCall v Italy*, Application No. 51362/09, 30 June 2016. There, the applicants had formed a same-sex couple since 1999. They lived in New Zealand with the status of unmarried couple until December 2003 when they decided to settle in Italy on grounds of the first applicant’s poor health. During their first period of residence in Italy, the second applicant had a student’s temporary residence permit. He subsequently applied for a residence permit for family reasons, which was rejected in October 2004. Proceedings ensued in which the applicants invoked article 8 (right to family life) and article 14 (right to equality on enjoyment of rights). By a majority of 6:1, the ECtHR held that the applicants’ right to family under article 8 was engaged; that with regard to eligibility for a residence permit for family reasons, the applicants were treated in the same way as persons

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in a significantly different situation from theirs, namely, heterosexual partners who had decided not to regularize their situation,<sup>23</sup> and that the differential treatment was not justified. In his partly dissenting opinion, Judge Sicilianos queried the majority’s reasoning, noting that it was unprecedented in the Court’s case law and that the same argument could be raised in respect of other rights, thereby seriously undermining the special status of marriage.

130. Ms Rose asked us to apply *Taddeucci* because, according to her, the facts are similar to the present case. Ms Carss-Frisk submitted that the majority was wrong and asked us to follow Judge Sicilianos’s judgment.

131. For present purposes, I need not dwell on counsel’s submissions on the correctness or otherwise of *Taddeucci*. I say this for two reasons. First, *Taddeucci* does not add much to what *Preddy* and *Rodriguez* had decided in terms of principle. And I do not think it is Ms Carss-Frisk’s submission that the two English cases were wrongly decided. So even if the majority in *Taddeucci* was wrong as she contended, it does not take her case any further. As to Judge Sicilianos’s concern that the special status of marriage might be seriously undermined, I think the check on any possible floodgate lies in (1) the recognition that there are certain core rights pertaining to marriage and that differential treatment based on those core rights cannot be regarded as discriminatory; and (2) the justification analysis. When the justification analysis is engaged, noteworthy

<sup>23</sup> Hence a form of *Thlimmenos* discrimination.

right pertaining to marriage said to have been infringed by reason of discrimination on account of sexual orientation will be affected. It will happen only if the encroaching measure does not pass the justification test. And it will only happen after the court has, under the guidance of a rich jurisprudence in this area of the law, critically examined all the issues in a structured manner as mandated by the justification analysis.

132. Applying the principle enunciated in *Predyand Rodriguez*, the Eligibility Requirement based on marital status may constitute indirect discrimination on account of sexual orientation against homosexual unmarried couples in a stable, long term and committed relationship, if not justified.

133. This brings me to the justification proffered by the Director.

*E2. Justification by the Director*

134. To recap, the justification advanced by the Director is this :

“ The difference in treatment pursues the legitimate aim of striking a balance between (1) maintaining Hong Kong’s continued ability to attract people with the right talent and skills to come to Hong Kong to work (by giving them the choice of bringing in their closest dependants to live with them in Hong Kong and to care for and support them in Hong Kong); and (2) the need for a system of effective, strict and stringent immigration control in the light of Hong Kong’s small geographical size, huge population, substantial intake of immigrants, relatively high per capita income and living standard, and local living and job market conditions, which bring constant and high pressure on Hong Kong’s society as a whole in particular the labour market, social benefits system, housing, education and infrastructure.

To achieve the said legitimate aim, the Director adopts a bright-line rule, based on marital status as defined by Hong Kong’s matrimonial law and which the Director is obliged to follow and give effect to, and which provides for legal certainty and administrative workability and convenience, which is rationally connected with the said aim and is no more than necessary to accomplish the said aim.”

*E2.1 Legitimate aim*

135. The Director must first prove that the Eligibility Requirement serves a legitimate aim.

136. It is common ground that the avowed aim of striking the balance as described is a legitimate one. It must be right.

137. Hong Kong is a regional hub of services and a world city. As one of the most important international financial centers, Hong Kong is committed to attract not only capital but also talented and skilled people (which is in itself an invaluable form of resources) to come to work and live here. Its ability to continue to attract talented and skilled people to live and work here is essential to its success, especially against a backdrop of increased globalization and intense competition from other places. The best way to achieve this of course is to open up the applications for dependant visas to all, irrespective of their sexual orientation. It is better to include rather than exclude homosexual couples whom otherwise Hong Kong would like to attract. However, given Hong Kong’s unique geographical, economic and societal circumstances as rightly pointed out by the Director, there is an obvious need to exercise stringent immigration

A control. We simply cannot afford such an open-ended policy. Hence  
B the need to strike the balance between these two competing factors.

C *E2.2 Rationality*

D 138. The Director must next prove that the Eligibility Requirement  
E is rationally connected to the legitimate aim of striking the balance as  
F described. In this regard, it is not sufficient for the Director to justify the  
G Policy generally. He must justify the discriminatory aspect of the  
H Eligibility Requirement based on marital status.

I 139. As rightly submitted by Ms Rose, the Director's avowed aim  
J of balancing (a) the encouragement of talented people to live and work in  
K Hong Kong with (b) the maintenance of stringent immigration control  
L applies just as much to talented homosexual people as it does to talented  
M heterosexual people. Simply put, the Director's avowed aim of striking  
N the balance is applicable to all potential talented people that Hong Kong  
O wishes to attract irrespective of their sexual orientation. Yet the  
P Eligibility Requirement only permits heterosexual married people to bring  
Q their spouses with them. Thus analyzed, the Eligibility Requirement is  
R inconsistent with the Director's avowed aim.

S 140. The Director draws the bright line at marriage for two main  
T reasons. First, the Directors says he is obliged to and follow and give  
U effect to the legal definition of marriage in Hong Kong in setting the  
V

A Eligibility Requirement. This is a point which Au J accepted and  
B emphasized repeatedly in his judgment.<sup>24</sup> In fact, the Judge said:<sup>25</sup>

C “ When viewed under this context, if for the purpose of the  
D Policy, the Director is to treat a same-sex marriage-like  
E relationship equivalent to the marriage legally recognized in  
F Hong Kong, it would amount to requiring the Director to at least  
G indirectly recognize civil partnership or same-sex marriage as  
H valid in Hong Kong through the backdoor. This would  
I effectively require the Director to apply a policy with an element  
J which is regarded as unlawful in Hong Kong.”

K 141. Ms Rose submitted that the Judge erred in so holding as the  
L Director has no legal obligation to follow and give effect to Hong Kong  
M matrimonial law in administering the Policy. Ms Carss-Frisk accepted  
N that the Judge might have gone too far but she submitted that the Director  
O is entitled to adopt the statutory definition of marriage in administering the  
P Policy. As the statutory definition is sanctioned by the Basic Law, it is a  
Q powerful justification.

R 142. This requires a closer look of the nature of the dependant visa.  
S As said, a dependant visa is no more than a privilege conferred by the  
T Director on the applicant. It enables the applicant to stay in Hong Kong  
U in the capacity as a dependant with conditions attached. It does not have  
V the legal effect of the Director recognizing the validity of the union or  
relationship between the applicant and the sponsor, be it heterosexual or  
homosexual, under Hong Kong law.

<sup>24</sup> See [55(3)] above.  
<sup>25</sup> Judgment [68].

A 143. In setting the Eligibility Requirement, the Director is not  
B legally obliged to follow and give effect to marital status as defined in  
C Hong Kong law, even if it is sanctioned by the Basic Law. In fact, the  
D Director does not do so in every scenario. For it is the Director's own  
E case that for polygamous marriages, he allows the sponsor to bring with  
F him any one of his spouses at his own choosing.

G 144. Although it may be viewed as an exception, how the Director  
H deals with the applicants to polygamous marriages contradicts his case in  
I two significant ways. First, contrary to his stated position, the Director  
J is not legally obliged to follow and give effect to Hong Kong matrimonial  
K law. If he were, he could not have allowed applications in cases of  
L polygamous marriages. Second, it cannot be seriously suggested that by  
M granting a dependant visa to a spouse to a polygamous marriage, the  
N Director has thereby recognized the validity of such marriage. It destroys  
O the argument of recognition of any form of marriage other than what is  
P legal under Hong Kong law by way of backdoor.

Q 145. The Director's stated objective of following and giving effect  
R to Hong Kong matrimonial law would have stronger force had it been his  
S case on justification that he wished to uphold the institution of marriage in  
T Hong Kong. For there are authorities to support the proposition that  
U protection of traditional marriage is capable of being a legitimate and  
V weighty aim. But that is simply not his case before us.

146. The second reason why the Director draws the bright line rule  
at marriage is administrative workability and convenience. In my view,

A the Director is entitled to do so, subject always to the principle of  
B equality. Under the bright line rule, the Director is entitled to lay down a  
C rule that is clear, certain and administratively convenient in implementing  
D the Policy : *Fok Chun Wa*, supra, per Ma CJ at [73]. For marriage, it is a  
E universally recognized institution. There is no ambiguity in it as a  
F requirement for eligibility under the Policy. Marriage can be proved  
G objectively and with ease. Usually, it is done by producing the requisite  
H documentary evidence, such as marriage certificate. For unmarried  
I homosexual couples whose relationship is legalized in the form of civil  
J partnership or same-sex marriage, the same degree of administrative  
K workability and convenience, in terms of definition, existence and proof  
L of the relationship, applies to them as it does to marriages. So excluding  
M them by reason of administrative workability and convenience is not  
N rational.

O 147. For unmarried couples, heterosexual and homosexual alike,  
P whose relationship is not legalized, the position is markedly different.  
Q Unlike legalized relationships which can be proved with ease by  
R production of the relevant certificates, non-legalized relationships may be  
S difficult to prove. The evidence presented by the applicant may be  
T difficult to verify. Establishing their relationship objectively may hence  
U be difficult. It is also difficult to objectively assess if their professed  
V relationship possesses the character of dependence as in the case of a  
marriage, civil partnership or same-sex marriage. The process of vetting  
the application may become very onerous. The Director is entitled to  
draw the bright line to exclude unmarried heterosexual couples and  
unmarried homosexual couples who have not legalized their relationshipso

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as to relieve himself of such unnecessary burdens in administering the Policy.

148. For the above reasons, I hold that in the case of civil partnership and same-sex marriage, the Director has failed to satisfy that the Eligibility Requirement is rationally connected to the avowed aim of striking the balance as described. The Director has therefore failed to justify the indirect discrimination on account of sexual orientation that QT suffers from the Eligibility Requirement.

*E2.3 Necessity and the fourth step*

149. That being my conclusion on rationality, the remaining two steps of the justification analysis do not arise for consideration. On necessity, I would only say that apart from a bare assertion, the Director has not explained why, in the case of civil partnership and same-sex marriage, the discriminatory aspect of the Eligibility Requirement is no more than necessary to achieve the avowed aim of striking the balance as described.

*F. DISPOSITIONS*

150. In the circumstances, I would respectfully differ from Au J. I would allow QT's appeal and set aside the Judge's judgment.

151. As to the actual relief to be granted, I think the parties should be able to come up with a proposed draft order by consent after reading

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our judgment. I would therefore direct them to submit a proposed draft order by consent within 28 days after handing down of this judgment for our consideration, or failing consent, they should submit their respective proposed draft orders within the same time limit for our consideration. The order would then be finalized on paper.

152. Costs should follow the event. I would propose to make an order nisi that QT shall have the costs below and on appeal, to be taxed if not agreed, with a certificate for two counsel; and that QT's own costs are to be taxed in accordance with the legal aid regulations.

153. Last but not least, I would like to thank counsel for their very able assistance.

Cheung CJHC:

154. Accordingly, we allow this appeal in terms of the orders and directions proposed by Poon JA.

(Andrew Cheung)  
Chief Judge of the  
High Court

(Johnson Lam)  
Vice President

(Jeremy Poon)  
Justice of Appeal

A		
B		
C	Ms Dinah Rose QC and Mr Timothy Parker, instructed by Vidler & Co., assigned by the Director of Legal Aid, for the applicant (appellant)	
D		
E	Ms Monica Carss-frisk QC, Mr Stewart Wong SC and Ms Grace Chow, instructed by Department of Justice, for the respondent (respondent)	
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LONG STAY FOREIGN NATIONALS

# Permanent Residency After 7 Years Continuous Ordinary Residence in the HKSAR

**HONG KONG VISA**  
CENTRE[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)**RIGHT OF ABODE****1**

Claim the RoA by applying to verify your eligibility for a HKPID Card

**2**

For our purposes, you are a non-Chinese citizen resident in HK for not less than seven years

**3**

Need to show 7 years continuous ordinary residence

**4**

No outstanding taxation liabilities nor security objections

**The RoA is manifested in a Hong Kong Permanent Identity Card**

## RoA for Non-Chinese Citizens

The information which follows relates to the Right of Abode for long stay foreign nationals of Hong Kong who are not Chinese Citizens.

### Eligibility

To be eligible for the Right of Abode you need to have had "*continuous residence in Hong Kong for a period of not less than seven years*" all the while holding a qualifying residence visa (this excludes Foreign Domestic Helpers and persons admitted under the Supplementary Labour Scheme) and have taken Hong Kong as your only place of permanent residence (as evidenced by your intention and conduct.)

### Approvability Test

Subject to there being no security objection and no outstanding taxation liabilities, if you have been continuously resident in Hong Kong for a period not less than seven years and will declare that you have taken Hong Kong as your only place of permanent residence (evidenced via your intention and conduct) you should, *a priori*, be granted the Right of Abode.

### Structuring Your Argument

The key challenge is to be able to argue away any periods of missing residence. Absences from Hong Kong of more than 6 months will require proof that, irrespective of the length of absence, at the time of your departure from the HKSAR, your intention was to depart only temporarily. Your application can also be complicated by the fact that you could be holding permanent residence in a third country, not being the country of the passport which you are current holding. Case law underpinning the current procedures governing how the Right of Abode is administered by the Director of Immigration state that the applicant should be able to demonstrate that he has taken concrete steps (via intention and conduct) to having taken Hong Kong as his only place of permanent residence. This notwithstanding, the HKID do appear to have taken a liberal interpretation of the words of the judge but it is prudent to downplay the fact of any third country permanent residence at the time you are declaring you have taken Hong Kong as [your current and] only place of permanent residence.

### How to Apply

You must apply to verify your eligibility for a Permanent Hong Kong Identity Card via form ROP145 which is submitted to the HKID at Immigration Tower via the Right of Abode section along with the completed the declaration on Form ROP146. Alternatively you can initiate your application on line via the dedicated online submission process located at:

<http://www.gov.hk/en/apps/immpermanentidcardapply.htm>



### Approval Formalities

After your eligibility for a permanent identity card has been verified, your condition of stay in Hong Kong will be cancelled and you will be asked to attend the Registration of Persons Office to apply for a Hong Kong permanent identity card. Kids under 11 years of age will receive an endorsement in their passport stating that their eligibility for a permanent identity card is verified; approved children over 11 must apply for a PHKID in their own right.

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)



Preparing Your Case

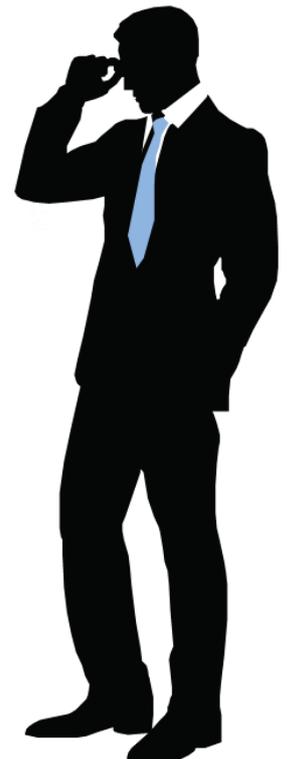
[\(Click to Watch\)](#)

#### Highlights

- Continuous ordinary residence of not less than 7 years is required
- Any absences in that time to have been of a temporary nature
- You will need to declare that you have taken Hong Kong as your only place of permanent residence
- Apply by seeking to verify your eligibility for a Permanent Identity Card



Discussion



## Refusal & Appeal

If your application for the Right of Abode is refused, you may appeal to the Registration of Persons Tribunal under Section 3C of the Registration of Persons Ordinance which deals with appeals made under section 3D(1) of the Ordinance by a person who is aggrieved by a decision of a registration officer not to issue a permanent identity card to him.

## Documents & Approach Required

1. A copy of your resume (but not for children and spouse).
2. A full copy all passports held during the previous seven year period.
3. Copies of salaries tax returns for the last seven years (for all adults who have worked).
4. Copy of residential tenancy agreements (for renters) or land registry record of your residence in Hong Kong (for property owners) for the 7 years prior to submitting the application.
5. A testimonial from your current employer stating the length of time you have been employed by them.
6. Any other references you might have from previous Hong Kong employers which state your time of employment with them.
7. Copies of utilities bills, bank and credit card statements and other papers which attest to a consistent period of residence in Hong Kong for the requisite seven years.
8. A copy of your Smart Hong Kong Identity Card.
9. Detailed supporting letter which sets out the chronology of your life in Hong Kong.
10. Statement of Travel Records (HKID Form ID697).

Spouse and dependant children over seven years of age born overseas who have been in continuous residence with you in Hong Kong for a minimum of seven years will 'piggyback' their applications on yours. Children born in Hong Kong during your ordinaru residence will have their eligibility for a PHKID verified at the same time as their parents so long as applications are made at the same time. The presumption by the HKID is that your dependants will have been resident with you all throughout the 7 years but any further proof you can supply (such as school reports, fees invoices etc) will help tremendously. If your kids have spent time abroad in pursuit of a full time education their continuity of residence for visa purposes will not necessarily be broken but it helps greatly if they have maintained HKSAR dependant visa status throughout the time of their studies outside of Hong Kong. These privileges extend beyond the normal 18 years of age demarcation so long as the period of education was unbroken throughout and 'normal' residence in Hong Kong resumed immediately after the full time course of education overseas was completed.

## Other Resources



Discussion



[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)



## Right of Abode

- Application forms ROP145/146
- A copy of your resume (but not for children and dependant spouse).
- A full copy all passports held during the previous seven year period.
- Copies of salaries tax returns for the last seven years (for all adults who have worked).
- Copy of residential tenancy agreements (for renters) or land registry record of your residence in Hong Kong (for property owners) for the 7 years prior to submitting the application.
- A testimonial from your current employer stating the length of time you have been employed by them.
- Any other references you might have from previous Hong Kong employers which state your time of employment with them.
- Copies of utilities bills, bank and credit card statements and other papers which attest to a consistent period of residence in Hong Kong for the requisite seven years.
- Hong Kong Identity Card copies for all applicants who hold them.
- Detailed supporting letter which sets out the chronology of your life in Hong Kong.
- Statement of Travel Records (HKID Form ID697) for all applicants.

Spouse and dependant children over seven years of age born overseas who have been in continuous residence with you in Hong Kong for a minimum of seven years will 'piggyback' their applications on yours. Children born in Hong Kong during your ordnmaru residence will have their eligibility for a PHKID verified at the same time as their parents so long as applications are made at the same time. The presumption by the HKID is that your dependants will have been resident with you all throughout the 7 years but any further proof you can supply (such as school reports, fees invoices etc) will help tremendously. If your kids have spent time abroad in pursuit of a full time education their continuity of residence for visa purposes will not necessarily be broken but it helps greatly if they have maintained HKSAR dependant visa status throughout the time of their studies outside of Hong Kong. These privileges extend beyond the normal 18 years of age demarcation so long as the period of education was unbroken throughout and 'normal' residence in Hong Kong resumed immediately after the full time course of education overseas was completed.



Discussion

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## Right of Abode

### Notes



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LONG STAY FOREIGN NATIONALS

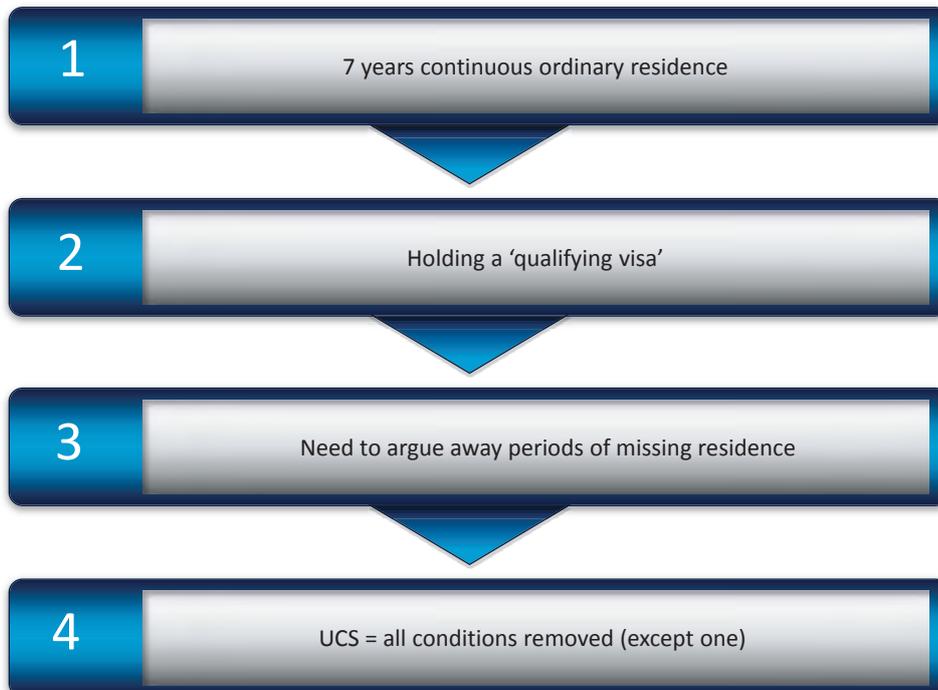
# Residence in Hong Kong With No Conditions Attached

(not entirely true)

## HONG KONG VISA CENTRE

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### QUALIFYING FOR UNCONDITIONAL STAY



**UCS is an administrative convenience – it is NOT the same as RoA**

# Unconditional Stay

## Eligibility

To be eligible for Unconditional Stay you need to have had "*continuous residence in Hong Kong for a period of not less than seven years*" all the while holding a qualifying residence visa (this excludes Foreign Domestic Helpers and persons admitted under the Supplementary Labour Scheme.)

## Approvability Test

Subject to there being no security objection, if you have been continuously resident in Hong Kong for a period not less than seven years you should, *a priori*, be granted permission to remain in Hong Kong without the need to apply for any sort of visa and without any limitation imposed on your length of stay (thus making your residence 'unconditional').

## But Subject to One Condition

The term 'unconditional' is confusing as there is, in fact, one condition imposed along with Unconditional Stay. Namely, if you have been granted Unconditional Stay you must make yourself physically present in the HKSAR at least once in any given period of twelve months. This 'one entry' rule allows for the maintenance of continuing eligibility for Unconditional Stay status after it has been granted. Any failure to be physically present in Hong Kong for a period greater than twelve months will mean that your Unconditional Stay status will be relinquished by operation of law and you will once again have to apply to the HKID for a suitable visa covering your proposed activity in the HKSAR (employment, business investment etc).

## UCS is NOT the ROA

No sponsorship is required for Unconditional Stay. The rationale for this immigration status is the idea that after a lengthy period of trouble-free residence you should be allowed to escape the grip of the HKID as regards your reason for remaining in Hong Kong and also the time you ought to be allowed to remain here. This status is merely an administrative convenience and is NOT the same as Permanent Residence (aka the Right of Abode). Unconditional Stay has an important role to play for those long term foreign national residents of Hong Kong who have, for their own reasons, not taken Hong Kong as their place of permanent residence and who can not, in all good faith, make a declaration to that effect as part of the process of acquiring a Permanent Hong Kong Identity Card. Unconditional Stay is also the long term immigration status of choice for holders of Capital Investment Visas who have been resident on and off in Hong Kong all throughout the 7 years they have kept their investments in the HKSAR but who can not show they have been continuously resident in this time. Whilst such people will not be eligible for the Right of Abode, the HKID do afford them Unconditional Stay status without the need for unbroken continuous residence, the rationale being that having your HKD10 million (or HKD6.5 M if you received your visa before October 2010) invested in the HKSAR for not less than 7 years should afford you a long term residence visa without any conditions and thus allow you to liquidate your Hong Kong holdings, the Capital Investment visa programme having served its purposes in your circumstances.

## Structuring Your Argument

The key challenge is to be able to argue away any periods of missing residence. Absences from Hong Kong of more than 6 months will require proof that, irrespective of the length of absence, at the time of your departure from the HKSAR, your intention was to depart only temporarily.



Preparing Your Case

[\(Click to Watch\)](#)

### Highlights

- Continuous ordinary residence of not less than 7 years is required
- Any absences in that time to have been of a temporary nature
- Status is maintained if you enter Hong Kong at least once in 12 months
- Conditional Stay is not the same as Right of Abode



Discussion



## How to Apply

Application can be via the Extension of Stay procedures or by Mail. The method chosen is usually a function of whether you now have a need to secure an extension to your current period of stay or not. In both cases, the HKID will receive the application bundle from you and then contact you 6-12 weeks later with either a request for further information or notification of approval and an invitation to attend at Immigration Tower to complete the approval formalities.



## Approval Formalities

When you attend at the Immigration Tower, the HKID will issue you will a new visa label which states you now have Unconditional Stays status. At the same time, all limitations to your previous visa will be lifted, including sponsorship obligations and the finite period which you were previously allowed to remain in Hong Kong. You will also be advised to apply for a new Hong Kong Identity Card which will denote that you now have "U" status, now that you are a resident holding Unconditional Stay.

## Refusal & Appeal

If your application for Unconditional Stay is refused, you can request a Reconsideration in the first instance and, if that proves unsuccessful, you may make an application under the section 53 Immigration Ordinance 'Review of a decision of a public officer' process via the Chief Secretary's office.

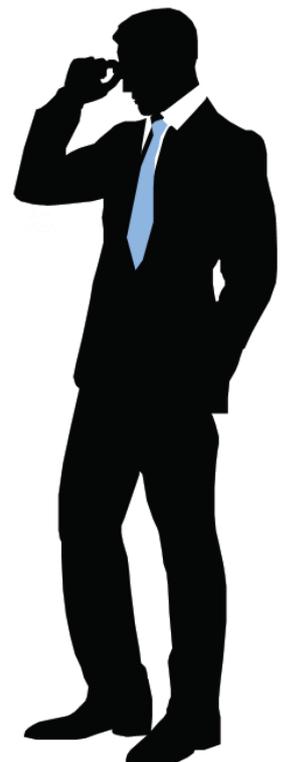
## Documents & Approach Required

1. A copy of your resume (but not for children and spouse).
2. A full copy all passports held during the previous seven year period.
3. Copies of salaries tax returns for the last seven years (for all adults who have worked).
4. Copy of residential tenancy agreements (for renters) or land registry record of your residence in Hong Kong (for property owners) for the 7 years prior to submitting the application.
5. A testimonial from your current employer stating the length of time you have been employed by them.
6. Any other references you might have from previous Hong Kong employers which state your time of employment with them.
7. Copies of utilities bills, bank and credit card statements and other papers which attest to a consistent period of residence in Hong Kong for the requisite seven years.
8. Hong Kong Identity Card copies for all applicants who have them.
9. Detailed supporting letter which sets out the chronology of your life in Hong Kong.
10. Statement of Travel Records (HKID Form ID 697).
11. Forms SF/IM/1657 & ID91

Spouse and dependant children over seven years of age who have been in continuous residence with you in Hong Kong for a minimum of seven years will 'piggyback' their applications on yours. The presumption by the HKID is that your dependants will have been resident with you all throughout the 7 years but any further proof you can supply (such as school reports, fees invoices etc) will help tremendously. If your kids have spent time abroad in pursuit of a full time education their continuity of residence for visa purposes will not necessarily be broken but it helps greatly if they have maintained HKSAR dependant visa status throughout the time of their studies outside of Hong Kong. These privileges extend beyond the normal 18 years of age demarcation so long as the period of education was unbroken throughout and 'normal' residence in Hong Kong resumed immediately after the full time course of education overseas was completed.



Discussion





## Unconditional Stay

- Application Form ID91 for each applicant.
- A copy of your resume (but not for children nor dependant spouse).
- A full copy all passports held during the previous seven year period.
- Copies of salaries tax returns for the last seven years (for all adults who have worked).
- Copy of residential tenancy agreements (for renters) or land registry record of your residence in Hong Kong (for property owners) for the 7 years prior to submitting the application.
- A testimonial from your current employer stating the length of time you have been employed by them.
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Discussion

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**Unconditional Stay**

**Notes**



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# Trying Again After Your First Application is Refused

## HONG KONG VISA CENTRE

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### WHY DO APPLICATIONS GET DENIED?

#### Case Fatally Flawed From the Outset

Approval markers, incorrect relationships, security considerations, not approvable *ab initio*, previous denials, poor history with HKID

#### Very Poor Preparation & Approvability Analysis

Treating all cases the same, argument not persuasive, argumentative not administrative

#### Insufficient Supporting Documentation

Critical paperwork missing, laziness

#### Requests of the HKID Not Afforded Significance

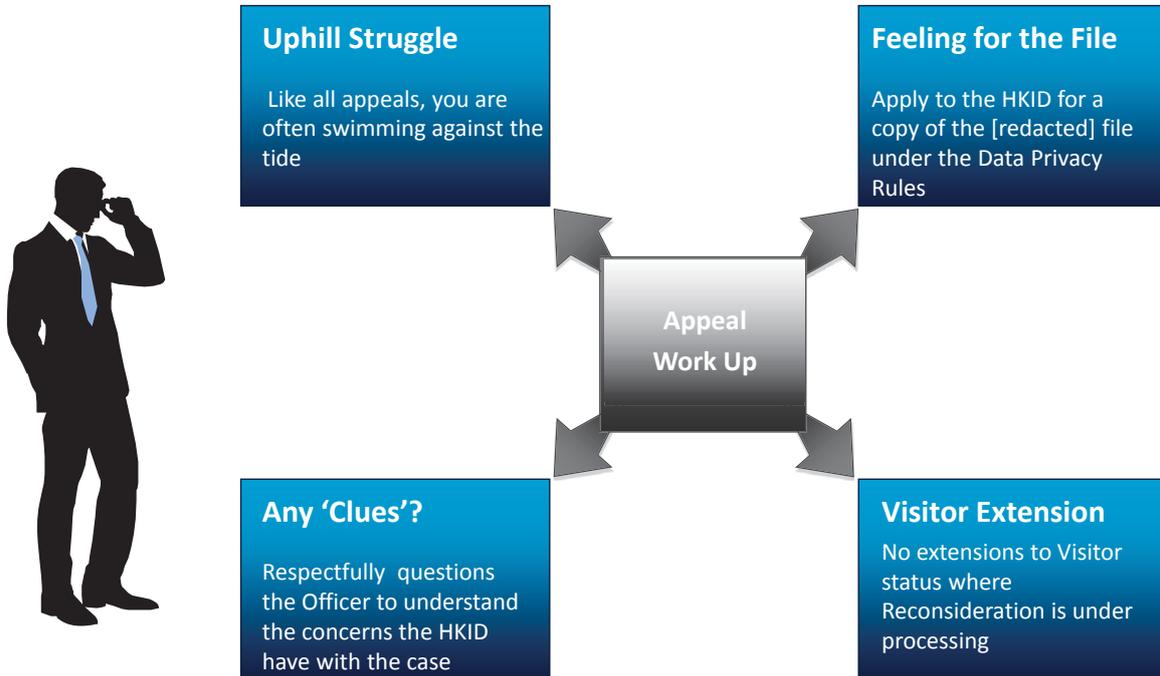
If the HKID request it, they need it – so get it to them – no questions asked!

#### Applicant Caught Breaching Conditions of Stay

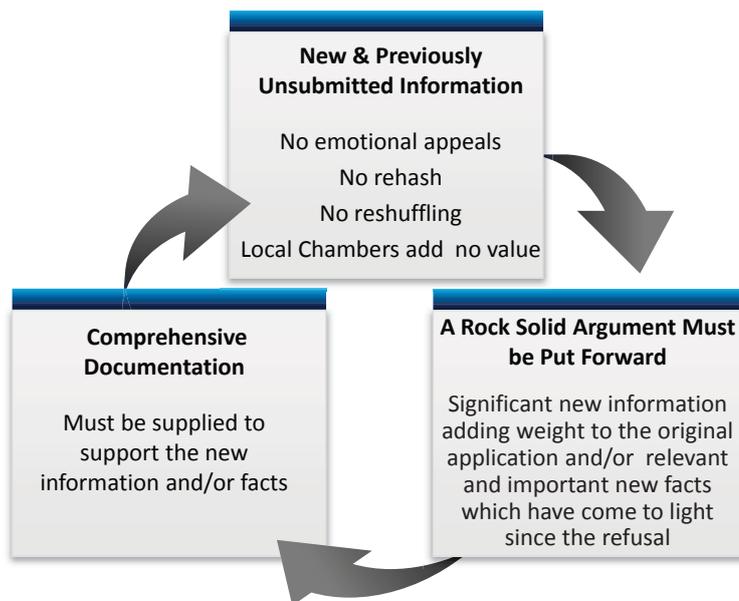
During the application consideration process whilst remaining in Hong Kong as a Visitor or pre-taking up of unapproved employment



**REQUESTING A CASE RECONSIDERATION**



**ARGUING THE RECONSIDERATION**



**You have only one good chance to fix a previously denied case - make it count!**

**TIMELINE TO A DECISION**



# Reconsideration

## Why Apply for a Reconsideration?

Your case has been refused. You are disappointed, naturally, and your plans for Hong Kong have been dealt a severe body blow. So what can you do? The answer is to apply to have the decision to refuse your application reconsidered by the HKID but, be warned, it is an uphill struggle - and you only get one good shot at it, so you had better make it count.

## Grounds for a Reconsideration

The HKID will only entertain an application for a reconsideration of a decision to refuse an application if there is significant additional, new information adding weight to the original application or relevant and important new facts which have come to light since the refusal - with comprehensive verifying documentation to support.

## What Does All this Mean?

It means that you need to be ready to further argue your case stridently and have the bullets ready to fire in support. Emotional appeals are fruitless; as are a collection of mere testimonials from your consulate or chambers of commerce.

## How Do I Figure Out What Has Gone Wrong?

There are typically five key underlying reasons why cases get denied. It could be that the case was destined to fail from the get go as the applicant was incapable of passing the approvability test applicable to the visa type applied for. It might be that the case was very poorly put together or incorrectly argued. Often times, applicants are unable to come up with critical supporting documentation required by the HKID or other specific information requests are not adhered to. Finally, if the applicant has a poor immigration record in Hong Kong the Immigration Department could be minded not to afford the applicant the privilege of residence.

## Documents Required

This really does all depend on how you intend to further argue your case.

## Submitting Your Reconsideration Application

You should submit your application bundle for the Reconsideration in the same way as you submitted your original application. If you are a Visitor in Hong Kong, the HKID will not afford you an interim extension to your current period of stay pending the finalisation of the Reconsideration process and notification of the outcome.

## Further Appeal

You can apply under s 53 of the Immigration Ordinance for the review of a decision of a public officer or seek the direct intervention of the Chief Executive if there is a matter of significant public interest at issue.

## Further Resources



Discussion

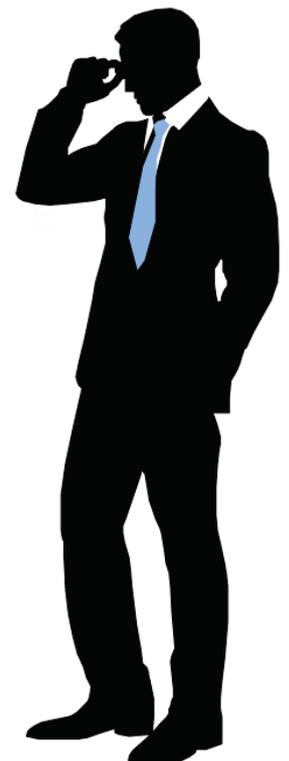


Preparing Your Case

(Click to Watch)

### Highlights

- All applicants for residence visas can request a reconsideration of a decision to refuse an application
- Not an easy task and should not be approached lightly
- There are typically 5 key underlying reasons why cases get denied
- The essential ground for a reconsideration is new and previously unsubmitted information
- Reconsiderations without merit get knocked back very quickly





## Reconsideration

- Form ID91
- Collected further documentation which serves to support the representations you have made as to new and important facts which have come to light since the application was refused.
- Detailed covering letter which sets out new and important facts which have come to light since the application was refused.

## Notes



Discussion

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## Appeal Options – When Reconsideration Fails

**HONG KONG VISA**  
CENTRE

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### TWO OPTIONS FOR FURTHER APPEAL

#### s.53 Review

Any person aggrieved by a decision, act or omission of any public officer taken, done or made in the exercise or performance of any powers, functions or duties under this Ordinance may by notice in writing lodged with the Chief Secretary for Administration within [14 days] object to that decision, act or omission.

#### Direct Intervention by the Chief Executive

**BUT ONLY IF THERE IS  
A SIGNIFICANT  
MATTER OF PUBLIC  
INTEREST AT ISSUE**

Both are problematic!



**Alternatively you can instruct a solicitor and seek a  
Judicial Review of Administrative Action**

## Options for Final Appeal

### Two Options Available

If your Reconsideration is finally refused, you do have to consider if the HKID do in fact have solid grounds for denying your application. The road gets very rocky for you now, but there are two further avenues of appeal that you may wish to travel.

### s.53 Immigration Ordinance Review

This section of the Immigration Ordinance provides for 'superior officer' oversight of the decisions which 'rank and file' are making in the conduct of their duties under immigration law. Section 53 states any person aggrieved by a decision, act or omission of any public officer taken, done or made in the exercise or performance of any powers, functions or duties under the Immigration Ordinance may by notice in writing lodged within [14 days] object to that decision, act or omission. This process can take up to six months to complete and if the person seeking Review is in Hong Kong as a visitor he will not be allowed to remain whilst the Review process is pending. You progress the Review application by writing to the Chief Secretary, setting out your case and asking for the Review. The HKID will then write back to you with details of how the process will unfold and what you can expect. Upon completion of the Review you will be notified of the outcome and what new decisions have been directed, if any.

### Request for Direct Intervention

Only if there is a matter of significant public interest which stems from your case refusal, you could seek to request the direct intervention of the Chief Executive to have the HKID reconsider the Reconsideration. But to be taken seriously, your case situation needs to have obvious public merit.

### Judicial Review (Instruct a Solicitor)

Judicial review is a procedure in administrative law by which the courts supervise the exercise of public power. A person who feels that an exercise of such power by a government authority, is unlawful, perhaps because it has violated his or her rights, may apply to the Court for judicial review of the decision and have it set aside (quashed) and possibly obtain damages. A court may also make mandatory orders or injunctions to compel the authority to do its duty or to stop it from acting illegally. You will need to consult a solicitor to this end.

### Procedures

Section 53 Review commences with a letter to the Chief Secretary. A request for the direct intervention of the Chief Executive also commences with a letter, typically by fax.

### Further Resources



Preparing Your Case

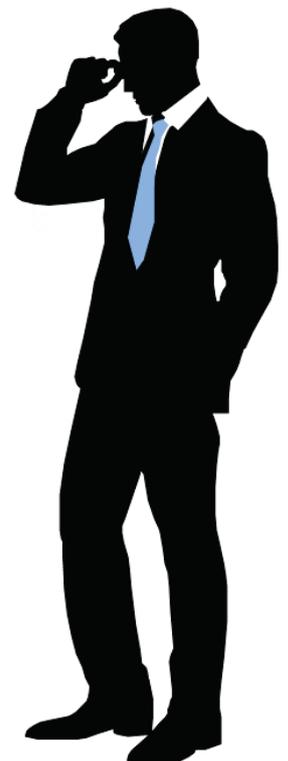
[\(Click to Watch\)](#)

#### Highlights

- If your Reconsideration fails, there are two options open to you
- Experience suggests none of them are especially attractive
- The procedures are expensive, burdensome and not to be pursued lightly
- Only in very rare instances will these options be suitable
- Judicial Review will require you to take the HKID to court



Discussion



NEW PROGRAMME

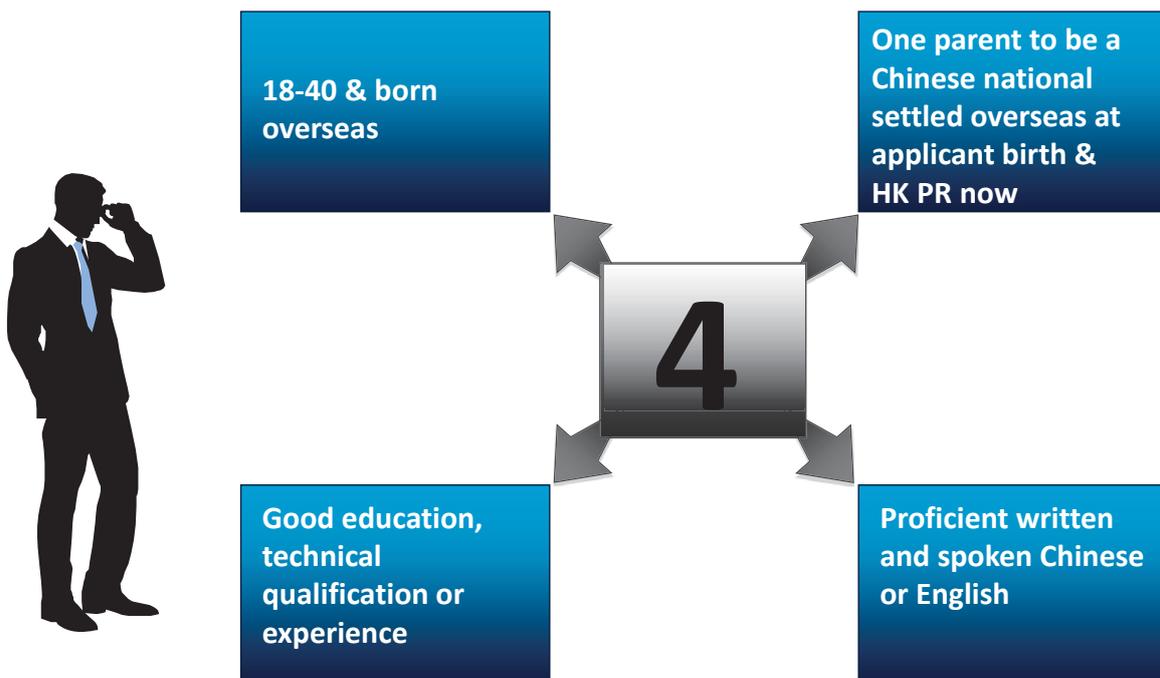
# Admission Scheme for 2<sup>nd</sup> Generation of Hong Kong Chinese Permanent Residents

(Commenced May 6, 2015)

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CENTRE

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## QUALIFYING APPLICANTS



# Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents

Immigration Department  
The Government of the  
Hong Kong Special Administrative Region



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<b>IX Checklist of Forms and Documents to be Submitted</b>	

ID(E) 1018 (04/2015)

## I. Introduction

This guidebook sets out the entry arrangements for persons who wish to enter the Hong Kong Special Administrative Region (HKSAR) for employment under the “Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents” (the Scheme)<sup>1</sup>.

## II. Eligibility Criteria

2. Persons who are the second generation of emigrated Chinese Hong Kong permanent residents from overseas who wish to return to work in the HKSAR may apply under the Scheme.

3. Applicants under the Scheme will have to meet, apart from normal immigration requirements (see details in paragraph 15 below), the following criteria -

- (a) aged between 18 and 40 at the time of application;
- (b) born overseas (i.e. not in the Mainland, the HKSAR, the Macao Special Administrative Region (SAR) or Taiwan);
- (c) have at least one parent who is the holder of a valid Hong Kong Permanent Identity Card at the time of application and was a Chinese national<sup>2</sup> who had settled overseas at the time of the applicant’s birth;
- (d) have a good education background, normally a first degree, but in special circumstances, good technical qualifications, proven professional abilities and/or relevant experience and achievements supported by documentary evidence may also be accepted;<sup>3</sup>
- (e) proficient in written and spoken Chinese (Putonghua or Cantonese) or English; and

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<sup>1</sup> This Scheme is not applicable to applicants who are nationals of Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People’s Republic of), Nepal and Vietnam.

<sup>2</sup> "Chinese national" means a person of Chinese nationality under the Nationality Law of the People's Republic of China, as implemented in the HKSAR pursuant to Article 18 of and Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and interpreted in accordance with the Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region adopted at the 19<sup>th</sup> meeting of the Standing Committee of the National People's Congress at the 8<sup>th</sup> National People's Congress on 15 May 1996.

<sup>3</sup> The academic level of claimed non-local academic qualifications shall be equivalent to the locally recognised standard of Bachelor’s, Master’s or Doctoral degrees. The Immigration Department may require applicant to have his / her claimed overseas academic qualifications assessed by the Hong Kong Council for Accreditation of Academic and Vocational Qualifications at the applicant’s own expense, if necessary.

- (f) have sufficient financial means and are able to meet the living expenses for his/her (including his/her dependants, if any) maintenance and accommodation in the HKSAR without recourse to public funds.

### III. Application Procedures

#### *Application Forms*

- 4. Applicants should complete application form ID 1017 which can be obtained free of charge from the following offices:
  - (a) Immigration Department Headquarters;
  - (b) Immigration Branch Offices;
  - (c) Overseas Chinese Diplomatic and Consular Missions; and
  - (d) HKSAR Government offices outside Hong Kong.

The form can also be downloaded from the Immigration Department's website at [www.immd.gov.hk](http://www.immd.gov.hk).

#### *Supporting Documents*

- 5. Please refer to the checklist at **Part IX**.

#### *Submission of Application*

6. All application forms must be duly completed and signed before submission. Failure to properly complete the forms or submit requested supporting documents may delay the processing of the applications. Where there are accompanying dependants, each dependant must complete and sign Part B of application form ID 1017 (for details, please refer to **Part VII** below). If an individual dependant wishes to join the applicant later and submit the application separately, he/she should complete the application form "Application for Entry for Residence as Dependants in Hong Kong" (ID 997) instead. For dependant under the age of 16, the application form must be signed by his/her parent or legal guardian.

- 7. Completed application forms, ID 1017 or ID 997 as appropriate, and all supporting documents are to be submitted in one of the following ways:

- (a) In person / by post or through a local representative in the HKSAR to:

Receipt and Despatch Sub-Unit  
Hong Kong Immigration Department  
2/F, Immigration Tower  
7 Gloucester Road  
Wan Chai, Hong Kong

or

- (b) Online through the GovHK website at the following links:

[www.gov.hk/en/residents/immigration/nonpermanent/secondgenerationhkpr](http://www.gov.hk/en/residents/immigration/nonpermanent/secondgenerationhkpr)  
[www.gov.hk/tc/residents/immigration/nonpermanent/secondgenerationhkpr](http://www.gov.hk/tc/residents/immigration/nonpermanent/secondgenerationhkpr)

#### **IV. Travel Documentation Requirement**

8. A visa/entry permit label will be issued upon successful application and payment of fees. It can be collected from the Immigration Department in person or by a local representative or be mailed to the applicant directly by registered air mail.

9. The visa/entry permit label should be affixed onto a blank visa page of the applicant's valid travel document for presentation to an immigration officer upon arrival in the HKSAR.

#### **V. Conditions of Stay**

10. Applicants admitted under the Scheme will remain in the HKSAR on time limitation only without other conditions of stay. They are free to take up or change employment or to establish or join in business in the HKSAR during their permitted stay without the need to seek prior approval from the Director of Immigration.

#### **VI. Extension of Stay**

11. Persons admitted under the Scheme will normally be granted an initial stay of 12 months on time limitation only without other conditions of stay. They may apply for extension of stay in the HKSAR within four weeks before the expiry of their limit of stay. While applicants are not required to have secured an offer of employment in the HKSAR upon application for entry under the Scheme, when applying for extension of stay, applicants are required to have secured an offer of

employment (which is at a level commonly taken up by degree holders and the remuneration package of which is at market level). For those who have established or joined in business in the HKSAR, they are required to produce proof of their business. Successful applicants for extension of stay will normally be permitted to remain on time limitation only on the 2-2-3 years extension pattern without other conditions of stay.

## VII. Entry of Dependants

12. Persons admitted or seeking admission under the Scheme may apply, under their sponsorship, to bring in their spouse and unmarried dependent children under the age of 18 to the HKSAR under the prevailing dependant policy. An application for admission of a dependant may be favourably considered if normal immigration requirements (see details in paragraph 15 below) and the following criteria are met:

- (a) there is reasonable proof of a genuine relationship between the dependant and the sponsor;
- (b) there is no known record to the detriment of the dependant; and
- (c) the sponsor is able to support the dependant's living at a standard well above the subsistence level and provide him/her with suitable accommodation in the HKSAR.

13. This entry arrangement for dependant does not apply to:

- (a) former Mainland Chinese residents residing in the Macao SAR who have acquired residence in the Macao SAR through channels other than the One-way Permit Arrangements; and
- (b) nationals of Afghanistan and Korea (Democratic People's Republic of).

14. The length of stay of such dependants will normally be linked to that of their sponsors. They will remain in the HKSAR on time limitation only without other conditions of stay and are not prohibited from taking up employment or studies in the HKSAR. Any subsequent applications for extension of stay of such dependants will be considered only if the dependants continue to meet the eligibility criteria set out in paragraph 12 above and the sponsor remains a bona fide Hong Kong resident living in the HKSAR. For further details on the entry and extension of stay arrangements for dependants, please refer to the "Guidebook for Entry for Residence as Dependants in Hong Kong" [ID(E) 998].

## VIII. Other Information

15. In general, unless a person has the right of abode or right to land in the HKSAR, he/she requires a visa/entry permit to work in the HKSAR. While each application is determined on its individual merits, an applicant should meet normal immigration requirements (such as holding a valid travel document with adequate returnability to his/her country of residence or citizenship; be of clear criminal record and raise no security or criminal concerns to the HKSAR; have no likelihood of becoming a burden on the HKSAR, etc.) as well as the relevant specific eligibility criteria detailed above before he/she may be considered for the grant of a visa/entry permit. It should be noted that the eligibility criteria may be subject to change from time to time without prior notice. Please check the Immigration Department's website at [www.immd.gov.hk](http://www.immd.gov.hk) for up-to-date information.

### *Re-entry into the HKSAR*

16. Non-permanent residents of the HKSAR (including persons admitted under this Scheme), irrespective of their nationality and type of travel document held, do not require a re-entry visa/entry permit to enter the HKSAR provided that they return within the validity of their permitted limit of stay and that the circumstances upon which they have acquired their residential status remain unchanged.

### *Right of Abode*

17. Persons admitted under this Scheme who have ordinarily resided in the HKSAR for a continuous period of not less than seven years may apply for the right of abode in the HKSAR in accordance with the law.

### *Payment of Fees*

18. Payment of visa/entry permit fee, applicable to each applicant / dependant, will be settled after the application is approved. If the visa/entry permit label is collected in person or through a local representative, payment of fees should be made upon collection of the visa/entry permit in cash, by EPS or by cheque. The cheque should be crossed, made payable to "*The Government of the Hong Kong Special Administrative Region*", properly dated and signed.

19. If an applicant wishes to receive the visa/entry permit label by registered air mail, he/she should send a cashier order or a bank draft (with exact fare in Hong Kong currency) upon receipt of an approval letter from the Immigration Department. The cashier order or bank draft should be issued by a bank which has a connected bank in the HKSAR and made payable to "*The Government of the Hong Kong Special Administrative Region*". No cash should be sent.

#### *Processing of Application*

20. The Immigration Department will not be able to start processing the application unless all the required supporting documents and information are received. As it will take time to process applications, applicants may regard their applications as being under process unless they have received a notification of application result from the Immigration Department.

21. All applications are processed and determined by the Immigration Department. Approval of applications is entirely discretionary and is subject to changes in government policies. The Director of Immigration reserves absolute discretion to refuse any application even if the application meets all eligibility criteria.

#### *Warning*

22. It is an offence to make false statements or representations to an immigration officer. A person who knowingly and wilfully makes a statement or gives information which he/she knows to be false or does not believe to be true shall be guilty of an offence under the Laws of Hong Kong and any such visa/entry permit issued or permission to enter or remain in the HKSAR granted shall have no effect.

#### *Disclaimer*

23. The information in this guidebook serves as reference only. The Immigration Department of the HKSAR is not responsible for any loss or damage whatsoever arising out of or in connection with any information in this guidebook. The Immigration Department reserves the right to omit, suspend or edit any information in this guidebook at any time in its absolute discretion without giving any reason or prior notice. The Immigration Department further reserves the right to change the eligibility criteria and details of the arrangement set out above from time to time without prior notice.

*Enquiries*

24. Applicants can enquire about their application status online through the GovHK website at [www.gov.hk/immdstatusenquiry](http://www.gov.hk/immdstatusenquiry) or through the 24-hour telephone enquiry system at (852) 3160 8663. For more information, please contact the Immigration Department by enquiry hotline at (852) 2824 6111, by fax at (852) 2877 7711, by email to [enquiry@immd.gov.hk](mailto:enquiry@immd.gov.hk), or visit the Immigration Department's website at [www.immd.gov.hk](http://www.immd.gov.hk).

**IX. Checklist of Forms and Documents to be Submitted***(A) Forms and documents to be submitted by the applicant*

Application Form for Entry under the Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents (ID 1017)
The applicant's recent photograph (affixed on page 1 of application form ID 1017)
Photocopy of the applicant's valid travel document containing personal particulars, date of issue, date of expiry and/or details of any re-entry visa held
Photocopy of the applicant's Hong Kong identity card (if any)
Photocopy of evidence of the applicant's relationship with his/her Chinese Hong Kong Permanent Resident parent(s) e.g. applicant's birth certificate
Photocopy of valid Hong Kong Permanent Identity Card of applicant's parent(s)
Photocopy of proof of academic qualifications and relevant work experience
Photocopy of the applicant's financial standing e.g. bank statements, savings accounts passbooks, tax receipts and salary slips

*(B) Forms and documents to be submitted in respect of dependants*

Application for Entry under the Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents (ID 1017) with Part B duly completed by each accompanying dependant <i>(for joint application with the applicant)</i>
Application for Entry for Residence as Dependants in Hong Kong (ID 997) <i>(for individual dependant not submitting application together with the applicant)</i>
The dependant's recent photograph (affixed on Part B of application form ID 1017 or ID 997)
Photocopy of the dependant's valid travel document containing personal particulars, date of issue, date of expiry and/or details of any re-entry visa held
Photocopy of evidence of the dependant's relationship with the applicant, e.g. marriage certificate, birth certificate and census record book
Photocopy of the sponsor's travel document containing personal particulars, date of issue, date of expiry and/or details of any re-entry visa held
Photocopy of the sponsor's Hong Kong identity card (if any)
Photocopy of the sponsor's financial standing e.g. bank statements, savings accounts passbooks, tax receipts and salary slips
Photocopy of the dependant's Macao identity card [ <i>for Macao SAR residents only</i> ]
Photocopy of the dependant's household registration in Taiwan and Taiwan identity card [ <i>for Taiwan residents only</i> ]

*(C) Forms and documents to be submitted by the applicant for extension of stay application*

<b>Forms/Documents Required</b>	<b>First-time extension</b>	<b>Subsequent extension</b>
Application for Extension of Stay (ID 91)	✓	✓
Original and photocopy of the applicant's valid travel document and, where applicable, his/her previous travel document page showing the latest visa/entry permit label/arrival stamp/landing slip/extension of stay label in the HKSAR	✓	✓
Photocopy of the applicant's Hong Kong identity card	✓	✓
Completed form ID 990B and supporting documents listed in Part VII(B) of the "Guidebook for Entry for Employment as Professionals in Hong Kong" [ID(E) 991]	✓	✓ ^

^Applicants without change of employment are only required to provide a supporting letter from the current employer stating the applicant's position, total monthly remuneration and period of employment

**Important Notice:**

1. Notwithstanding that the documents and information required have been furnished, applicants and accompanying dependant(s) may still be required to submit further supporting documents (including original documents) and information in connection with the application(s) when necessary.
2. Where a document is not in Chinese or English, it must be accompanied by a Chinese or English translation certified as a true translation by a sworn translator, court translator, authorised public translator, certified translator, expert translator or official translator.
3. If the application is to be submitted online via the GovHK website, the application forms and copies of all supporting documents shall be converted into specified electronic format. For details of the technical specifications on the limitation of record size and format, please refer to the technical requirements as published on the Immigration Department's webpage at [www.immd.gov.hk/en/e-services/e-submission/general-format-manner-procedure.html](http://www.immd.gov.hk/en/e-services/e-submission/general-format-manner-procedure.html).

# Audit Commission Report No. 66 April 2016

**HONG KONG VISA**  
CENTRE

## Practical Effects

### Will things really change?

- Yes. All the recommendations made by the Audit Commission have been accepted by the Government and so ImmD are duty bound to change.

### How soon will they change?

- Impact was immediate. Greater scrutiny and deeper investigation have already had an effect on the processing of many visa types.

## MY EXPERIENCES

1

The majority of visa applicants and their employers underestimate the documentary preparations needed to pursue a visa application

2

The majority of visa applicants and their employers underestimate the amount of time it takes for a visa to be approved. They wait until the last minute before commencing the application.

3

Most applicants and their employers approach their applications with a sense of entitlement for approval and underestimate the amount of work involved before an application can be finalized (positively or negatively)

4

Most applicants and their employers do not realise that HKID policy has always been to give due and full consideration to applications once all the documents they need to undertake their duties have been received.

**The "Easy Ride" is well and truly over.**

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

## MAJOR changes – Number ONE – for Professionals and Non-local Graduates

**Applications MUST BE COMPLETE at the point of submission, enabling ImmD to work towards their performance requirement of finalizing 90% of cases within the four week pledge time**

The culture of skeleton, initial submissions will end. Only 10% of cases should therefore require further follow up correspondence by ImmD.

**Practical consequence for applicants?**

Start your deliberations leading to an eventual visa application 60 days earlier than you might have previously anticipated.

**MAJOR changes Number TWO - for Professionals and Non-local Graduates**

ImmD will issue guidelines to set out clearly the required procedures for considering availability of local employees and market level of remuneration in processing EMPLOYMENT and ASMTV visa applications

Local employee count and the potential for job creation is going to become a key facet in the determinations of ImmD to approve (and possibly extend) an application

**Practical consequence for applicants?**

Applicants and their employers need to steel themselves for significant scrutiny as to rates of pay and whether a local candidate should be preferred for the position in question

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)**MAJOR changes – Number THREE - for Professionals and Non-local Graduates**

The ImmD will tighten control over the verification of the authenticity of supporting documents submitted by Immigration Arrangements for Non-local Graduate (“IANG”) cases

Whilst the Audit Commission specifically pointed this out in the context of IANG applications, there is no good reason not to implement this widely across GEP and other case types too

**Practical consequence for Applicants?**

Documents supporting employment & education qualifications will become more rigorously assessed, with secondary means of authentication being required (longer documentation preparation times and additional expense of official translations and authentications)

**MAJOR Changes – Number FOUR - for Professionals and Non-local Graduates**

**The ImmD will strictly require a 12 month prior employment before recognising an intracompany transferee applicant**

To be availed of positive consideration, an ICT applicant will need a minimum of 12 months documented prior employment with the entity seeking to ICT transfer them into Hong Kong

**Practical Consequence for Applicants?**

This will potentially limit flexibility as regards the transfer of new hires into Hong Kong ex – third country operations and could require applicants in certain circumstances to defer their applications for at least 12 months to satisfy the one year requirement

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)**MAJOR Changes – Number FIVE – for Business Investors (Entrepreneurs)**

**Applications MUST be complete at the point of submission enabling ImmD the potential to meet their performance requirements of finalising 90% of cases within the four week pledge time**

The culture of skeleton, initial submissions will end. Only 10% of cases should therefore require follow up correspondence by ImmD

**Practical Consequence for Applicants?**

Start planning 90 days earlier than you anticipated. Work on the establishment of a company bank account, which may take up to 6 weeks to be opened and funded. The ImmD may not accept an application until the bank account is open and funded

## MAJOR Changes – Number SIX - for Business Investors (Entrepreneurs)

### **Tightening up on the control of extensions of stay and consistency of Business Review**

Entrepreneurs are going to be held closely to account for the jobs they say they are going to create; if you don't create the jobs your extension of stay and/or its limits of stay may well be at risk

### **Practical Consequence for Applicants**

Extensions of stay requests which do not evidence local job creation whatsoever may jeopardise the visa extension. Jobs not created in line with those previously planned and forecast will inevitable mean continuing Business Review

## CHAPTER 4

### Immigration Department

#### Admission schemes for talent, investors and workers

*This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.*

Report No. 66 of the Director of Audit contains 8 Chapters which are available on our website at <http://www.aud.gov.hk>

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**Audit Commission  
Hong Kong  
5 April 2016**

# ADMISSION SCHEMES FOR TALENT, INVESTORS AND WORKERS

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## Executive Summary

# ADMISSION SCHEMES FOR TALENT, INVESTORS AND WORKERS

## Executive Summary

1. As pre-entry control measures, persons who come to Hong Kong for employment, investment, residence, study or training and do not have the right of abode or right to land are required to apply for entry visas or permits before landing. The Government has introduced the following eight Admission Schemes to attract talent, investors and workers to work/stay in Hong Kong:

- (a) *Admission Schemes for talent, professionals and non-local graduates.* The four Schemes are the General Employment Policy (GEP) Employment Stream, the Admission Scheme for Mainland Talents and Professionals (ASMTP), the Quality Migrant Admission Scheme (QMAS) and the Immigration Arrangements for Non-local Graduates (IANG);
- (b) *Admission Schemes for investors.* The two Schemes are the GEP Investment Stream and the Capital Investment Entrant Scheme (CIES); and
- (c) *Admission Schemes for importing foreign domestic helpers (FDHs) and workers.* The two Schemes are the Admission Scheme for FDHs and the Supplementary Labour Scheme (SLS).

The Immigration Department (ImmD) is responsible for processing applications under the Admission Schemes and issuing visas or entry permits to successful applicants. Upon entry to Hong Kong, a person must comply with the limit of stay and such conditions of stay imposed by the ImmD under the Immigration Ordinance (Cap. 115). He may apply to the ImmD for permission of extension of stay. Except for FDHs and imported workers under the SLS, a person who has been admitted under the other six Admission Schemes and is lawfully and continuously an ordinary resident in Hong Kong for seven years may apply for permanent residence. According to ImmD Controlling Officer's Report, the total estimated expenditure of its pre-entry control programme for 2015-16 is \$281 million.

2. In his 2015 Policy Address, the Chief Executive of the Hong Kong Special Administrative Region announced adopting a more proactive and targeted approach, as recommended by the Steering Committee on Population Policy (SCPP), to attract more outside talent to work and settle in Hong Kong by taking various enhancement measures. The duration of stay of successful applicants/entrants and their extension of stay pattern under the GEP, the ASMTP and the QMAS have been relaxed, and the consideration factors of the GEP Investment Stream have been specified. The Audit Commission (Audit) has recently conducted a review to examine the ImmD's work on the administration of the eight Admission Schemes.

## Admission Schemes for talent, professionals and non-local graduates

3. *GEP Employment Stream and ASMTP.* The GEP Employment Stream aims to attract qualified professionals from overseas, Taiwan and Macao and the ASMTP aims to attract those from the Mainland to work in Hong Kong to meet local manpower needs. An application may be favourably considered if the applicant meets the eligibility criteria, including securing employment that cannot be readily taken up by the locals and his remuneration package is broadly commensurate with the market level. From January 2006 to December 2015, some 273,100 applications had been approved under the GEP Employment Stream with an average approval rate of 95.7% from 2011 to 2015. For the ASMTP, from its inception in July 2003 to December 2015, some 83,700 applications had been approved with an average approval rate of 91.7% from 2011 to 2015 (paras. 1.6(a) and (b), 2.2 and 2.3).

4. *Need to monitor GEP and ASMTP applications with long processing time.* From 2011 to 2015, the ImmD achieved its targets for processing entry visas and permits for the GEP Employment Stream and the ASMTP within four weeks (upon receipt of all supporting documents) for 90% of the applications. Audit's analysis of the actual processing time of approved applications from January 2014 to September 2015 from the receipt of the applications revealed that 665 (1%) of the 53,694 GEP approved applications and 1,055 (7%) of the 15,663 ASMTP approved applications had taken more than 90 days to process. Audit's sample check of 30 such applications further revealed that in 13 (43%) cases, there were delays on the part of the ImmD in requesting additional supporting documents from the applicants (paras. 2.4 and 2.5).

## Executive Summary

5. **Need to provide more guidelines on the assessment of local availability and remuneration.** In processing GEP and ASMTP applications, the case officers should consider availability of local employees and market level of remuneration to ascertain whether the applicants meet the criteria stated in paragraph 3. While the ASMTP guidelines specified that the sponsoring companies (i.e. the employers) should be required to provide a declaration that genuine local recruitment efforts had been made but without success and such proof would be sought if necessary, the GEP guidelines did not have the same requirement. According to the ImmD, salary statistics reports prepared by the Census and Statistics Department and salary survey reports published by employment websites would be used for considering applicants' monthly remunerations but such practices were not laid down in its guidelines. In some cases, the applicants' remunerations were below the average/median salaries published by the information sources mentioned by the ImmD and the basis of accepting the remunerations as commensurate with the market level was not documented by the case officers (para. 2.6).

6. **Need to ensure compliance with laid-down guidelines in processing applications.** In processing GEP and ASMTP applications, there were guidelines requiring case officers to: (a) grant limit of stay to applicants subject to validity of their travel documents to ensure returnability to their countries of residence or citizenship; (b) approve limit of stay not exceeding the employment contract period or the limit stipulated by the ImmD, whichever is shorter; (c) vet intra-company transfer applications to ensure that the transferees have worked for the company for not less than one year; and (d) impose special conditions of stay on foreign cooks, including restricting the change of employer. However, Audit's sample check of approved applications revealed instances of non-compliance with the laid-down guidelines (paras. 2.10 to 2.16).

7. **QMAS.** The Scheme aims to attract highly skilled or talented persons to settle in Hong Kong. It is a quota-based scheme (currently 1,000 persons per year) operated under a points-based system, which includes the Achievement-based Points Test for individuals with exceptional talents or skills and outstanding achievements, and the General Points Test for other skilled and talented persons. Since its inception in June 2006 to December 2015, some 3,000 applications had been approved with an average approval rate of 28.9% from 2011 to 2015 (paras. 1.6(c) and 2.20).

## Executive Summary

8. **Need to incorporate a talent list for the QMAS.** From January 2010 to September 2015, 713 applicants had submitted applications for two to four times (totalling 1,500 representing 14% of all 10,574 applications received in the period) but only 151 (21%) of them were successfully allocated a quota under the QMAS. The large number of repeat applications suggests that the applicants might be unclear about the targeted talent requirements. The ImmD needs to closely liaise with the Labour and Welfare Bureau (LWB), which is now considering the feasibility of drawing up a talent list to attract high quality talent, for incorporating the list into the QMAS once it is available so that prospective applicants are better informed before deciding whether they should submit an application (para. 2.28).

9. **LANG.** The Scheme aims to attract foreign and Mainland students who have obtained a degree or higher qualification in a full-time and locally-accredited local programme to stay/return and work in Hong Kong. Since its inception in May 2008 to December 2015, some 51,500 non-local graduate applications had been approved to stay/return and work in Hong Kong with an average approval rate of 99.9% from 2011 to 2015 (paras. 1.6(d), 2.31 and 2.33).

10. **Need to verify authenticity of supporting documents.** An LANG applicant/entrant is only required to submit photocopies of his academic/professional qualification and employment offer to support his entry application or extension-of-stay application. With the advances in information technologies (e.g. image processing technology), there is a risk that bogus documents may be used to support LANG applications. Audit research on similar schemes administered by overseas authorities reveals that the authenticity of supporting documents is verified by different means, e.g. applicants are required to provide an original endorsement letter from an education institution (paras. 2.34 and 2.35).

11. **Need to document factors considered in assessing LANG applicants' job qualification requirements.** For an entry application by a returning graduate (i.e. not a fresh graduate) or an application for extension of stay, the LANG requires an applicant/entrant to secure an employment offer which is at a level commonly taken up by degree holders and a remuneration package at market level. Audit's examination of 30 of 442 approved cases with monthly remunerations of \$9,000 or below from January 2010 to September 2015 revealed that in 6 cases, the case officers approved the applicants taking up the jobs which were specified for

### Executive Summary

certificate holders/Form 5 graduates or above. There was no documentation on the factors that had been considered by the case officers in allowing IANG applicants to take up jobs that could be filled by local certificate holders/Form 5 graduates (paras. 2.36 to 2.38).

### Admission Schemes for investors

12. **GEP Investment Stream.** Apart from the Employment Stream (see para. 3), the GEP has an Investment Stream to admit overseas, Taiwan and Macao investors who wish to set up or join in a business in Hong Kong, and are in a position to make substantial contributions to the economy. From January 2006 to December 2015, some 3,300 applications had been approved under the GEP Investment Stream with an average approval rate of 66.7% from 2011 to 2015 (paras. 1.6(e) and 3.4).

13. **Need to improve the efficiency of processing applications.** Audit's analysis of the actual processing time for approved GEP Investment Stream applications from the receipt of applications in the period January 2014 to September 2015 revealed that 193 (58%) of the 330 approved applications had taken more than 90 days to process. Audit's sample check of 15 such applications further revealed that on average, the case officers took 73 days in 3 cases to make further information requests and 87 days in 5 cases to grant approval after receipt of all supporting documents (paras. 3.5 and 3.6).

14. **Need to improve business reviews for extension-of-stay applications.** The ImmD may approve an entry application on the condition that a business review (covering office set-up, local recruitment and business performance) will be carried out upon the subsequent extension-of-stay application. Audit's sample check of 15 business review cases from January 2012 to September 2015 revealed that in four (27%) cases, while the applicants had not delivered the planned scale of operation as stated in the entry applications, the case officers approved their extension-of-stay applications without imposing the requirement of further business reviews (paras. 3.7 and 3.8(a)).

### Executive Summary

15. **CIES.** The CIES was implemented in October 2003 to facilitate the entry for residence by persons who would make capital investment in permissible investment assets in Hong Kong but would not be engaged in the running of business. Since its inception to December 2015, some 28,200 applications with capital investment of some \$244 billion had been approved under the CIES with an average approval rate of 99.9% from 2011 to 2015. In view of the economic situation in Hong Kong, the Government decided to suspend the CIES with effect from 15 January 2015. The applications pending processing as at December 2015 totalled 11,429 (paras. 1.6(f) and 3.15).

16. **Need to step up monitoring of the processing of CIES applications.** Audit's examination of ten selected approved applications in 2014 and 2015 revealed that in two cases, the case officers took 49 and 60 months respectively to grant final approvals. The long processing time of the two cases was partly attributable to the case officers' belated actions as they had not reminded the applicants to submit the required information (such as proof of investment) until 10 and 25 months respectively after the submission deadlines (para. 3.21).

17. **Need to tighten control over breaches of CIES Scheme Rules.** The CIES Scheme Rules require a financial intermediary to notify the Director of Immigration that the applicant/entrant has not re-invested within 14 days the proceeds of sale of his scheme assets. Audit's examination of ten of some 300 cases of breaches of the requirements on re-investment revealed that the ImmD only issued warning letters to the entrants concerned a long time (averaging 525 days) after the breaches had occurred. Besides, in three of the ten cases, the entrants had breached the re-investment requirement two to four times each despite warning letters issued by the ImmD (para. 3.23).

### Admission Scheme for foreign domestic helpers

18. Since early 1970s, the Government has allowed admission of FDHs in order to meet the acute shortage of local live-in domestic helpers. From 2011 to 2015, 492,139 applications had been approved with an average approval rate of 99.5%. As at December 2015, there were some 340,000 FDHs in Hong Kong (paras. 1.6(g) and 4.2).

## Executive Summary

19. *Need to strengthen follow-up actions on suspected job-hoppers.* In response to the public concern that individual FDHs deliberately under-performed to cause their employers to terminate the contracts pre-maturely, the ImmD has taken measures to strengthen control over FDH entry-visa applications to curb possible abuses. Audit's examination of 30 selected suspected job-hopper cases (i.e. FDHs who had two or more pre-mature termination (PMT) records in 12 months preceding their new visa applications) revealed that seven cases were approved although the case officers had not contacted all their ex-employers who made adverse comments on the applicants' performance. Moreover, there were no laid-down procedures to guide case officers in processing new applications from suspected job-hoppers (paras. 4.7 to 4.11).

20. *Need to tighten the vetting of applications for FDHs performing driving duties.* Since January 2000, an FDH has been prohibited from performing all sorts of driving duties unless an employer can provide full justifications that he has genuine needs for his FDH to perform driving duties. From 2000 to 2015, the total number of successful applications for FDHs performing driving duties had increased by 125% from 903 to 2,032. Audit examination of ten approved applications revealed that the justifications provided in the application forms were travelling needs for performing commonly required domestic duties but there was no elaboration on why such travelling needs could only be met by an FDH performing driving duties (paras. 4.13 to 4.15).

## Other administrative issues

21. *Need to properly maintain computer records.* All the entry and extension-of-stay applications under the various Admission Schemes are processed with the aid of a computer system. Audit's examination revealed that the remuneration or employment information of some GEP, ASMTP and IANG applications was not or incorrectly input into the computer system. A reliable database will facilitate the ImmD to compile management information for better decision making and resources planning (paras. 5.2 and 5.3).

## Executive Summary

### Way forward

22. *Need to periodically compile key statistics and conduct reviews on the effectiveness of the Admission Schemes.* To achieve the population policy objective as recommended by the SCPP (see para. 2), the Chief Executive in his 2015 Policy Address announced that various enhancement measures should be implemented in the Admission Schemes to deal with the ageing population and decline in labour force. Statistics on entrants obtaining right of abode and their duration of stay are key indicators of the entrants' willingness to work/stay in Hong Kong. However, such statistics were not periodically compiled by the ImmD because they could not be generated from the computer system readily. In light of the introduction of various enhancement measures in 2015, the ImmD needs to, in consultation with the Security Bureau, continue to monitor the implementation of such measures and review the effectiveness of the Schemes, taking on board the audit observations and recommendations in this Audit Report (paras. 6.2, 6.5 to 6.7 and 6.9).

### Audit recommendations

23. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has recommended that the Director of Immigration should:**

#### *Admission Schemes for talent, professionals and non-local graduates*

- (a) monitor GEP and ASMTP applications with long processing time (para. 2.18(a));
- (b) issue guidelines to set out clearly the required procedures for considering availability of local employees and market level of remuneration in processing GEP and ASMTP applications (para. 2.18(b)(i) and (ii));
- (c) closely liaise with the LWB to incorporate the talent list into the QMAS once it is available (para. 2.29(b));
- (d) tighten control over the verification of the authenticity of supporting documents submitted by IANG applicants/entrants (para. 2.40(a));

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## Executive Summary

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### *Admission Schemes for investors*

- (e) step up monitoring of the processing time of GEP entrepreneur applications (para. 3.13(b));
- (f) tighten control over breaches of Scheme Rules of the CIES (para. 3.24 (b));

### *Admission Scheme for FDHs*

- (g) issue guidelines setting out the key follow-up procedures in processing new visa applications with PMT records (para. 4.17(b));
- (h) consider tightening the vetting of applications for FDHs performing driving duties (para. 4.17(e));

### *Other administrative issues*

- (i) take measures to ensure the proper maintenance of computer records for the various Admission Schemes (para. 5.9(a)); and

### *Way forward*

- (j) enhance the computer system to periodically generate statistics and review the effectiveness of the Admission Schemes (para. 6.10(a) and (b)(ii)).

## Response from the Government

24. The Government agrees with the audit recommendations.

### Introduction

(c) facilitate the mobility of tourists and business people, making Hong Kong an attractive tourist and business centre.

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

### Background

1.2 The Government adopts an open immigration regime. Nationals of about 170 countries and territories are allowed visa-free visits to Hong Kong for periods ranging from 7 to 180 days. Mainland visitors may visit Hong Kong for periods ranging from 7 to 90 days under different arrangements (Note 1). Every visitor must possess a valid travel document, sufficient means of support and re-entry facilities to their countries of domicile.

1.3 Apart from visitors, professionals and businessmen are welcome to work and invest in Hong Kong. Non-local students are also allowed to enter Hong Kong for study. While effort is made to facilitate the entry and stay of visitors and those who contribute to Hong Kong's development and prosperity, the Immigration Department (ImmD), under the policy directives of the Security Bureau, exercises pre-entry immigration control to:

- (a) guard against the entry of undesirable persons to maintain Hong Kong's prosperity and stability;
- (b) facilitate the entry of talent and professionals to enhance Hong Kong's competitiveness while protecting the local labour force from unfair competition; and

**Note 1:** Article 22 of the Basic Law states that "for entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval". Residents from the Mainland who wish to visit Hong Kong should obtain an Exit-entry Permit for Travelling to and from Hong Kong and Macao and an appropriate exit endorsement from the Mainland authorities. There are different arrangements for entry of Mainland visitors. For example, under the Individual Visit Scheme for Mainland Residents, residents of all the 21 cities in Guangdong Province and 28 other cities may visit Hong Kong on an individual basis for a period of not more than seven days upon each entry.

1.4 As pre-entry control measures, persons who come to Hong Kong for employment, investment, residence, study or training and do not have the right of abode or right to land are required to apply for visas or entry permits (Note 2) before landing. Applicants may send their applications direct to the ImmD or through their sponsors in person or by post. The ImmD will finalise the applications upon receipt of all necessary documents in four to six weeks. Upon entry to Hong Kong, a person has to comply with the limit of stay and such conditions of stay imposed by the ImmD under the Immigration Ordinance (Cap. 115). Before expiry of the limit of stay, he may apply to the ImmD for permission of extension of stay. According to ImmD Controlling Officer's Report (COR), the total estimated expenditure of its pre-entry control programme for 2015-16 is \$281 million.

1.5 The ImmD charges a successful applicant a fee for a visa or an entry permit for entering Hong Kong or for extension of stay (see fees at Appendix A). The total estimated revenue of such fees for 2015-16 is \$129 million.

### Admission Schemes

1.6 The Government has introduced various Admission Schemes to attract talent, professionals, non-local graduates and investors from other places to work or invest in Hong Kong. To address the problems of shortage of local live-in domestic helpers and shortage of labours in some industries, the Government has also established schemes to import foreign domestic helpers (FDHs) and workers in relevant industries. To qualify for admission under various schemes, applicants must meet the normal immigration requirements (Note 3) and the specific eligibility criteria of individual schemes. The ImmD is responsible for processing applications

**Note 2:** For entry into Hong Kong, visas are issued to foreigners whereas entry permits are issued to residents of the Mainland, Macao and Taiwan.

**Note 3:** Applicants: (a) must possess valid travel documents with adequate returnability to their countries of residence or citizenship; (b) are of clear criminal record and raise no security or criminal concerns to Hong Kong; and (c) have no likelihood of becoming a burden to Hong Kong.

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### Introduction

Committee on Admission of Quality Migrants and Professionals (Note 5) on the assessment, point-scoring and quota allocation under the Scheme. Successful applicants are not required to secure an offer of local employment before taking up residence in Hong Kong. From inception of the Scheme to December 2015, some 3,000 applications had been approved;

- (d) **Immigration Arrangements for Non-local Graduates (IANG).** The IANG was launched in May 2008 to complement the policy initiative “Developing Hong Kong as a Regional Education Hub” (Note 6) endorsed by the Chief Executive of the Hong Kong Special Administrative Region in October 2007. It aims to attract non-local graduates (i.e. who have obtained a degree or higher qualification in a full-time and locally-accredited local programme in Hong Kong) to stay/return and work in Hong Kong so as to strengthen its human resources and competitiveness, and enhance its attractiveness to non-local students. Successful applicants may be granted 12 months’ stay on time limitation without other conditions of stay. They are free to take up and change employment during their permitted stay without the need to seek prior approval from the ImmD. From inception of the Scheme to December 2015, some 51,500 non-local graduates had been approved to stay/return and work in Hong Kong;

### Admission Schemes for investors

- (e) **GEP Investment Stream.** Apart from the Employment Stream (see para. (a)), the GEP has an Investment Stream to admit overseas, Taiwan and Macao investors who wish to set up or join in a business in Hong Kong, and are in a position to make substantial contributions to the

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**Note 5:** *The Advisory Committee, chaired by a non-official chairperson and comprises three government officials (one representative each from the Labour and Welfare Bureau, the Security Bureau and the Labour Department) and 18 non-official members. The Committee considers the socio-economic needs of Hong Kong and other relevant factors for making recommendations on the allocation of available quota in each selection exercise.*

**Note 6:** *The education hub policy aims to attract quality non-local students to study in Hong Kong, internationalise the local higher education sector and increase the exposure of local students. The measure helps address the manpower needs of Hong Kong and enhance its overall competitiveness.*

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under the following eight Admission Schemes (Note 4) with the aid of a computer system, namely the Application and Investigation Easy System (APPLIES — see para. 5.2):

#### *Admission Schemes for talent, professionals and non-local graduates*

- (a) **General Employment Policy (GEP) Employment Stream.** The Government has for many years admitted overseas, Taiwan and Macao professionals who possess special skills, knowledge or experience of value to and not readily available in Hong Kong under the GEP Employment Stream. Applicants must have a confirmed offer of employment, and the remuneration package of which must be broadly commensurate with the prevailing market rate of Hong Kong. From January 2006 to December 2015, some 273,100 applications had been approved under the GEP Employment Stream;
- (b) **Admission Scheme for Mainland Talents and Professionals (ASMTP).** The ASMTP was introduced in July 2003 with assessment criteria in line with those under the GEP Employment Stream. The objective was to attract qualified Mainland talent and professionals to work in Hong Kong in order to meet local manpower needs and enhance Hong Kong’s competitiveness in the global market. From inception of the Scheme to December 2015, some 83,700 applications had been approved;

- (c) **Quality Migrant Admission Scheme (QMAS).** The QMAS was introduced in June 2006 for highly skilled or talented persons from the Mainland and overseas to settle in Hong Kong in order to enhance Hong Kong’s economic competitiveness in the global market. The QMAS is a quota-based scheme (1,000 persons per year) operated under a points-based system, which includes the Achievement-based Points Test (APT) for individuals with exceptional talents or skills, and who have outstanding achievements (e.g. Olympic Games medalists and Nobel Prize winners) and the General Points Test (GPT) for other skilled and talented persons. The ImmD may seek advice from the Advisory

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**Note 4:** *For the purpose of classifying the Admission Schemes by types, the Employment Stream (para. 1.6(a)) and the Investment Stream (para. 1.6(e)) of the General Employment Policy are treated as two separate Admission Schemes in this Audit Report.*

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may perform full-time and live-in domestic duties such as household cleaning and taking care of the elderly and children. From 2006 to 2015, 909,861 FDHs had been admitted under the Scheme. As at December 2015, there were some 340,000 FDHs working in Hong Kong; and

- (h) **Supplementary Labour Scheme (SLS).** The SLS was introduced in 1996 to allow employers with genuine difficulties in finding suitable staff locally to import workers at technician level or below. The SLS is administered by the Labour Department. Members of the Labour Advisory Board (Note 11) are invited to give views on the applications to the Commissioner for Labour. There are no overall or industry-specific quotas under the SLS and all applications are considered on a case-by-case basis. After approval-in-principle is granted by the Labour Department, employers will arrange submission of visa/entry permit applications for their prospective imported workers to the ImmD for processing and issuing visas/entry permits. Imported workers are required to return to their places of origin on completion of their employment contracts. From January 2006 to December 2015, some 18,500 workers (mainly for the community, social and personal services industry, the agriculture and fishing industry, and the construction industry) had been admitted under the SLS.

- 1.7 Under the Immigration Ordinance, a person who is lawfully and continuously an ordinary resident in Hong Kong for seven years may apply for permanent residence. Furthermore, persons admitted under the Admission Schemes for talent, professionals, non-local graduates and investors may bring in their spouses and unmarried children below the age of 18 to Hong Kong. However, the Ordinance provides that FDHs or imported workers should not be treated as ordinary residents and therefore they cannot apply for right of abode in Hong Kong. Besides, they cannot bring in their dependants (see Appendix B). The number of approved applications under the Admission Schemes from 2011 to 2015 is shown in Table 1.

**Note 11:** *The Labour Advisory Board, chaired by the Commissioner for Labour, is a non-statutory body responsible for advising the Commissioner on labour matters. It has 12 unofficial members (6 representing employers and 6 others representing employees).*

**Introduction**

economy. In addition to the amount of investment, they have to satisfy the ImmD on matters such as the nature of business to be established, number of jobs to be created for local people, and economic benefits to be brought to Hong Kong. From January 2006 to December 2015, some 3,300 applications had been approved under the GEP Investment Stream;

- (f) **Capital Investment Entrant Scheme (CIES).** The CIES was implemented in October 2003 to facilitate the entry for residence by persons (Note 7) who would make capital investment in permissible investment assets (Note 8) in Hong Kong but would not be engaged in the running of business. The investment threshold was originally set at \$6.5 million but was subsequently raised to \$10 million in October 2010. From inception of the Scheme to December 2015, some 28,200 applications with capital investment of some \$244 billion had been approved. In view of the economic situation in Hong Kong, the Government considered that attracting capital investment entrants would no longer be a priority and decided to suspend the CIES with effect from 15 January 2015 (Note 9);

**Admission Schemes for importing FDHs and workers**

- (g) **Admission Scheme for FDHs.** Since early 1970s, the Government has allowed admission of FDHs to Hong Kong in order to meet the acute shortage of local live-in domestic helpers. With employment terms (Note 10) set out in the two-year Standard Employment Contract, FDHs

**Note 7:** *In this context, persons refer to foreign nationals (except nationals of Afghanistan, Cuba and the Democratic People's Republic of Korea), Macao 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.*

**Note 8:** *Permissible investment assets originally included real estate and financial assets (such as equities, debt securities and certificates of deposits). Since October 2010, real estate has been suspended as permissible investment asset.*

**Note 9:** *The suspension does not affect applications received before the suspension date.*

**Note 10:** *The employment terms include a mandatory wage level not lower than prevailing Minimum Allowable Wage, free accommodation and return passage to and from the place of origin on expiry of the two-year contract or on contract termination.*

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**Recent developments**

1.8 In January 2015, the Chief Secretary for Administration's Office issued a Report on Population Policy Strategies and Initiatives (hereinafter referred to as the 2015 Population Policy Report) setting out the strategies and initiatives put forward by the Steering Committee on Population Policy (SCPP – Note 12). According to the Report, one-third of the Hong Kong's population in 2041 will be 65 years old or above and the ageing population will lower the labour force participation rate (the proportion of the labour force within the total population aged 15 or above) from 59.4% in 2013 to 49.5% in 2041. To address population ageing and anticipated decline in labour force, the Chief Executive, in his Policy Address of January 2015, announced adopting the SCPP's proposed five-pronged strategy, one of which was “adopting a more proactive and targeted approach to attract more outside talent to work and settle in Hong Kong” (Note 13), by taking the following enhancement measures:

- (a) implement a pilot scheme to attract the second generation of Chinese Hong Kong permanent residents who have emigrated overseas to return to Hong Kong;
- (b) encourage talent and entrepreneurs to come and stay in Hong Kong by relaxing the stay arrangements under the GEP, the ASMTP and the QMAS;
- (c) adjust the QMAS (see para. 1.6(c)) scoring points to attract quality migrants with an outstanding educational background or international work experience to come to Hong Kong;

**Note 12:** The SCPP, chaired by the Chief Secretary for Administration and comprised both official and non-official members, was reconstituted in December 2012. Between October 2013 and February 2014, a public engagement exercise was conducted to seek public views on strategies and measures to address the demographic challenges.

**Note 13:** The other four strategies were: (a) unleashing the potential of local labour force; (b) nurturing local manpower; (c) fostering a supportive environment for forming and raising families; and (d) promoting active ageing.

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**Table 1**

**Number of approved applications under the Admission Schemes (2011 to 2015)**

Admission Scheme	Number of approved applications					Percentage increase/ (decrease) from 2011 to 2015
	2011	2012	2013	2014	2015	
<b>Admission Scheme for talent, professionals and non-local graduates</b>						
GEP Employment Stream	30,064	28,150	28,070	31,461	34,198	14%
ASMTP	8,088	8,105	8,017	9,313	9,229	14%
QMAS	292	251	298	338	240	(18%)
IANG	5,258	6,756	8,704	10,375	10,269	95%
<b>Admission Scheme for investors</b>						
GEP Investment Stream	493	475	310	215	205	(58%)
CIES	4,187	3,804	3,734	4,855	2,739	(35%)
<b>Admission Scheme for importing FDHs and workers</b>						
FDH	101,505	102,581	95,057	95,060	97,936	(4%)
SLS	1,602	2,159	2,582	2,543	3,852	140%
<b>Others</b>						
Dependant	28,363	27,063	27,593	30,227	26,412	(7%)
Overall	179,852	179,344	174,365	184,387	185,080	3%

Source: ImmD records

Remarks: The approved applications did not include extension-of-stay applications.

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### Introduction

granted a 6-year extension of stay. Furthermore, QMAS entrants under the APT may be granted a stay of eight years upon entry instead of the previous pattern of 1+2+2+3;

- (c) the consideration factors of the GEP Investment Stream have been specified to include business plan, business turnover, financial resources, investment sum, number of jobs created locally and introduction of new technology or skills. Furthermore, the ImmD may favourably consider an application from an applicant who wishes to establish or join a start-up business supported by a government-backed programme; and

- (d) to facilitate the entry of talent with an outstanding academic background and those with international work experience, with effect from May 2015, an additional 30 points under the GPT of the QMAS will be awarded to graduates of renowned institutions recognised internationally and an additional 15 points to applicants with not less than two years of graduate or specialist level international work experience.

1.10 In his Policy Address of January 2016, the Chief Executive further said that the Government proposed to make greater efforts to attract talent and planned to set up a dedicated platform to provide employment information for the second generation of Hong Kong migrants, Hong Kong students educated in overseas tertiary institutions and overseas professionals.

### Organisation of the ImmD

1.11 The Visa and Policies Branch of the ImmD, headed by an Assistant Director of Immigration, is responsible for formulating, reviewing and implementing policies in respect of visas/permits and extension of stay. The Branch has two divisions, each headed by a Principal Immigration Officer (see organisation chart at Appendix C), namely:

- (a) **Visa Control (Policies) Division.** The Division formulates and reviews policy and assessment procedures on visa matters and handles petitions/appeals/judicial reviews relating to the Certificate of Entitlement Scheme and visa control matters; and

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### Introduction

- (d) list clearly the factors to be considered when processing applications to enter Hong Kong for investment under the GEP to attract more entrepreneurs from overseas to develop their business in Hong Kong, and suspend the CIES (see para. 1.6(f)); and

- (e) study, with regard to overseas experience, the feasibility of drawing up a talent list to attract, in a more effective and focused manner, high-quality talent to support Hong Kong's development as a diversified and high value-added economy.

1.9 Following the 2015 Policy Address:

- (a) the Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents (ASSG) was introduced in May 2015 as a pilot scheme to attract the second generation of Chinese Hong Kong permanent residents, aged 18 to 40, from overseas to return to Hong Kong. Applicants must have a good educational background and are not required to have secured an employment offer before entry. As at December 2015, the ImmD had received 211 applications and approved 108 under the ASSG (Note 14);

- (b) the initial duration of stay of successful applicants under the GEP and the ASMTP on employment condition and QMAS entrants under the GPT has been relaxed from one year to two years (or in accordance with the duration of the employment contract for GEP and ASMTP applicants, whichever is shorter). The extension of stay pattern for all entrants under the GEP, the ASMTP and the QMAS (GPT) will also be relaxed from 2+2+3 years to 3+3 years (or in accordance with the duration of employment contract for GEP and ASMTP applicants, whichever is shorter). Top-tier GEP, ASMTP and QMAS entrants (Note 15) may be

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**Note 14:** *This audit review does not cover the ASSG as it is a pilot scheme newly introduced in May 2015.*

**Note 15:** *This refers to GEP and ASMTP entrants who have been permitted to take up employment as professionals for not less than two years and have an assessable income of not less than \$2 million in the previous year of salaries tax assessment, and QMAS entrants who have the same threshold of assessable income.*

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**Introduction****General response from the Government**

1.13 The Secretary for Security welcomes and the Director of Immigration agrees with the audit recommendations. The Secretary has said that the Security Bureau will monitor the progress of the ImmD's work closely to ensure that the audit recommendations are implemented as far as possible.

**Acknowledgement**

1.14 Audit would like to acknowledge with gratitude the assistance and full cooperation of the staff of the ImmD during the course of the audit review.

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**Introduction**

(b) *Visa Control (Operations) Division.* The Division processes applications for entry into Hong Kong for visit, employment, investment, training, residence and study, applications for extension of stay from visitors and temporary residents, and applications for Certificate of Entitlement to the right of abode in Hong Kong.

As at 31 December 2015, the Visa and Policies Branch had a strength of 538 staff, comprising 396 disciplined staff and 142 civilian staff.

**Audit review**

1.12 In October 2015, the Audit Commission (Audit) commenced a review to examine the ImmD's work on the administration of the eight Admission Schemes mentioned in paragraph 1.6(a) to (h), focusing on:

- (a) Admission Schemes for talent, professionals and non-local graduates (PART 2);
- (b) Admission Schemes for investors (PART 3);
- (c) Admission Scheme for FDHs (PART 4);
- (d) other administrative issues (PART 5); and
- (e) way forward (PART 6).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

**Admission Schemes for talent, professionals and non-local graduates**

- 2.3 Apart from the normal immigration requirements (see Note 3 to para. 1.6), an application may be favourably considered if:
- (a) the applicant has a good education background, normally a first degree in the relevant field, but in special circumstances, good technical qualifications, proven professional abilities and/or relevant experience;
  - (b) there is a genuine job vacancy;
  - (c) the applicant has a confirmed employment offer and is employed in a job relevant to his academic qualifications or work experience that cannot be readily taken up by the local work force; and
  - (d) the remuneration package (including income, accommodation, medical and other fringe benefits) is broadly commensurate with the prevailing market level for professionals in Hong Kong.

An analysis of the applications received and processed under the GEP Employment Stream and the ASMTTP from 2011 to 2015 is shown in Table 2.

**PART 2: ADMISSION SCHEMES FOR TALENT, PROFESSIONALS AND NON-LOCAL GRADUATES**

- 2.1 This PART examines the admission of talent, professionals and non-local graduates, focusing on:
- (a) administration of GEP Employment Stream and ASMTTP (paras. 2.2 to 2.19);
  - (b) administration of QMAS (paras. 2.20 to 2.30); and
  - (c) administration of IANG (paras. 2.31 to 2.41).

**Administration of GEP Employment Stream and ASMTTP**

2.2 The objective of the GEP Employment Stream and the ASMTTP is to attract qualified talent and professionals to work in Hong Kong in order to meet local manpower needs and enhance Hong Kong's competitiveness in the global market. Applicants should possess special skills, knowledge or experience of value to and not readily available in Hong Kong (Note 16). The schemes are quota-free and non-sector specific. The Employment and Visit Visas Section (EVS Section) of the Visa Control (Operations) Division is responsible for processing entry applications under the GEP and the Extension Section of the Division for extension-of-stay and change-of-employment applications. As at December 2015, 38 staff in the EVV Section and 26 staff in the Extension Section were deployed to administer the GEP among other duties. For the ASMTTP, the Quality Migrants and Mainland Residents Section (QMMR Section) of the Division is responsible for processing entry, extension-of-stay and change-of-employment applications. As at December 2015, 21 staff in the QMMR Section were deployed to administer the ASMTTP.

**Note 16:** Both the GEP Employment Stream and Investment Stream are not applicable to nationals of Afghanistan, Cambodia, Cuba, the Democratic People's Republic of Korea, Laos, Nepal and Vietnam, and Chinese residents of the Mainland.

Admission Schemes for talent, professionals and non-local graduates

Table 2

Analysis of applications under GEP Employment Stream and ASMTP (2011 to 2015)

Application	Number of applications					Percentage increase/ (decrease) from 2011 to 2015
	2011	2012	2013	2014	2015	
<b>GEP Employment Stream</b>						
Received	32,491	30,769	31,416	34,664	36,052	11%
Approved	30,064	28,150	28,070	31,461	34,198	14%
Rejected	857	1,402	1,764	1,821	922	8%
Case closed (Note)	1,094	1,119	1,311	1,439	1,064	(3%)
Processed	32,015	30,671	31,145	34,721	36,184	13%
<b>ASMTP</b>						
Received	9,591	10,461	10,185	10,983	11,034	15%
Approved	8,088	8,105	8,017	9,313	9,229	14%
Rejected	209	896	1,230	831	711	240%
Case closed (Note)	963	1,303	981	819	921	(4%)
Processed	9,260	10,304	10,228	10,963	10,861	17%

Source: ImmD records

Note: A case would be closed when the applicant withdrew his application or when the application could not be processed (e.g. due to failure to provide required information).

Remarks: The average approval rates (i.e. applications approved ÷ (applications processed – cases closed) × 100%) from 2011 to 2015 were 95.7% and 91.7% for the GEP Employment Stream and the ASMTP respectively.

Admission Schemes for talent, professionals and non-local graduates

Need to monitor GEP and ASMTP applications with long processing time

2.4 According to the ImmD Guidebook to applicants, it normally takes four weeks to process visa/entry permit applications for employment upon receipt of all required documents. The ImmD set the targets for processing entry visas and permits for employment and for processing entry permits under the ASMTP “within four weeks (upon receipt of all supporting documents) for 90% of the applications” in the COR. For the purpose of reporting the achievement of the processing time targets, the period between the time of receipt of applications and that of all supporting documents would not be counted. The targets were achieved from 2011 to 2015 for 96.1% to 98.9% of the applications. Audit noted that for applications without all supporting documents available at the time of submission, the actual processing time counting from the receipt of applications could, in some cases, take more than four weeks. Audit analysis of the actual processing time of approved applications from the receipt of the applications from January 2014 to September 2015 (Note 17) revealed that:

- (a) for the GEP, 665 (1% of 53,694 approved applications) had taken more than 90 days to process (averaging 122 days); and
- (b) for the ASMTP, 1,055 applications (7% of 15,663 approved applications) had taken more than 90 days to process (averaging 130 days).

2.5 Audit’s sample check of 30 approved GEP and ASMTP cases with processing time longer than 90 days revealed that in 13 (43%) cases, there were delays on the part of the ImmD in requesting additional supporting documents. For example, in one case, the case officer requested additional information (such as details of the job duties) from the sponsoring company (i.e. the employer) on 24 April 2014 (about one month after receipt of the application on 21 March 2014). While not all of the requested information was received on 22 May 2014, the case officer only requested the outstanding and further information on 29 October 2014 (i.e. 5 months later). The reply was received on 11 November 2014 and the application was approved on 27 November 2014. In Audit’s view, there is a need to monitor GEP and ASMTP applications with long processing time to ensure the timely admission of talent and professionals to meet local manpower needs.

Note 17: The analysis covered applications received from January 2014 to September 2015 which were approved from January 2014 to December 2015.

### Admission Schemes for talent, professionals and non-local graduates

#### *Need to provide more guidelines on the assessment of local availability and remuneration*

2.6 As reflected in Table 2, the average approval rates for the GEP Employment Stream and the ASMTP during 2011 to 2015 were 95.7% and 91.7% respectively. The number of applications processed also increased by 13% from 32,015 in 2011 to 36,184 in 2015 for the GEP Employment Stream and by 17% from 9,260 in 2011 to 10,861 in 2015 for the ASMTP. According to the Immd, in processing the GEP and ASMTP applications, the case officers should consider availability of local employees and market level of remuneration to ascertain whether the applicants meet the criteria stated in paragraph 2.3(c) and (d). Audit's examination of approved GEP and ASMTP cases revealed room for enhancement in the assessment of local availability and remuneration:

- (a) **Local availability.** The common application form used for the GEP and the ASMTP requires a sponsoring company to provide justifications for employing an applicant and the reasons why the post cannot be filled by the locals. According to the Immd's departmental guidelines, supporting documents for proof of local recruitment will normally be exempted but the Sections responsible for processing applications would issue operational instructions as appropriate. Audit noted that:
- (i) the QMMR Section's ASMTP guidelines specified that the sponsoring companies should be required to provide a declaration that genuine local recruitment efforts had been made but without success and such proof would be sought if necessary. However, Audit's sample check of 20 approved ASMTP applications (for which the required information was not available) revealed that in seven cases, the case officers concerned had not requested proofs of local recruitment. There was no documentation on the reasons why the declaration or relevant proof was not obtained; and
- (ii) the GEP guidelines issued by the EVV Section did not contain the same declaration or proof of local recruitment requirement as the ASMTP guidelines. As the eligibility criteria for both the GEP and the ASMTP schemes are the same, Audit considers that the Immd should issue guidelines to ensure that the assessments of local availability for GEP applications are carried out in a manner consistent with that of ASMTP applications; and

### Admission Schemes for talent, professionals and non-local graduates

- (b) **Remuneration.** According to the Immd, case officers would make reference to information including the salary statistics reports prepared by the Census and Statistics Department (C&SD), salary survey reports published by two specified employment websites and information provided by relevant professional bodies in considering market level of remuneration. However, such practices were not laid down in the Immd's guidelines. Audit reviewed 51 approved cases for the Information Technology Manager position and 217 approved cases for the Accounting/Finance Manager position during 2010 to 2015 (up to September) and noted that the monthly remunerations of some applicants were below the average/median monthly salaries published by the information sources mentioned by the Immd. However, the case officers concerned had not documented the basis of accepting the remunerations as commensurate with the market level for such cases. Details are as follows:
- (i) according to the C&SD, the average monthly salaries of Information Technology Managers during 2010 to 2015 ranged from \$35,100 to \$60,700. According to one of the Immd's specified employment websites, the average monthly salaries during the same period ranged from \$34,518 to \$43,766. According to another employment website specified by the Immd, as at February 2016, the median monthly salary of Information Technology Managers for the period from March 2015 to February 2016 was \$41,282. However, 13 (25%) of 51 Information Technology Manager positions approved had monthly remunerations of below \$30,000 (averaging \$22,808). No notations were made for the 13 cases on how the case officers had satisfied themselves that the remunerations of the applicants were commensurate with the market level;
- (ii) according to the C&SD, the average monthly salaries of Accounting/Finance Managers during 2010 to 2015 ranged from \$40,500 to \$71,900. According to one of the Immd's specified employment websites, the average monthly salaries during the same period ranged from \$34,861 to \$44,261. According to another employment website specified by the Immd, as at February 2016, the median monthly salary of Accounting Managers for the period from March 2015 to February 2016 was \$35,731. For Finance Managers, the median monthly salary

### Admission Schemes for talent, professionals and non-local graduates

during the same period was \$47,772. However, 56 (26%) of the 217 Accounting/Finance Manager positions approved had monthly remunerations of below \$30,000 (averaging \$22,322). No notations were made for the 56 cases on how the case officers had satisfied themselves that the remunerations of the applicants were commensurate with the market level; and

(iii) according to the ImmD, in all 69 (13 plus 56) cases, the case officers concerned had considered that the applicants' remunerations were commensurate with the market level but the basis used in the assessments had not been documented.

2.7 In Audit's view, the ImmD needs to issue guidelines setting out clearly the required procedures for considering availability of local employees and market level of remuneration to ensure that the Admission Schemes' criteria are applied consistently to all applications. The ImmD also needs to tighten control to ensure that the laid-down guidelines on considering availability of local employees in processing ASMTP applications are complied with at all times.

### *Need to improve the random check arrangements in verifying applicants' qualifications*

2.8 The GEP and ASMTP applicants are only required to submit photocopies of their academic/professional qualifications and employment offers to support their entry applications. According to ASMTP guidelines, in warranted cases (Note 18), the applicants are required to apply for verification of their qualifications at the China Academic Degrees and Graduate Education Development Centre (Note 19)

**Note 18:** *These include cases where the issuing institutes of the academic certificates are not found in the education institute list provided by the Education Bureau or cannot be verified by the Hong Kong Council for Accreditation of Academic and Vocational Qualifications, or the authenticity of the academic certificates is in doubt.*

**Note 19:** *The Centre is an administrative department directly under the Ministry of Education of the Mainland. One of its functions is to engage in the researches into the degree equivalency between China and foreign countries, and between Mainland and Hong Kong, Macao and Taiwan.*

### Admission Schemes for talent, professionals and non-local graduates

and arrange for the verification results to be sent to the ImmD directly. Regarding the authenticity of documents from the other professionals such as cooks, the applicant may be required to apply to the relevant Notary offices for confirmation.

2.9 Audit's examination of the arrangements in verifying the GEP and ASMTP applicants' qualifications revealed the following issues:

- (a) according to ASMTP guidelines, the case officers of the QMMR Section should verify the applicants' qualification documents and supervisors should randomly select 5% of the potential approval cases for performing the same verification procedures. In January 2016, Audit requested the QMMR Section to provide evidence of the supervisors' random checks for review. In response, the QMMR Section said in February and March 2016 that case officers had conducted verification on the applicants' qualifications in warranted cases with the documentation received scanned and the applications checked and endorsed by supervisors in the computer system. However, records of the 5% random checks had not been maintained; and
- (b) as for the GEP Scheme, Audit noted that the EVV Section had not issued specific guidelines on verification of applicants' qualifications and there was no similar requirement on random checks as that of the ASMTP. In response to Audit's enquiry, the EVV Section said in February 2016 that as a general and normal practice, case officers would require clarification and verification of documents in case of doubt.

In Audit's view, the ImmD needs to improve the random check arrangements in verifying applicants' qualification documents for both GEP and ASMTP applications.

### *Need to tighten control over approval on limit of stay*

2.10 **Returnability requirement not met.** According to the ImmD's guidelines, to ensure returnability of an applicant to his country of residence or citizenship, the limit of stay granted is subject to validity of the applicant's travel document. The limit of stay will only be approved up to 7 days before the expiry date of the travel

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2.12 **Limit of stay granted beyond contract period.** According to ImmD guidelines, the initial duration of stay of successful non-top-tier applicants under the GEP and the ASMTP is two years and the extension of stay pattern for them is 3+3 years or in accordance with the duration of the employment contract, whichever is shorter. Audit's sample check of 30 applications approved from 2010 to 2015 revealed that in four cases (Note 22), the limit of stay granted exceeded the contract periods by 101 to 456 days (averaging 277 days). The ImmD needs to remind its case officers to strictly follow the laid-down guidelines in approving limit of stay.

**Need to tighten checking of applications for intra-company transfer**

2.13 According to ImmD guidelines, an employee at managerial or professional level is allowed to enter Hong Kong for intra-company transfer provided that he has worked with the company for not less than one year. In addition to the requirement that the remuneration provided should be at market level, the number of transferees sponsored by a company at any one time should also be reasonable. In this regard, the company is required to state in the application form the number of local and expatriate staff employed.

2.14 From 2010 to 2015 (up to September), there were 51,543 and 8,326 applications approved through intra-company transfer under the GEP and the ASMTP. Audit's sample check of 30 applications approved during the period suggested that there were inadequacies in the ImmD's vetting process, as follows:

- (a) in 11 (37%) approved GEP cases, the sponsoring companies had not provided the number of local and non-local staff in the application forms or only provided incomplete (e.g. only the number of local staff was provided) or outdated information. There was no evidence to show that

**Note 22:** *These involved an entry application and a change-of-employment application for the GEP, and two change-of-employment applications for the ASMTP.*

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document for GEP entry cases (Note 20). An extension of stay will not normally be granted beyond one month before the expiry date of the applicant's travel document for all GEP cases. For ASMTP cases, the extension of stay will not be normally granted beyond one month (before 17 March 2014) and 7 days (since 17 March 2014) before the expiry date of the applicant's travel document. Audit analysed the ImmD's computer records of the GEP cases and the ASMTP extension-of-stay cases (see Note 20) from 2010 to 2015 (up to September) and found that the approved limit of stay of 10,449 approved cases appeared to have exceeded the stipulated requirements, accounting for about 3% of some 354,000 cases analysed (Note 21).

2.11 Audit selected 90 such approved cases for further examination and noted the following:

- (a) 54 (60%) cases were related to the case officers' oversight of the expiry dates of the travel documents; and
- (b) the remaining 36 (40%) cases involved incorrect data recorded in the computer system. For example, in some cases, although new travel documents were subsequently provided by the applicants, the ImmD had not updated the computer records or the data were not correctly input into the system. According to the ImmD, as the expiry date of travel document was not a mandatory data input field, the data captured in the system might not be up-to-date.

In Audit's view, the ImmD needs to remind its case officers to ensure that the returnability requirement is met in granting approval on limit of stay. The ImmD also needs to take measures to ensure that data maintained in the computer system are accurate and up-to-date.

**Note 20:** *The immigration requirement for ASMTP applicants is different. After an ASMTP application is approved, the applicant should apply for an Exit-entry Permit for Travelling to and from Hong Kong and Macao and an exit endorsement from the Public Security Bureau Office. As the documents are not available at the time of application, the returnability test will be carried out by ImmD staff at the control point when the applicant arrives in Hong Kong.*

**Note 21:** *Audit's analysis excluded applications without records of travel document expiry date in the computer system.*

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the ImmD had requested the relevant information from the companies concerned and assessed the reasonableness of the local and expatriate staff mix (Note 23); and

- (b) in 10 (33%) approved GEP cases, the applicants had worked for the companies for less than one year (averaging 4 months) but the ImmD still approved the applications.

The ImmD needs to remind case officers to strictly follow the laid-down guidelines in checking applications for intra-company transfer.

***Need to ensure compliance with requirement on special conditions of stay of foreign cooks***

2.15 It is the ImmD's policy to tighten control of the conditions of stay of foreign cooks employed by local restaurants under the GEP. According to the guidelines, special conditions of stay should be imposed on foreign cooks by the Section Head (Chief Immigration Officer), namely:

- (a) they should work for a specific employer and that change of employer is not permitted; and
- (b) they should stay in Hong Kong until the end of their limit of stay or two weeks after termination of employment contract, whichever is earlier.

2.16 Audit's sample check of 20 GEP applications approved during 2010 to 2015 involving foreign cooks revealed that in 7 (35%) cases, the special conditions of stay for foreign cooks were not imposed. Audit also noted that the special conditions of stay for foreign cooks were not applied to cooks under the ASMTP.

**Note 23:** According to the EVV Section, in 7 cases, although the relevant information had not been provided by the sponsoring company in the GEP application forms, the case officers had made reference to other application forms submitted by the same company under the ASMTP and for training visas in assessing the GEP applications.

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2.17 Apart from foreign cooks, there were no laid-down guidelines on whether special conditions should also apply to other types of catering professionals. Audit noted that there were inconsistencies in imposing special conditions of stay by case officers. For example, special conditions of stay were imposed in some cases on bakers, chef trainers and mixologists but not others. In Audit's view, the ImmD needs to review the consistency of the practices of imposing special conditions of stay on cooks and catering professionals.

**Audit recommendations**

2.18 Audit has recommended that the Director of Immigration should, in administering the GEP and the ASMTP:

- (a) monitor GEP and ASMTP applications with long processing time to ensure that case officers take prompt actions on requesting and following up additional information from applicants;
- (b) issue guidelines to set out clearly the required procedures for:
- (i) considering availability of local employees in processing GEP applications in line with those for ASMTP applications;
  - (ii) considering market level of remuneration in processing both GEP and ASMTP applications; and
  - (iii) documenting the justifications in cases where the laid-down guidelines cannot be followed,

and take measures to ensure relevant staff's compliance with the laid-down guidelines;

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- (c) improve the random check arrangements in verifying applicants' qualification documents for GEP and ASMTP applications;
- (d) remind case officers to:
  - (i) ensure that the returnability requirement is met in approving the limit of stay;
  - (ii) strictly follow the laid-down guidelines in approving limit of stay in accordance with duration of the employment contracts where applicable;
  - (iii) strictly follow the laid-down guidelines in checking applications for intra-company transfer; and
  - (iv) ensure that special conditions of stay for foreign cooks under the GEP are imposed in accordance with the ImmD's policy;
- (e) take measures to ensure that the data maintained in the computer system for processing GEP/ASMTP applications are accurate and up-to-date; and
- (f) review the consistency of the practices of imposing special conditions of stay on cooks and professionals in the catering industry.

**Response from the Government**

- 2.19 The Director of Immigration agrees with the audit recommendations. He has said that the ImmD:
- (a) has stepped up monitoring of cases with prolonged processing time. Case officers have been reminded to adhere to the laid-down guidelines in processing the GEP and the ASMTP applications; and

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- (b) will conduct reviews on:
    - (i) the alignment of the assessment procedures for local availability as well as remuneration in processing both the GEP and the ASMTP applications; and
    - (ii) the imposition of special conditions of stay on cooks and professionals in the catering industry,
- and take appropriate follow-up measures based on the review results.

**Administration of QMAS**

2.20 The QMAS aims to attract highly skilled or talented persons to settle in Hong Kong (see para. 1.6(c)). The Scheme is promoted to interested persons through the Government's Economic and Trade Offices in overseas countries and in the Mainland, and the website of the ImmD. It is a quota-based scheme (currently 1,000 persons per year) operated on a points-based system. Since its inception in June 2006 to December 2015, 3,305 applicants (Note 24) were successfully allotted a quota (averaging 348 per year). Table 3 shows that from 2011 to 2015, while the number of annual applications received had increased by 9% from 1,674 to 1,829, the number of annual applications approved dropped by 18% from 292 to 240.

**Note 24:** *Of the 3,305 quotas allotted, 3,042 quotas were allotted under the GPT and 263 quotas under the APT (see para. 2.22).*

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Table 3  
Analysis of applications under QMAS  
(2011 to 2015)

Application	Number of applications					Percentage increase/ (decrease) from 2011 to 2015
	2011	2012	2013	2014	2015	
Received	1,674	1,965	1,787	2,341	1,829	9%
Approved	292	251	298	338	240	(18%)
Rejected	471	604	736	884	789	68%
Case closed (Note)	703	720	710	1,335	820	17%
Processed	1,466	1,575	1,744	2,557	1,849	26%

Source: ImmD records

Note: A case would be closed when the applicant withdrew his application or when the application could not be processed (e.g. due to failure to provide required information).

Remarks: The average approval rate (i.e. applications approved ÷ (applications processed – cases closed) × 100%) from 2011 to 2015 was 28.9%.

2.21 The QMMR Section is also responsible for administering the QMAS. As at December 2015, 19 staff in the QMMR Section were deployed to administer the QMAS.

Selection mechanism

2.22 A QMAS applicant meeting the normal immigration requirements (see Note 3 to para. 1.6) will be assessed by one of the two points-based tests (see para. 1.6(c)) according to his choice:

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(a) **GPT.** The GPT uses five point-scoring factors (i.e. age, academic/professional qualifications, work experience, language proficiency and family background – Note 25) to assess the points which an applicant can score. The prevailing pass point is 80 (Note 26) out of a possible 195 points; and

(b) **APT.** Under the APT, an applicant can score either 0 or 195 points depending on whether he can meet the criteria for achievement (e.g. Olympic medal, Nobel Prize or lifetime achievement award from industry).

2.23 Each application attaining the pass point will be further assessed on its individual merits by one of the four Panels (Note 27) of the Advisory Committee on Admission of Quality Migrants and Professionals (the Committee – see Note 5 to para. 1.6(c)) for approval based on the following factors:

(a) **Education.** The awarding institution is one that is representative of its field of study;

(b) **International exposure.** The applicant has valuable international exposure that is regarded as a plus by his sector;

**Note 25:** The maximum points for each factor are: age (30), academic/professional qualifications (70), work experience (55), language proficiency (20) and family background (20).

**Note 26:** The QMAS aims to cast the net wider for talent from places all over the world and expand the pool of candidates for selection. With a pass point set at 80, young talent with strong academic background (e.g. a doctorate degree) but with less work experience may also be selected.

**Note 27:** The four Panels, each comprises five to six members of different sectors, are responsible for assessing applications of their respective sectors, including: (a) manufacturing, architecture, surveying, engineering and construction, and information technology and telecommunications sectors; (b) financial and accounting services, legal services, logistics and transportation, and commerce and trade sectors; (c) broadcasting and entertainment, catering and tourism, arts and culture, and sports sectors; and (d) business support and human resources, academic research and education, human health and veterinary services and others sectors.

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2.25 Audit also found that in three selection exercises of some 750 GPT applications, the Panels had not provided any justifications for recommending eight applications and assessing two other applications as “marginal” either by checking against the appropriate boxes in the comments sheets or stating the justifications in the minutes of meetings.

2.26 In Audit’s view, proper documentation of the justifications for recommending or rejecting QMAS applications is important to support accountability and ensure consistency in assessing applications in future selection exercises. The ImmD needs to remind the Panels to record their justifications in this regard.

***Need to incorporate a talent list for the QMAS***

2.27 From 2011 to 2015, the number of rejected QMAS applications had increased by 68% from 471 in 2011 to 789 in 2015 (see Table 3 in para. 2.20). In response to Audit’s enquiry in February 2016, the ImmD said that the Committee would consider the socio-economic needs of Hong Kong, the sectoral mix of candidates and other relevant factors (see para. 2.23) before making recommendation to the Director of Immigration on allocating quota in each selection exercise.

2.28 Audit noted that from January 2010 to September 2015, 713 applicants had submitted applications for two to four times each (totalling 1,500 representing 14% of all 10,574 applications received in the period) but only 151 (21%) of them were successfully allocated a quota under the QMAS. The large number of repeat applications suggests that the applicants might be unclear about the targeted talent requirements. In pursuance of the Chief Executive 2015 Policy Address, the Labour and Welfare Bureau (LWB) is now considering the feasibility of drawing up a talent list to attract high quality talent to support Hong Kong’s development (see para. 1.8(e)). In Audit’s view, the ImmD needs to closely liaise with the LWB for incorporating the talent list into the QMAS once it is available so that prospective applicants are better informed before deciding whether they should submit an application.

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(c) **Language skills.** The applicant possesses language skills other than Chinese/English that are needed by his sector;

(d) **Career track record/professional training.** The career track record and other professional training of the applicant are likely to bring contribution to Hong Kong; and

(e) **Future plan.** The applicant has a concrete and feasible plan which is relevant to his past experience.

Applications that require further deliberation and review (Note 28) will be discussed at the Committee for making decisions. A successful applicant is required to attend an interview in which the authenticity of his documents is verified.

***Need to document justifications for recommending or rejecting GPT applications***

2.24 Audit examined the records of 55 GPT selection exercises conducted by the Committee (11 exercises) and its Panels (44 exercises) from January 2013 to September 2015. Audit found that:

(a) the Committee recorded in the minutes of meetings details of the deliberations in the selection exercises and justifications for allotting or not allotting a quota to an applicant; and

(b) the Panels used a standard pre-printed form called “comments sheet” to record their assessments on the applications in the selection exercises (i.e. by making a tick mark against the list of choices under the comments and justifications columns (Note 29)). General comments made in the selection exercises were also recorded in the minutes of meetings.

**Note 28:** *If an applicant possesses specific or unique profile (e.g. having a doctorate degree) but his application is not recommended by a Panel, the Committee will review his application.*

**Note 29:** *There are four choices under the comments column (viz. exceptional, highly recommended, recommended and marginal) and six choices under the justification columns (i.e. the five factors mentioned in para. 2.23 and others).*

**Admission Schemes for talent, professionals and non-local graduates****Audit recommendations**

- 2.29 **Audit has recommended that the Director of Immigration should:**
- (a) remind the Panels of the QMAS to record their justifications for recommending or rejecting an application in the GPT selection exercise; and
  - (b) closely liaise with the LWB to incorporate the talent list into the QMAS once it is available so that prospective applicants are better informed before deciding whether they should submit an application.

**Response from the Government**

2.30 The Director of Immigration agrees with the audit recommendations. He has said that the Immd will follow up the audit recommendations in paragraph 2.29(a) and (b) with the Panels of the QMAS and the LWB respectively.

**Administration of IANG**

2.31 The IANG aims to attract foreign and Mainland students (Note 30) who have obtained a degree or higher qualification in a full-time and locally-accredited local programme to stay/return and work in Hong Kong so as to strengthen its human capital and enhance its attractiveness to non-local students (see para. 1.6(d)). A non-local fresh graduate who wishes to apply for the IANG needs to submit an application within six months after the date of his graduation. He is not required to have an offer of employment upon application. On the other hand, a non-local graduate who wishes to return to work in Hong Kong beyond six months after his graduation is required to secure an offer of employment upon application.

**Note 30:** *The IANG is not applicable to nationals of Afghanistan, Cambodia, Cuba, the Democratic People's Republic of Korea, Laos, Nepal and Vietnam.*

**Admission Schemes for talent, professionals and non-local graduates**

2.32 Upon approval of an IANG application, the applicant becomes an IANG entrant and he may normally be granted 12 months' stay. He is free to take up and change employment without the need to seek prior approval from the Director of Immigration. Upon application for extension of stay before expiry of his limit of stay, he is required to have secured an offer of employment as in the case of a returning graduate. Successful entrants will normally be permitted to stay in Hong Kong in a pattern of 2+2+3 years.

2.33 The QMMR Section is responsible for administering the IANG. As at December 2015, five staff in the Section were deployed to process the IANG applications (Note 31). As indicated in Table 4, from 2011 to 2015, the number of IANG approved applications had increased by 95% from 5,258 in 2011 to 10,269 in 2015 (i.e. an average increase of some 1,200 cases per year).

**Note 31:** *According to the Immd, staff in the QMMR Section are flexibly deployed to cope with upsurges in workload among different units in the Section.*

**Table 4**  
**Analysis of applications under IANG**  
**(2011 to 2015)**

Application	Number of applications					Percentage increase from 2011 to 2015
	2011	2012	2013	2014	2015	
Received	5,313	6,803	8,750	10,444	10,337	95%
Approved	5,258	6,756	8,704	10,375	10,269	95%
Rejected	0	0	0	3	3	—
Case closed (Note)	33	35	35	64	59	79%
Processed	5,291	6,791	8,739	10,442	10,331	95%

Source: ImmD records

Note: A case would be closed when the applicant withdrew his application or when the application could not be processed (e.g. due to failure to provide required information).

Remarks: The average approval rate (i.e. application approved ÷ (applications processed – cases closed) × 100%) from 2011 to 2015 was 99.9%.

**Need to verify authenticity of supporting documents**

2.34 An IANG applicant/entrant is only required to submit photocopies of his academic/professional qualification and employment offer to support his entry application or extension-of-stay application. Unlike the QMAS (see para. 2.23), he is not required to attend any interview when the original copies of his supporting documents can be inspected. In response to Audit’s enquiry, the ImmD said in February 2016 that:

- (a) case officers would check the application history of IANG applicants in the APPLIES (see para. 1.6) to confirm their non-local student status; and

- (b) the case officers might request fresh graduates to provide original transcripts of academic records, graduation certificates or supporting letters from the degree awarding institutions if the cases warranted. For returning graduates, since it was impracticable to request them to submit original copies of their documents, the ImmD would check with the respective degree awarding institutions in case of doubt.

2.35 With the advances in information technologies (e.g. image processing technology), there is a risk that bogus documents may be used to support IANG applications. Audit research on similar schemes administered by overseas authorities reveals that the authenticity of supporting documents is verified by different means (e.g. applicants are required to provide an original endorsement letter from an education institution or to submit certified copies of original documents). In Audit’s view, the ImmD needs to tighten the control over the verification of the authenticity of supporting documents submitted by IANG applicants (e.g. sample checking original documents or requesting confirmation from relevant education institutions).

**Need to document factors considered in assessing IANG applicants’ job qualification requirements**

2.36 For an entry application (by a returning graduate) or an application for extension of stay (by a fresh/returning graduate), the IANG requires an applicant/entrant to secure an employment offer which is at a level commonly taken up by degree holders and the remuneration package is at market level. Audit analysed the computer records of the approved IANG cases by remuneration levels (for the period January 2010 to September 2015) and found that 442 of some 34,000 cases had monthly remunerations of \$9,000 or below. Audit randomly selected 30 of the 442 approved cases to examine:

- (a) the academic/professional requirements of the applicants’ jobs as specified by the employers in the employment contracts/application forms; and
- (b) the comments made by the case officers for recommending or rejecting an application.

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package of young graduates employed in various industries to facilitate case officers' reference. To improve the efficiency and effectiveness of the assessment of IANG applications and subsequent reviews by supervisory staff, the ImmD needs to consider establishing such a database.

**Audit recommendations**

2.40 Audit has *recommended* that the Director of Immigration should:

- (a) **tighten control over the verification of the authenticity of supporting documents submitted by IANG applicants/entrants;**
- (b) **remind case officers to document all the factors considered in assessing IANG applicants' job qualification requirements; and**
- (c) **consider establishing a database of current market remuneration package of young graduates employed in various industries to facilitate case officers' assessment of IANG applications.**

**Response from the Government**

2.41 The Director of Immigration agrees with the audit recommendations. He has said that the ImmD:

- (a) has stepped up the verification of the authenticity of supporting documents submitted by IANG applicants/entrants;
- (b) has reminded case officers to document all factors considered in assessing IANG applications; and
- (c) will consider the feasibility of establishing a database as recommended in paragraph 2.40(c).

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2.37 Audit's examination revealed that the case officers' written comments on the academic/professional qualification requirements of the applicants' jobs did not always tally with those specified by the employers. In 6 of the 30 approved cases selected for audit examination, while the application forms/employment contracts submitted by the employers specified that the jobs (e.g. account clerk) were open to certificate holders/Form 5 graduates or above, the case officers concerned noted down on file that the entry requirement was a bachelor degree and the job duties were highly professional and technical in nature.

2.38 Upon Audit's enquiry in February 2016, the ImmD said that in processing the applications, the case officers concerned had considered the following factors:

- (a) whether the applicants/entrants possessed the qualification/experience which suited the job requirements;
- (b) the employers' comments on the potential of the applicants/entrants; and
- (c) whether the remuneration packages offered were at market level.

However, there was no documentation that these factors had been considered by the case officers in the cases reviewed by Audit. Audit considers that the ImmD needs to remind case officers to document all the factors considered in assessing the applicants' job qualification requirements.

***Need to establish a database of current market remuneration package***

2.39 According to the ImmD, in processing IANG applications, the case officers needed to ascertain whether an IANG applicant/entrant could meet the criteria of securing an employment offer of degree level with remuneration at market level and would make reference to the latest graduate employment survey reports of local universities, the remuneration packages offered by reputable employers and recruitment advertisements in local media (e.g. newspapers and recruitment journals). In this connection, Audit notes that the ImmD has not established a database to maintain information on current market remuneration

## Admission Schemes for investors

**PART 3: ADMISSION SCHEMES FOR INVESTORS**

3.1 This PART examines the admission of investors, focusing on:

- (a) administration of GEP Investment Stream (paras. 3.2 to 3.14); and
- (b) administration of CIES (paras. 3.15 to 3.25).

**Administration of GEP Investment Stream**

3.2 Overseas, Taiwan and Macao persons who wish to enter/stay in Hong Kong for investment as entrepreneurs (i.e. establishing or joining in a business in Hong Kong) shall apply for admission under the GEP Investment Stream (see para. 1.6(e)). The scheme is quota-free and non-sector specific. The EVV Section is responsible for processing entry applications and the Extension Section for extension-of-stay applications. An application may be favourably considered if, apart from meeting the same conditions under the GEP Employment Stream mentioned in paragraph 2.3(a), the applicant is in a position to make substantial contribution to the economy of Hong Kong.

3.3 Before the implementation of enhancement measures in May 2015 (see para. 1.9(c)), in assessing whether the applicant was in a position to make substantial contribution to the economy of Hong Kong, factors such as nature of business, mode of operations, financial and staffing situation of the company, and financial situation of the applicant were considered. Currently, other factors including business plan, business turnover, financial resources, investment sum, number of jobs created locally and introduction of new technology or skills are also considered.

3.4 Entrepreneurs admitted under the GEP Investment Stream will normally be granted an initial stay in Hong Kong for 24 months upon entry. They may apply for extension of stay within four weeks before their limit of stay expires. Extension of stay, if approved, will normally follow the 3+3 years pattern. An analysis of the applications received and processed under the GEP Investment Stream from 2011 to 2015 is shown in Table 5.

Table 5

Analysis of applications under GEP Investment Stream (2011 to 2015)

Application	Number of applications				Percentage increase/ (decrease) from 2011 to 2015 (48%)	
	2011	2012	2013	2014		2015
Received	702	718	793	581	368	(48%)
Approved	493	475	310	215	205	(58%)
Rejected	49	85	354	270	90	84%
Case closed (Note)	108	99	199	93	69	(36%)
Processed	650	659	863	578	364	(44%)

Source: ImmD records

Note: A case would be closed when the applicant withdrew his application or when the application could not be processed (e.g. due to failure to provide required information).

Remarks: The average approval rate (i.e. applications approved ÷ (applications processed – cases closed) × 100%) from 2011 to 2015 was 66.7%.

**Need to improve the efficiency of processing applications**

3.5 In the COR, the ImmD has reported the performance for processing visa/entry permit applications under the GEP Investment Stream together with that for the GEP Employment Stream against the same performance target of processing 90% of the applications within four weeks (upon receipt of all supporting documents – see para. 2.4). For the purpose of reporting the attainment of the processing time target, the period between the time of receipt of applications and that of all supporting documents would not be counted. Audit analysed the actual processing time for approved GEP Investment Stream applications from the receipt

**Admission Schemes for investors*****Need to improve business reviews for extension-of-stay applications***

3.7 The ImmD may approve an entry application on the condition that a business review will be carried out upon the subsequent extension-of-stay application in warranted cases (e.g. a newly established business). The review will cover aspects such as office set-up, local recruitment and business performance. For such a review, the ImmD will require the applicant to submit documents (such as tenancy agreements) to support his application. Of the 1,148 entry applications approved from January 2012 to September 2015, 157 (14%) were subject to business reviews.

3.8 Audit examined a sample of 15 business review cases handled by the Extension Section to identify areas where improvements can be made. Audit noted the following issues:

- (a) in four (27%) cases, while the applicants had not delivered the planned scale of operation (e.g. setting up offices/recruiting local staff) as stated in the entry applications, the case officers approved their extension-of-stay applications without imposing the requirement of further business reviews (see an example in Case 1); and

**Case 1**

1. The applicant stated in the entry application in November 2013 that he planned to employ 9 local staff each for setting up two retail shops and another 8 local staff for the wholesale business. The application was approved with a condition that a business review should be carried out.
2. The business review conducted in November 2014 revealed that only one retail shop had been opened with one local staff employed to operate the shop. However, the application for extension-of-stay was approved without requiring a further business review.

Source: Audit analysis of ImmD records

**Admission Schemes for investors**

of applications from January 2014 to September 2015 (Note 32) and found that 193 (58%) of the 330 approved applications had taken more than 90 days with an average processing time of 137 days.

3.6 Audit selected 15 cases with processing time exceeding 90 days for examination and found that:

(a) in 14 cases, the case officers requested the following additional documents from the applicants to facilitate processing:

- (i) in 13 (93%) cases, documents filed with the Companies Registry (e.g. latest annual returns or incorporation forms);
- (ii) in 11 (79%) cases, tenancy agreements or supporting documents on office set-up; and
- (iii) in 6 (43%) cases, licences or certificates of a particular type of business (e.g. financial institution licences issued by the Securities and Futures Commission).

While these documents were frequently requested by case officers, they were not included in the checklist of submission of documents in the relevant guidebook for applicants. To enhance processing efficiency, the ImmD needs to review the types of additional documents required for processing and include them in the checklist so that the applicants can submit such documents together with their applications at an early time; and

- (b) in 3 cases, upon receipt of additional documents from the applicants, the case officers took over 30 days (averaging 73 days) to make further information requests. In 5 cases, the time lapse between the receipt of all supporting documents and granting the approval was over 30 days (averaging 87 days). The ImmD needs to step up monitoring of the processing time of applications to ensure that prompt actions are taken in obtaining/following up any additional supporting documents from applicants.

**Note 32:** The analysis covered applications received from January 2014 to September 2015 which were approved from January 2014 to December 2015.

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- (b) in two (13%) cases, there was room for enhancement in obtaining reliable supporting documents for business reviews (see an example in Case 2).

**Case 2**

1. When approving the entry application in September 2012, the case officer stated on file that Mandatory Provident Fund (MPF) contribution record for local staff employed should be examined in the business review.
2. While the applicant failed to provide MPF records for his local employees in three subsequent business reviews conducted in December 2013, September 2014 and October 2015, his extension-of-stay application in October 2015 was approved without requiring a further business review.
3. Upon Audit's enquiry, the ImmD said that the applicant had provided a staff list as a supporting document of employing local employees. However, the staff list was prepared by the applicant's company and could not provide the same level of assurance as MPF contribution records.

*Source: Audit analysis of ImmD records*

- 3.9 Business reviews are important to ascertain whether the entrants under the GEP Investment Stream have delivered the planned scale of operation as stated in the entry applications. In Audit's view, the ImmD needs to remind case officers to ascertain that the GEP entrepreneur entrants have done so (including obtaining reliable proof in warranted cases) before approving their extension-of-stay applications. For doubtful cases, the approval should be granted subject to further business reviews.

***Need to obtain the stipulated supporting letters in processing extension-of-stay applications***

- 3.10 Since May 2015, the ImmD has required a GEP entrepreneur applicant for extension of stay to submit a supporting letter indicating his contribution to Hong Kong. According to ImmD guidebook for applicants, the supporting letter

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should include information on the applicants' business, such as the amount of capital invested and to be invested in the coming three years, the number of posts created for local employees with post titles and those to be created in the coming three years. Audit examined a sample of 30 approved extension-of-stay cases (with applications submitted after May 2015) and found that the stipulated information on the applicants' contribution to the economy of Hong Kong was not always obtained by the case officers. Details are as follows:

- (a) in 15 (50%) applications, the applicants concerned provided information in accordance with the pre-May 2015 requirements (i.e. the office positions held by the applicants and remunerations received) instead of the stipulated supporting letters on their contribution to the economy of Hong Kong; and
  - (b) in 9 (30%) applications, the supporting letters submitted did not contain all the required information or the contribution made was not clearly stated. For example, in 5 (56%) of the 9 applications, the numbers of posts to be created for local employees in the coming three years were not stated in the supporting letters. In another case, the required information was not stated in exact terms in the supporting letter, i.e. the applicant had invested millions of dollars in Hong Kong, and the company had employed some full-time and part-time staff and would employ at least two full-time staff.
- 3.11 In Audit's view, the ImmD needs to take measures to ensure that the stipulated supporting letters with all the required information are always obtained for processing extension-of-stay applications. Given that the supporting letters are prepared by the applicants' companies, the ImmD also needs to obtain proof on their claimed contributions in warranted cases.

***Need to maintain statistics on GEP entrepreneur entrants' contribution to Hong Kong's economy***

- 3.12 Since May 2015, the ImmD has required case officers to input GEP entrepreneur entrants' business information (such as business sector, amount of capital invested and to be invested in the coming three years, and number of posts created for local employees and those to be created in the coming three years) into the computer system for statistical analysis of their contribution to the economy of

**Admission Schemes for investors****Response from the Government**

3.14 The Director of Immigration agrees with the audit recommendations. He has said that the Immd:

- (a) has stepped up monitoring of the processing time and reminded case officers of guidelines and requirements for applications under the GEP Investment Stream; and
- (b) will also explore the feasibility and cost-effectiveness of the enhancement of the APPLIES having due regard to operational efficiency.

**Administration of CIES**

3.15 The CIES was introduced in October 2003 to facilitate the entry for residence by persons who make capital investment in permissible investment assets but would not be engaged in the running of any business in Hong Kong. Notwithstanding the suspension of the CIES since 15 January 2015, the Immd is continuing to process applications received before the suspension date (see para. 1.6(f)). Table 6 shows the number of CIES applications received and processed by the Immd from 2011 to 2015. Approved applications have declined by 35% from 4,187 in 2011 to 2,739 in 2015. The applications pending processing as at December 2015 totalled 11,429 (see para. 3.18). According to the Immd, after suspension of the CIES, reinforcement staff have been redeployed back to other fronts of the Immd to cope with pressing operational needs. As at December 2015, 33 staff were deployed to administer the CIES.

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Hong Kong in order to evaluate the effectiveness of the scheme. However, such requirement only applies to entry and change-of-status applications but not for extension-of-stay applications. In Audit's view, the Immd needs to maintain computerised information on the GEP entrepreneur entrants' sustained contribution to the local economy since their admission to Hong Kong. Such computerised information is useful for compiling statistics for evaluating the extent of achievement of the GEP Scheme.

**Audit recommendations**

3.13 Audit has recommended that the Director of Immigration should:

- (a) include the types of supporting documents required for processing GEP entrepreneur applications in the checklist of submission of documents in the relevant guidebook for applicants;
- (b) step up monitoring of the processing time of GEP entrepreneur applications to ensure that prompt actions are taken in obtaining/following up any additional supporting documents from applicants;
- (c) remind case officers to ascertain that the GEP entrepreneur entrants have delivered the planned scale of operation as stated in their entry applications (including obtaining reliable proof in warranted cases) before approving their extension-of-stay applications. For doubtful cases, the approval should be granted subject to further business reviews;
- (d) take measures to ensure that the stipulated supporting letters with all the required information are always obtained for processing extension-of-stay applications;
- (e) obtain proof on the GEP entrepreneur applicants' claimed contributions to Hong Kong in warranted extension-of-stay cases; and
- (f) maintain computerised information on the GEP entrepreneur entrants' sustained contributions to the local economy.

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ImmD that he agrees to abide by the Scheme Rules (Note 34). In essence, the Scheme Rules prescribe that an applicant/entrant should not reduce his investment commitment while he is permitted to stay in Hong Kong (see Appendix D). The Scheme Rules also specify that the Director of Immigration is expected, for example, to scrutinise closely:

- (a) transactions between parties not at arm's length (e.g. associated persons under the influence of the applicant/entrant); and
- (b) suspected "back-to-back" arrangements where the applicant/s/entrant's holding of specified financial assets by borrowing or leveraging against those assets.

3.17 In processing an application, the ImmD may grant an applicant a formal approval or an approval-in-principle, as follows:

- (a) **Formal approval.** A formal approval is granted if an applicant has met one of three specified investment requirements. For example, he has invested permissible investment assets of not less than \$10 million within and thereafter throughout the period beginning six months before submission of his application; or
- (b) **Approval-in-principle.** An approval-in-principle is granted if an applicant can demonstrate that he has net assets/equity to which he is absolutely beneficially entitled with a market value of not less than \$10 million net throughout the two years preceding the date he lodged his application. A formal approval will be granted after the entrant furnishes proof of his investments (within and thereafter throughout the period beginning six months after approval-in-principle has been granted).

**Note 34:** *If an applicant/entrant breaches any part of his undertaking to the Director of Immigration, he and his dependants would not be allowed to stay in Hong Kong. In addition, the applicant/entrant may be liable to a fine and to imprisonment on conviction if: (a) there is a breach of any of the conditions of stay imposed; or (b) he has made untruthful declaration or statement for the purpose of the Scheme.*

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**Table 6**

**Number of applications under CIES (2011 to 2015)**

Application	Number of applications				
	2011	2012	2013	2014	2015
Received	3,384	6,508	9,227	6,083	2,851 (Note 2)
Approved	4,187	3,804	3,734	4,855	2,739
Rejected	2	1	1	10	2
Case closed (Note 1)	274	471	645	1,012	1,264
Processed	4,463	4,276	4,380	5,877	4,005

Source: ImmD records

Note 1: *A case would be closed when the applicant withdrew his application or when the application could not be processed (e.g. due to failure to provide required information).*

Note 2: *Some 1,800 applications were received on 14 January 2015 when the Government announced that the CIES would be suspended on the next day.*

Remarks: *The average approval rate (i.e. applications approved ÷ (applications processed – cases closed) × 100%) from 2011 to 2015 was 99.9%.*

3.16 A CIES applicant must have net assets of not less than \$10 million throughout the two years preceding his application (Note 33). Under the CIES, the applicant must invest not less than \$10 million in permissible investment assets which include equities, debt securities, certificates of deposits, subordinated debts and eligible collective investment schemes or a combination of these assets (i.e. specified financial assets). He is also required to provide an undertaking to the

**Note 33:** *To streamline the application procedure as well as shortening the processing time of application, with effect from 16 March 2009, an applicant may at his own cost engage a Certified Public Accountant (Practising) to issue a report to demonstrate that he has met the personal asset requirement.*

**Admission Schemes for investors**

3.19 According to the ImmD, it will process CIES applications in chronological sequence based on the dates of application submission. The ImmD estimated that it might take two to three years to clear the backlog of applications.

**Need to step up monitoring of the processing of CIES applications**

3.20 According to the ImmD, it has not made specific performance pledge for the CIES because the procedures involved are more complicated and more supporting documents are required. Audit selected 30 closed (i.e. no formal approval granted) cases for examination and found that:

- (a) for 10 (33%) cases which were closed before approval-in-principle was granted, the case officers, on average, sent out the first request for further information 11 months after receipt of applications; and
- (b) for 18 (60%) out of 20 cases which were closed after approval-in-principle was granted, the case officers, on average, sent out the first request for proof of investment 18 months after the stipulated six-month period (see para. 3.17(b)).

3.21 Audit's examination of ten selected approved cases with processing time longer than 10 months from some 7,000 approved CIES applications in 2014 and 2015 revealed that in two cases, the case officers took 49 and 60 months respectively to grant final approvals. Audit found that the long processing time of the two cases was partly attributable to the case officers' belated actions. For example, the case officers concerned had not reminded the applicants to submit the required information (such as proof of investment) until 10 and 25 months respectively after the submission deadlines.

3.22 In light of Audit's findings in paragraphs 3.20 and 3.21, the ImmD needs to step up monitoring of the processing of CIES applications to ensure that prompt follow-up actions are taken in obtaining additional information or ascertaining whether the investment requirements have been met.

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An entrant who has obtained formal approval is permitted to stay in Hong Kong for two years and may apply for an extension of stay every two years (Note 35). From October 2003 to December 2015, some 28,200 CIES applications had been approved and the total values of the investments made by CIES entrants at the times when formal approvals were granted to them amounted to \$244 billion (see Appendix E).

3.18 Owing to an increase in the number of CIES applications over the years, the number of CIES applications pending processing as at December 2015 was 11,429. An ageing analysis (see Table 7) revealed that in 10,084 applications where approvals-in-principle/formal approvals have not been granted, 1,714 (17%) had been submitted for two years or more. Apart from the 10,084 outstanding applications, there were another 1,345 applications with approvals-in-principle granted but still awaiting final approvals. In 1,213 (90%) of these 1,345 cases, two years or more had elapsed since submission of applications.

**Table 7**  
**Ageing analysis of outstanding CIES applications**  
**(December 2015)**

Time elapsed since submission (Year)	Number of applications		Total
	pending processing	with approved-in-principle granted	
< 1	2,511	5	2,516
1 to < 2	5,859	127	5,986
2 to < 3	1,629	1,179	2,808
3 to < 4	71	25	96
≥ 4	14	9	23
Overall	10,084	1,345	11,429

Source: Audit analysis of ImmD records

**Note 35:** Upon completion of not less than seven years of continuous ordinary residence in Hong Kong, the entrant and his dependants may apply for right of abode.

### Admission Schemes for investors

- (b) **tighten control over breaches of Scheme Rules of the CIES, including:**
- (i) **timely issue of warning letters to the entrants concerned; and**
  - (ii) **taking more stringent actions against cases of repeated breaches after issue of warning letters.**

### Response from the Government

3.25 The Director of Immigration agrees with the audit recommendations. He has said that:

- (a) the ImmD has reminded case officers to tighten monitoring of the processing of CIES applications and to uphold the Scheme Rules; and
- (b) regarding Audit's observations in paragraph 3.21, only a small number (i.e. 25 (0.33%) of 7,600 cases) of all applications with formal approval granted in 2014 and 2015 took more than 48 months to process. Nevertheless, the ImmD would continue to stay alert and flexibly deploy manpower resources to expedite the processing of CIES applications as far as practicable.

### Admission Schemes for investors

#### ***Need to tighten control over breaches of CIES Scheme Rules***

3.23 The Scheme Rules require a financial intermediary to notify the Director of Immigration that the applicant/entrant has not re-invested within 14 days the proceeds of sale of his scheme assets (see (d)(i) in Appendix D). Audit randomly selected ten of some 300 cases of breaches of the requirements on re-investment within 14 days for examination and found that:

- (a) in all ten cases (nine discovered by the ImmD and one informed by a financial intermediary), the ImmD only issued warning letters to the entrants concerned a long time (averaging 525 days) after the breaches had occurred; and
- (b) in three of the ten cases, the entrants had breached the re-investment requirement two to four times each despite warning letters issued by the ImmD.

In Audit's view, the ImmD needs to tighten control over breaches of Scheme Rules to ensure that the CIES entrants meet the investment requirement (Note 36). Such control actions may include timely issue of warning letters to the entrants and taking more stringent actions against cases of repeated breaches after issue of warning letters.

#### **Audit recommendations**

- 3.24 **Audit has recommended that the Director of Immigration should:**
- (a) **step up monitoring of the processing of CIES applications to ensure that prompt follow-up actions are taken in obtaining additional information or ascertaining whether the investment requirements have been met; and**

**Note 36:** *As at December 2015, the ImmD should ensure that some 24,800 approved applicants/entrants from January 2009 to December 2015 meet the investment requirement.*

## Admission Scheme for foreign domestic helpers

Table 8  
Analysis of applications under Admission Scheme for FDHs  
(2011 to 2015)

Application	Number of applications					Percentage increase/ (decrease) from 2011 to 2015
	2011	2012	2013	2014	2015	
Received	104,138	105,955	99,132	98,149	105,590	1 %
Approved	101,505	102,581	95,057	95,060	97,936	(4 %)
Rejected	278	345	535	486	713	156 %
Case closed (Note)	3,938	3,870	3,519	3,292	3,624	(8 %)
Processed	105,721	106,796	99,111	98,838	102,273	(3 %)

Source: ImmD records

Note: A case would be closed when the applicant withdrew his application or when the application could not be processed (e.g. due to failure to provide required information).

Remarks: Of the total 492,139 approved applications from 2011 to 2015, the average approval rate (i.e. applications approved ÷ (applications processed – cases closed) × 100%) was 99.5%.

4.3 As at December 2015, 149 staff in the Foreign Domestic Helpers Section (FDH Section) under the Visa Control (Operations) Division (see Appendix C) were responsible for processing visa applications for FDHs.

## PART 4: ADMISSION SCHEME FOR FOREIGN DOMESTIC HELPERS

4.1 This PART examines the administration of the Admission Scheme for FDHs.

### Administration of Admission Scheme for FDHs

4.2 Since early 1970s, the Government has allowed admission of FDHs to perform full-time and live-in domestic duties in Hong Kong (see para. 1.6(g)). To apply for admission, an FDH must have two-year relevant work experience and the sponsor (i.e. the prospective employer) is a Hong Kong resident who is proved to be financially capable of employing an FDH. At present, the sponsor must have a household income of not less than \$15,000 per month or assets of not less than \$350,000 (Note 37) to support the employment of an FDH for the whole two-year contract period. From 2006 to 2015, 909,861 FDHs had been admitted under the Scheme. As at December 2015, there were some 340,000 FDHs in Hong Kong. Table 8 shows that the number of approved applications under the FDH Scheme had decreased by 4 % from 101,505 in 2011 to 97,936 in 2015.

**Note 37:** The sponsor may also submit proof of assets of comparable amount (currently \$350,000) which is approximately the total sum of the income threshold of \$15,000 per month for the 24-month contract period.

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As such, the Labour Department is of the view that any increase of the income and asset thresholds must be considered carefully with due regard to the above and other relevant factors.

4.6 Audit noted that, while the Minimum Allowable Wage of the FDHs had increased five times in the past six years from \$3,580 in 2010 to \$4,210 in 2015 (Note 40), the household income and asset thresholds had remained unchanged since the 1970s. As more than 14 years have elapsed since the inter-departmental Working Group's last review of the household income threshold, Audit considers that the ImmD should liaise with the Labour Department to conduct a review on the household income and the asset thresholds for employing FDHs, taking into consideration the need to ensure sponsors' financial capability and other socio-economic factors.

**Need to strengthen follow-up actions on suspected job-hoppers**

4.7 The two-year Standard Employment Contract (see para. 1.6(g)) stated that if a contract is terminated before its expiry, the employer and the FDH shall give the Director of Immigration a notice (pre-mature termination (PMT) notification) in writing within seven days of the date of termination (Note 41). From time to time, there were media reports alleging that individual FDHs deliberately

**Note 40:** Owing to the adjustments in the Minimum Allowable Wage, the household income threshold of \$15,000 was lower than the "four times Minimum Allowable Wage" level from December 1996 to January 1999 and from late September 2012 onwards. Audit estimated that, in order to meet the "four times Minimum Allowable Wage" level, the household income threshold for employing an FDH in 2015 should be \$16,840 (i.e.  $\$4,210 \times 4$ ) instead of \$15,000 and the asset threshold should be about \$400,000 (i.e.  $\$16,840 \times 24$ ) instead of \$350,000.

**Note 41:** These records will be kept and taken into account by the ImmD in considering future applications made by the FDH for visa or extension of stay.

**Admission Scheme for foreign domestic helpers****Need to review stipulated financial requirements**

4.4 The household income threshold of \$15,000 has been adopted since the 1970s. In 1994, the "four times Minimum Allowable Wage" was adopted as the basis of determining the income threshold. In 2001, an inter-departmental Working Group on Review of Policies relating to FDHs (Note 38) found that the income threshold was unrealistically low on account of inflation over the years and therefore recommended a review to be conducted shortly to reflect the wage index movements, followed by regular reviews in future to reduce the possibility of underpayment of wages for FDHs.

4.5 In March 2016, the Labour Department informed Audit that:

(a) the recommendation of the Working Group had not been pursued by the then Education and Manpower Bureau (Note 39). The household income and the asset thresholds were to ensure that employers had the means to pay wages to the FDHs for the whole 24-month contractual period. There was no indication so far that there was a deteriorating trend of wage defaults involving FDHs and their employers, thereby warranting any urgent need for a review of the income threshold; and

(b) there were over 340,000 FDHs in Hong Kong and many of them were helping families with children and elders, including retirees who relied on their other incomes (e.g. retirement benefits, contribution from their children) or savings. In view of the ageing population and the anticipated manpower shortage problem, the number of FDHs was likely to grow in the coming years. The household income and asset thresholds formed part of the Government's FDH policy and should be considered cautiously and holistically with a basket of socio-economic factors.

**Note 38:** The Working Group, comprising representatives from the then Education and Manpower Bureau, the Labour Department and the ImmD (who were invited to attend meetings involving immigration of FDHs), reviewed policies on FDHs.

**Note 39:** Following the reorganisation of the Government Secretariat with effect from 1 July 2007, the manpower portfolio under the Education and Manpower Bureau was taken up by the LWB.

**Admission Scheme for foreign domestic helpers**

under-performed to cause their employers to terminate the contracts pre-maturely (Note 42). On termination, instead of returning to their place of origin, the FDHs took a short trip to Macao or the Mainland pending approval of their entry visa for a new employment (Note 43).

4.8 In response to the public concern, the FDH Section has taken the following measures to strengthen control over FDH entry-visa applications to curb possible abuses:

(a) **Phase 1.** From June 2012 to June 2013, the FDH Section identified entry-visa applications of FDHs with two or more PMT records within six months preceding their new visa applications for further scrutiny of their previous contract duration, termination reasons given by ex-employers and other case facts (Note 44);

(b) **Phase 2.** In June 2013, the ImmD established a Special Duty Team (SDT — Note 45) within the FDH Section to further tighten the control. From late June to August 2013, the identification criteria were enhanced to cover FDHs who had two or more PMT records in 12 months preceding their new visa applications. The SDT would proactively contact the ex-employers of the suspected job-hoppers for a better assessment of their new visa applications;

(c) **Phase 3.** From September 2013 to November 2014, the identification criteria were further enhanced to cover those FDHs who had two or more PMT records in any 12 months within the two years preceding their new visa applications; and

**Note 42:** *The alleged incentives of an FDH are: (a) one-month salary in lieu of notice from employer (in case of immediate termination); and (b) possibly money in lieu of free passage for returning to her place of origin.*

**Note 43:** *The ImmD might reduce the period of stay of an FDH who used this means to prolong the period of stay in Hong Kong for searching a new employer.*

**Note 44:** *As at June 2013, the FDH Section had identified some 1,000 FDHs as suspected job-hoppers. Subsequently, some 3% of the identified applications were rejected.*

**Note 45:** *The SDT comprised one Senior Immigration Officer and two Immigration Officers.*

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(d) **Phase 4.** A review by the ImmD found that the identification criteria used in Phase 3 did not have a significant impact on identifying job-hoppers and they had lengthened the processing time. The ImmD decided to revert back to the identification criteria adopted in Phase 2 with effect from mid-December 2014 and formed a Special Screening Unit (Note 46) in the SDT to speed up the identification process of suspected job-hoppers.

Up to December 2015, the SDT had identified and processed 6,960 suspected job-hopper cases and refused 606 (8.7%) of the pertinent visa applications. Besides, 745 cases (10.7%) were closed either because the applicants withdrew their applications or the applications could not be processed (e.g. the required information was not provided by the applicants).

4.9 Audit extracted from the ImmD's computer system some 3,000 visa applications from January to September 2015 of FDHs who had two or more PMT records in 12 months preceding their applications, and randomly selected 30 cases for examination. Audit noted that there were no guidelines setting out the key procedures on processing visa applications with PMTs. Individual case officers of the SDT had taken one or more of the following courses of actions:

- (a) scrutinising the comments in the PMT notices/complaint letters;
- (b) contacting ex-employers by telephone;
- (c) arranging an interview with the FDHs concerned;
- (d) reviewing the duration of service in previous contracts; and
- (e) considering other relevant facts (e.g. whether the FDH had provided false statements in previous applications).

**Note 46:** *The Special Screening Unit comprised one Immigration Officer and two Clerical Assistants.*

**Admission Scheme for foreign domestic helpers**

4.10 Audit's examination of the 30 randomly selected cases also revealed that, in eight cases, the ex-employers of the FDHs had made adverse comments on their performance in the PMT notices/complaint letters. All eight visa applications had been approved although in seven cases, not all the ex-employers had been contacted:

(a) **Cases 3 to 6.** The four cases had been followed up by the individual units of the FDH Section instead of the SDT. There was no documentary evidence showing that the case officers had tried to contact any of the ex-employers who had made adverse comments on the applicant FDHs before approving the visa applications; and

(b) **Cases 7 to 9.** The three cases had been followed up by the SDT. Audit noted that:

- (i) in Case 7, the case officer had only made one telephone call to one ex-employer and gave up after the call was unanswered;
- (ii) in Case 8, the case officer had only successfully contacted a family member of one ex-employer who had made adverse comments on the FDH's performance. The case officer had not contacted the other ex-employer after the first telephone call was unanswered; and
- (iii) in Case 9, the case officer had not contacted the two ex-employers after the first telephone calls to them were unanswered.

In one of the 30 cases examined by Audit (Case 10), the FDH had three PMT records in 12 months preceding her visa application but the reasons for termination of contract were not stated. The case officer successfully contacted the first ex-employer who made some adverse comments on the FDH's performance. However, the visa application was approved without having successfully contacted the other two ex-employers to ascertain the reasons for the premature termination of contracts.

4.11 While the Immd had established the SDT to address the job-hopping problem of FDHs, there were no laid-down procedures to guide case officers in processing new applications with PMT records. Upon Audit's enquiry, the Immd said in February 2016 that case officers had to process new applications with PMT records on case-by-case merits by considering a wide array of factors including contacting the ex-employers to gather further information on the past performance of the FDHs (see para. 4.9). However, in view of the variation in the extent of follow-up actions on new applications with PMT records mentioned in paragraph 4.10 above, Audit considers that the Immd needs to issue guidelines setting out the key follow-up procedures to ensure consistency in processing such applications. If there is an operational need for other units in the FDH Section to handle new applications with PMT records, the Immd also needs to ensure that the unit case officers follow the same follow-up procedures.

***Need to timely process PMT notifications and update the computer records***

4.12 Upon receipt of PMT notifications from employers/FDHs, the FDH Section needs to expeditiously process such notifications and update the computer records in order to facilitate early identification of suspected job-hoppers for further actions. Audit's analysis revealed that, while the monthly average number of 10,928 PMT notifications received in 2015 was the lowest in the past five years from 2011 to 2015, the monthly average number of such notifications pending processing had increased by 44% from 4,298 in 2011 to 6,202 in 2015 (see Table 9). In this regard, the Immd said that it had endeavoured to process the PMT notifications and update the computer records timely. Subsequently, the number of PMT notifications pending processing as at the year end of 2015 was 3,683, 57% down from 8,471 in 2014. Audit notes the Immd's recent efforts and considers that the Immd should continue to expedite the processing of PMT notifications and updating the computer records to support the SDT's work in addressing the job-hopping problem of FDHs.

**Admission Scheme for foreign domestic helpers**

**Table 9**  
**Analysis of PMT notifications**  
**(2011 to 2015)**

PMT notification	Average number per month				
	2011 (Note)	2012	2013	2014	2015
Received	11,249	13,147	12,706	12,278	10,928
Processed	11,326	13,150	12,965	11,765	11,327
Pending processing (monthly average)	4,298	5,308	3,768	7,000	6,202
Pending processing (year end)	5,462	5,423	2,316	8,471	3,683

Source: Audit analysis of ImmD records

Note: A backlog of 6,400 PMT notifications were carried forward from December 2010 to January 2011.

**Need to tighten the vetting of applications for FDHs performing driving duties**

4.13 Since January 2000, the Standard Employment Contract (see para. 1.6(g)) has prohibited FDHs from performing all sorts of driving duties to prevent employers from employing FDHs to work as full-time chauffeurs (Note 47). Nevertheless, individual employers who have genuine needs for their FDHs to perform driving duties may apply to the ImmD for special permission. In a paper submitted to the Legislative Council in May 2011, the ImmD explained that when applying for special permission to perform driving duties, an employer should provide full justifications that:

**Note 47:** This restriction becomes one of the conditions of stay imposed on the FDHs.

**Admission Scheme for foreign domestic helpers**

- (a) his FDH has to perform any of the five broad categories of domestic duties (i.e. household chores, cooking, looking after aged persons in the household, baby-sitting and child-minding); and
- (b) the driving duties are incidental thereto and arising therefrom. Details of such driving duties should also be provided.

4.14 Audit noted that, while the number of FDHs in Hong Kong had increased by 57% from 216,790 in 2000 to 340,380 in 2015, the total number of successful applications for FDHs performing driving duties had increased by 125% from 903 to 2,032 (Note 48) during the same period. Table 10 shows the total number of approved and rejected applications by the ImmD from 2011 to 2015.

**Table 10**  
**Number of approved and rejected applications**  
**for FDHs performing driving duties**  
**(2011 to 2015)**

Year	Approved application			Rejected
	New	Renewal	Total	
2011	346	1,058	1,404	4
2012	347	1,404	1,751	3
2013	358	1,551	1,909	4
2014	236	1,530	1,766	8
2015	284	1,748	2,032	4

Source: ImmD records

**Note 48:** The actual number of FDHs permitted to carry out driving duties was more than 2,032 in 2015 because the permission would be valid for the contract period of two years.

**Admission Scheme for foreign domestic helpers****Audit recommendations**

4.17 Audit has *recommended* that the Director of Immigration should:

- (a) liaise with the Labour Department to conduct a review on the household income and the asset thresholds for employing FDHs, taking into consideration the need to ensure sponsors' financial capability and other socio-economic factors;
- (b) issue guidelines setting out the key follow-up procedures for all case officers in the FDH Section to ensure consistency in processing new visa applications with PMT records;
- (c) remind case officers in the SDT and all other units in the FDH Section to make greater efforts to contact the ex-employers of PMT cases, especially those who have made adverse comments on the performance of the applicant FDHs, for clarification before making decisions on their new visa applications;
- (d) continue to expedite the processing of PMT notifications and updating the computer records; and
- (e) consider tightening the vetting of applications (including renewals) for FDHs performing driving duties by requiring:
  - (i) employers to provide full justifications for employing FDHs to perform driving duties; and
  - (ii) FDHs to make a declaration to indicate whether they have any driving-related convictions in and outside Hong Kong.

**Admission Scheme for foreign domestic helpers**

4.15 Audit's examination of the ImmD's computer records of ten approved applications revealed that the justifications provided in the application forms were travelling needs for performing commonly required domestic duties, such as:

- (a) taking children to and from schools;
- (b) taking other domestic helpers to and from market/groceries stores/laundry stores;
- (c) taking pets to veterinarian/salon; and
- (d) taking elders/children to and from clinic.

There was no elaboration on why such travelling needs could only be met by an FDH performing driving duties. Upon Audit's enquiry, the ImmD said in February 2016 that the case officers concerned had to consider, among others, the location of the destinations and the individual needs of the household members when assessing the applications concerned. However, Audit could not find any documentation on these factors having been considered by the case officers. As it is the responsibility of the employers concerned to provide full justifications for employing FDHs to perform driving duties, Audit considers that the ImmD needs to tighten the vetting of such applications (such as requiring employers to demonstrate their special needs for FDHs performing such duties).

***Need to require FDHs to declare driving offence records***

4.16 ImmD guidelines do not require an FDH applicant for special permission to perform driving duties to declare in the application form his previous driving offence information. In this connection, Audit noted that in one case, an FDH was allowed to perform driving duties for three consecutive employers notwithstanding that there were adverse comments on his driving behaviour. In processing the applications for FDHs to perform driving duties, the case officers did not require the FDH to provide information on whether he had any driving-related convictions. Audit considers that the ImmD needs to take improvement measures in this regard.

**Admission Scheme for foreign domestic helpers****Response from the Government**

4.18 The Director of Immigration agrees with the audit recommendations. He has said that the ImmD:

- (a) will liaise with the Labour Department for its review on the sponsors' household income and the asset thresholds for employing FDHs;
- (b) will issue guidelines on follow-up actions for FDH visa applications with PMT records;
- (c) has reminded case officers to follow up on adverse comments given by FDHs' ex-employers of PMT cases;
- (d) has expedited the processing of PMT notifications; and
- (e) will closely scrutinise applications for FDHs performing driving duties and study the feasibility of requiring FDHs to make a declaration of driving-related convictions.

**PART 5: OTHER ADMINISTRATIVE ISSUES**

5.1 This PART examines other administrative issues relating to the Admission Schemes.

**Information system*****Need to properly maintain computer records***

5.2 All the entry and extension-of-stay applications under the various Admission Schemes are processed with the aid of the computer system known as the APPLIES. In the funding paper submitted to the Finance Committee of the Legislative Council in May 2004 (Note 49), the Security Bureau said that, to cope with increasing workload and continuous demand for service improvements, achieve productivity improvement and provide necessary management information for better decision making and resources planning, the ImmD had to enhance its computer system. The APPLIES which was rolled out in December 2008 had the following features:

- (a) case officer assessing applications and handling investigation cases would work in a paperless environment supported by imaging facilities, automatic tracking and case distribution functions, online processing capability as well as expert system technology to facilitate decision making and investigation;
- (b) the public would be able to submit applications for most services by electronic means and obtain services and the processing time could be significantly shortened. The applicants could also check the progress of the applications by electronic means;
- (c) the system would integrate standalone systems developed through end user computing to provide better system support to process applications; and

**Note 49:** *In May 2004, the Finance Committee approved funding of \$337 million for upgrading two computer systems, namely APPLIES and the Electronic Records Programme. A cost breakdown of the two systems was not available.*

**Other administrative issues****Need to enhance the functions of APPLIES**

5.4 Audit also notes that the QMMR Section needs to rely on a tailor-made programme to supplement the APPLIES for the purpose of capturing data of QMAS applicants for data analysis purpose. Audit considers that efforts should be exerted to use the APPLIES to integrate standalone systems developed through end user computing as stated in the 2004 Finance Committee Paper (see para. 5.2(c)).

5.5 Besides, the computer records of FDHs in the APPLIES might not be maintained in a way to facilitate easy retrieval of information for statistical analysis. For example, there was no identifier for rejected applications for special permission to undertake driving duties in the computer system. Audit considers that the ImmD should explore the feasibility of enhancing the functions of the APPLIES to address the above inadequacies.

**Supervisory checks****Need to improve supervisory-check arrangements**

5.6 The ImmD has put in place supervisory-check arrangements to provide quality assurance on the decisions made by case officers in processing visa/permit applications under various Admission Schemes. However, Audit's examination of the supervisory-check records for the period 2010 to 2015 has revealed the following inadequacies in the present supervisory-check arrangements:

- (a) the number of supervisory checks carried out was less than the stipulated requirements. Besides, there was insufficient documentation on the conduct of supervisory checks in the spot-check registers of the QMAS, the IANG, the CIES and the SLS for certain periods (see some examples in Appendix F);
- (b) there was no specified supervisory-check requirement on entry-visa and contract renewal applications in the FDH Section; and
- (c) the extent of checks was not specified in the relevant guidelines for the ASMTP.

**Other administrative issues**

- (d) the system would provide enhanced functionalities to investigation officers including information analysis, data dissemination and operation support.

The ImmD also expected that the APPLIES would render better support to various Admission Schemes launched by the Government such as the ASMTP and the CIES.

5.3 Audit's examination of computer records of the Admission Schemes kept in the APPLIES revealed inadequacies. For example:

- (a) **GEP and ASMTP.** While the monthly remunerations of GEP entry applicants were input into the computer system for easy retrieval and analysis purposes, there was no similar mandatory input requirement for extension-of-stay applications. Besides, in 12 (40%) of the 30 GEP and ASMTP entry applications examined by Audit, the monthly remuneration information was incorrectly input into the system. For example, in one case, an Information Technology Consultant's monthly remuneration in foreign currency equivalent to HK\$29,760 was incorrectly input as HK\$64,500;

- (b) **QMAS.** Of some 3,600 approved extension-of-stay applications from January 2010 to September 2015, the expiry dates of the travel documents of 232 cases were not input;

- (c) **IANG.** Of some 34,000 computer records for the period January 2010 to September 2015 captured by the APPLIES, some information was not input into the APPLIES (e.g. name of the employers (67 cases), work posts of the applicants/entrants (627 cases) and remuneration package of the applicants/entrants (721 cases)); and

- (d) **FDHs.** Some of the contract renewal applications and PMT notifications (see para. 4.12) received after late 2015 had not been scanned into the computer system up to February 2016.

A complete and reliable database will facilitate the ImmD to compile necessary management information for better decision making and resources planning (see para. 5.2). In Audit's view, the ImmD needs to take measures to improve the proper maintenance of computer records in the APPLIES.

**Other administrative issues**

- (c) enhance the supervisory-check arrangements to provide sufficient monitoring and evaluation of the quality of decisions made by case officers in processing visa/permit applications under various Admission Schemes; and
- (d) review the need for improving the cost-recovery rate of visas/entry permits and extension of stay and consider setting a target cost-recovery rate in the long run.

**Response from the Government**

5.10 The Director of Immigration agrees with the audit recommendations. He has said that the ImmD:

- (a) has reminded case officers of the importance of data accuracy;
- (b) will explore the feasibility and cost-effectiveness of enhancing the functions of the APPLIES having due regard to operational efficiency; and
- (c) has reminded case officers to keep records of supervisory checks.

**Other administrative issues**

Audit considers that the ImmD needs to enhance the supervisory-check arrangements to provide sufficient monitoring and evaluation of the quality of decisions made by case officers in processing visa/permit applications under various Admission Schemes.

**Cost recovery of visas/entry permits and extension of stay**

5.7 The ImmD charges a fee of \$190 for visas, entry permits and extension of stay under the various Admission Schemes (see Appendix A). The fee took effect from February 2015 after a costing exercise completed by the ImmD in mid-2014, which was eight years after the previous fee revision in June 2006 (Note 50). Notwithstanding the fee increase by 19% from \$160 to the current level of \$190, the cost-recovery rate of the current fee was only 26% in 2014.

5.8 In his 2013-14 Budget Speech, the Financial Secretary emphasised the need to review fees and charges systematically for upholding the “user pays” principle. Audit considers that the ImmD should review the need for improving the cost-recovery rates of visas/entry permits and extension of stay and consider setting a target recovery rate for such fees in the long run.

**Audit recommendations**

- 5.9 Audit has recommended that the Director of Immigration should:
- (a) take measures to ensure the proper maintenance of computer records for the various Admission Schemes, taking into account the audit findings mentioned in paragraph 5.3;
- (b) explore the feasibility of enhancing the functions of the APPLIES to address the inadequacies mentioned in paragraphs 5.4 and 5.5;

**Note 50:** Since 2010, the ImmD had conducted two costing exercises in 2010 and 2012 respectively but it was agreed that no fee revision would be suggested.

**Way forward**

6.3 Following the 2015 Policy Address, the Government implemented various enhancement measures (including the introduction of the ASSG, relaxation of stay arrangements for GEP, ASMTP and QMAS entrants, specification of consideration factors of the GEP Investment Stream and revision of the GPT of the QMAS — see para. 1.9(a) to (d)). Up to January 2016, the Government had not announced the study result on the feasibility of drawing up a talent list (Note 52) to attract, in a more effective and focused manner, high-quality talent (see para. 1.8(e)).

6.4 According to the 2015 Population Policy Report (see para. 1.8), importing talent and professionals is considered the most direct and effective means to meet the huge demand for talent in the local market and to build up human capital stock in Hong Kong. Hitherto, the role of the Government has been to facilitate the local market to bring in talent, professionals, entrepreneurs and non-local graduates through the GEP, the ASMTP, the QMAS and the IANG. With the adoption of a more proactive and targeted approach to attract talent, the SCPP will, as indicated in its terms of reference:

- (a) oversee the implementation of new or improved measures formulated and review the progress from time to time to ensure that such measures have been followed through; and
- (b) keep in view the main social and economic challenges brought about by the ageing population, refine existing policies and measures as necessary, and coordinate cross-bureaux initiatives to ensure that the policy measures remain relevant and effective to address the challenges.

**Note 52:** According to the 2015 Population Policy Report (see para. 1.8), many overseas countries are proactively attracting talent through targeted immigration programmes, such as the Shortage Occupation List in the United Kingdom and the Skilled Occupation List in Australia.

**PART 6: WAY FORWARD**

6.1 This PART explores the way forward for the administration of the GEP, the ASMTP, the QMAS and the IANG.

**Proactive and targeted approach to attract talent**

6.2 In his 2015 Policy Address, the Chief Executive adopted the five-pronged strategy to deal with demographic challenges (i.e. ageing population and decline in labour force) with a view to achieving the following population policy objective as recommended by the SCPP (Note 51):

*“To develop and nurture a population that will continuously support and drive Hong Kong’s socio-economic development as Asia’s world city, and to engender a socially inclusive and cohesive society that allows individuals to realise their potential, with a view to attaining quality life for all residents and families.”*

As one of the strategies was “adopting a more proactive and targeted approach to attract more outside talent to work and settle in Hong Kong”, the Chief Executive also announced in his Policy Address that various enhancement measures should be implemented (see para. 1.8(a) to (e)).

**Note 51:** The SCPP, chaired by the Chief Secretary for Administration, currently consists of government officials as members, including the Secretary for Security and the Director of Immigration.

## Way forward

**Need to periodically compile key statistics for measuring the effectiveness of the Admission Schemes**

6.5 The objectives of the Admission Schemes are to attract talent, professionals, entrepreneurs and non-local graduates to stay and work in Hong Kong in order to meet local manpower needs and enhance Hong Kong's competitiveness in the global market. Under the population policy, these entrants will help support and drive Hong Kong's socio-economic development. Over the years, the ImmD has approved a number of entrants under the GEP, the ASMTP (Note 53), the QMAS and the IANG (who may apply for permanent residence after residing in Hong Kong for not less than seven years — see para. 1.7).

6.6 Upon Audit's requests in December 2015 and January 2016, the ImmD provided Audit with the following statistics:

- (a) the number of entrants who had obtained right of abode for the four Admission Schemes (in accordance with their status at the time of application). As indicated in Table 11, from 2009 to 2015, a total of 32,274 entrants had obtained right of abode in Hong Kong, with an increase of 306% from 1,804 in 2009 to 7,327 in 2015; and
- (b) the number of GEP and ASMTP entrants with breakdown by duration of stay as at the end of December 2015. As indicated in Table 12, of the 71,986 GEP entrants and 16,234 ASMTP entrants who resided in Hong Kong as at December 2015, 1,525 (2%) and 1,447 (9%) had stayed in Hong Kong for seven years or more respectively.

The above statistics are key indicators of the entrants' willingness to work/stay in Hong Kong. Audit noted that the ImmD had not periodically compiled such statistics.

**Note 53:** About half of the GEP and ASMTP entrants were engaged in short-term employment of less than 12 months.

## Way forward

**Table 11**  
**Number of entrants having obtained right of abode (2009 to 2015)**

Year	Number of entrants				Total
	GEP	ASMTP	QMAS	IANG	
2009	1,531	130	6	137	1,804
2010	1,939	179	6	313	2,437
2011	2,648	406	11	827	3,892
2012	2,706	440	24	983	4,153
2013	3,831	647	50	1,360	5,888
2014	4,319	693	118	1,643	6,773
2015	4,494	905	186	1,742	7,327
Total	21,468	3,400	401	7,005	32,274

Source: ImmD records

## Way forward

- (b) the ImmD had therefore compiled such statistics on a need basis.

In Audit's view, the ImmD needs to enhance its computer system to periodically generate these statistics for closely monitoring the effectiveness of the Admission Schemes in attracting and retaining talent, professionals, entrepreneurs and non-local graduates.

6.8 *Analysis of entrants' employment by trade and industry.* Audit noted that the ImmD had conducted analyses of entrants' employment by trade and industry sectors for the approved entry applications of the ASMTP and the QMAS. Such analyses are useful to show whether the Admission Schemes are attracting the types of talent and professionals that meet the local manpower needs. For the GEP and the IANG, the ImmD has started to input employment sector data into the computer system since September 2014 and end of October 2014 respectively. Based on available data, the ImmD provided Audit with the analyses of entrants' employment by trade and industry sectors for the GEP and the IANG. Details of such analyses for the GEP, the ASMTP, the QMAS and the IANG are shown at Appendices G to J. In Audit's view, the ImmD needs to periodically analyse entrants' employment for the four Admission Schemes. Such analyses together with the statistics on the number of entrants who had obtained right of abode or stayed in Hong Kong for seven years or more are useful for the SCPP to review the progress of the enhanced measures under the Admission Schemes (see para. 6.4(a)). Audit considers that the ImmD needs to periodically provide such information for reference by the SCPP.

## Need to conduct reviews on the effectiveness of Admission Schemes

6.9 To meet changing social and economic needs of Hong Kong, the Government has conducted reviews from time to time to evaluate the effectiveness of the Admission Schemes in attracting and retaining outside talent to stay and work in Hong Kong. As laid down in the best practice guide entitled "A User Guide to Post Implementation Reviews" issued by the Efficiency Unit in February 2009, conducting a post-implementation review is a good practice of modern day public sector management. It helps bureaux and departments evaluate whether a programme/project has achieved its intended objectives, review its performance and capture learning points to improve the delivery and outputs of future programmes/projects. In light of the introduction of various enhancement measures under the Admission Schemes in 2015 (see para. 6.3), the ImmD needs to, in

## Way forward

Table 12

Number of GEP and ASMTP entrants with breakdown by duration of stay (December 2015)

Period for which entrants had stayed in Hong Kong	GEP		ASMTP		Total	
	Number	%	Number	%	Number	%
Less than one year	18,017	25%	4,593	28%	22,610	26%
One year to less than three years	24,655	34%	4,703	29%	29,358	33%
Three years to less than five years	17,221	24%	3,368	21%	20,589	23%
Five years to less than seven years	10,568	15%	2,123	13%	12,691	15%
Seven years or more	1,525	2%	1,447	9%	2,972	3%
Total	71,986	100%	16,234	100%	88,220	100%

Source: ImmD records

Remarks: Figures refer to those who have a valid limit of stay in Hong Kong as GEP and ASMTP entrants as at the end of December 2015. The above analysis excluded those entrants who had obtained right of abode in Hong Kong (see Table 11).

6.7 In response to Audit's enquiry in January 2016, the ImmD said that:

- (a) the statistics on the number of entrants who had obtained permanent residence under the Admission Schemes and the number of entrants by their duration of stay as shown in Tables 11 and 12 respectively could not be generated from the computer system readily. As such, the ImmD needed to engage manpower resources to manually retrieve a huge amount of data from the computer system to compile such statistics; and

**Way forward**

consultation with the Security Bureau, continue to monitor the implementation of such measures and review the effectiveness of the Schemes, taking on board the audit observations and recommendations in this Audit Report.

**Audit recommendations**

- 6.10 Audit has *recommended* that the Director of Immigration should:
- (a) enhance the computer system to periodically generate statistics for monitoring the effectiveness of the GEP, the ASMTP, the QMAS and the IANG in attracting and retaining talent, professionals, entrepreneurs and non-local graduates for reference by the SCPP; and
  - (b) in consultation with the Secretary for Security:
    - (i) continue to monitor the implementation of the various enhancement measures under the Admission Schemes mentioned in paragraph 6.3; and
    - (ii) review the effectiveness of the Admission Schemes in attracting and retaining outside talent to stay and work in Hong Kong, taking on board the audit observations and recommendations in this Audit Report.

**Response from the Government**

6.11 The Director of Immigration agrees with the audit recommendations. He has said that while the Security Bureau/the ImmD will continue to monitor/review the effectiveness of the various Admission Schemes, the ImmD will explore the feasibility and cost-effectiveness of enhancement of the APPLIES having due regard to operational efficiency.

**Appendix A**  
(paras. 1.5 and 5.7 refer)

**Fees for visas, entry permits and extension of limit of stay (December 2015)**

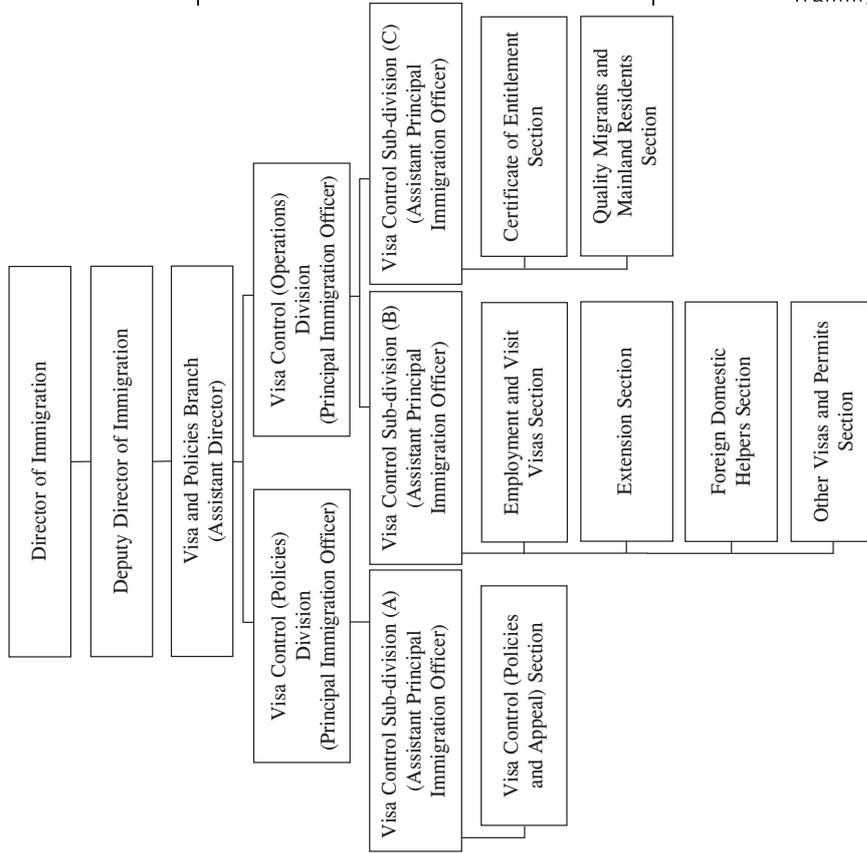
Item	Fee (\$)
Ordinary visa/entry permit	190
Extension of limit of stay (Note)	190
Entry permit valid for one entry	190

Source: ImmD records

Note: This includes changes of conditions of stay.

Appendix C  
(paras. 1.11 and 4.3 refer)

Immigration Department:  
Organisation chart (extract)  
(31 December 2015)



Source: ImmD records

Remarks: In addition to administering the eight Admission Schemes covered in this Report, the Visa and Policies Branch also provides assistance and/or processes applications for entry for visit, study and training, and other admission schemes, such as One-way Permit Scheme and Certificate of Entitlement Scheme.

Appendix B  
(para. 1.7 refers)

Eligibility for right of abode of admitted persons  
and entry of their dependants under Admission Schemes

Admission Scheme	Target person	Eligibility for right of abode of admitted person	Eligibility for entry of dependant
<b>Admission Scheme for talent, professionals and non-local graduates</b>			
GEP Employment Stream	Overseas, Taiwan and Macao talent and professionals	Yes	Yes
ASMTP	Mainland talent and professionals	Yes	Yes
QMAS	Mainland and overseas highly skilled or talented persons	Yes	Yes
IANG	Non-local graduates	Yes	Yes
<b>Admission Scheme for investors</b>			
GEP Investment Stream	Overseas, Taiwan and Macao investors	Yes	Yes
CIES	Capital investment entrants	Yes	Yes
<b>Admission Scheme for importing FDHs and workers</b>			
FDH	FDHs	No	No
SLS	Workers at technician level or below in industries with manpower shortage	No	No

Source: ImmD records

**Appendix D**  
(paras. 3.16 and  
3.23 refer)

**Main provisions in the Scheme Rules of the CIES**

The Scheme Rules provide that an applicant/entrant should:

- (a) transact only the permissible investment assets in designated account opened with a single financial intermediary (the ring-fencing requirement);
- (b) reinvest the entire proceeds from the sale of assets notwithstanding that he can switch investments among permissible investment assets (portfolio maintenance requirement). The applicant/entrant is not required to top-up the value of his investment asset should its market value fall below \$10 million;
- (c) make a declaration to the Director of Immigration every 12 months that he is the absolute beneficial owner of the investment assets in his designated account; and
- (d) enter into an agreement with the financial intermediary for the management and operation of the designated account. The agreement requires that, among others, the financial intermediary shall notify the Director of Immigration in writing:
  - (i) within seven working days that the applicant/entrant has not re-invested within 14 days the proceeds of sale or other realisation of investment assets; and
  - (ii) within 14 working days the composition and the acquisition cost of the designated account (i.e. annual statement) after each subsequent anniversary of the grant of formal approval to the applicant/entrant.

Source: *ImmD records*

**Appendix E**  
(para. 3.17 refers)

**Investments made by CIES entrants  
(October 2003 to December 2015)**

Investment	Amount (\$ million)	Percentage (%)
Equities	104,180	42.8%
Eligible collective investment scheme	55,906	23.0%
Real estate (Note)	42,588	17.5%
Debt securities	39,431	16.1%
Certificate of deposits	1,440	0.5%
Subordinated debt	2	0.1%
Total	243,547	100%

Source: *ImmD records*

Note: *Real estate has ceased to be permissible investment asset since October 2010.*

Appendix G  
(para. 6.8 refers)Analysis of approved GEP entry applications  
by employment sectors  
(September 2014 to December 2015)

Employment sector	Number of approved applications		Total
	2014 (Sept – Dec)	2015	
Academic research and education	1,071	3,763	4,834
Architecture/surveying	74	138	212
Arts/culture	1,058	3,973	5,031
Biotechnology	3	15	18
Catering industry	258	718	976
Commerce and trade	1,164	3,790	4,954
Engineering and construction	416	1,341	1,757
Financial services	1,799	4,942	6,741
Information technology	540	1,341	1,881
Legal services	175	512	687
Manufacturing industries	203	335	538
Medical and health services	51	224	275
Recreation and sports	2,446	7,115	9,561
Telecommunications	82	172	254
Tourism	203	657	860
Traditional Chinese medicine	1	2	3
Others	1,206	5,365	6,571
Total	10,750	34,403	45,153

Source: *ImmD records*Remarks: *The analysis includes applications from both the Employment and Investment Streams.*Appendix F  
(para. 5.6(a) refers)

## Examples of supervisory-check requirements and audit findings

GEP	<p><b>Supervisory-check requirements:</b> 5% of the intra-company transfer entry applications and on 50 routine extension-of-stay applications approved by the case officers monthly</p> <p><b>Audit findings:</b> The number of intra-company transfer entry cases approved by case officers was not readily available from 2013 to 2015 (on average, 39 cases were checked monthly). For extension-of-stay applications, the supervisory-check requirement was not met in 26 of the 36 months from 2013 to 2015 (on average, 28 cases were checked monthly).</p>
QMAS	<p><b>Supervisory-check requirements by Senior Immigration Officers:</b> 4% of entry applications, 5% of extension-of-stay applications and 4% of original document verifications conducted by Immigration Officers monthly</p> <p><b>Audit findings:</b> The guideline was outdated as the above duties were performed by Senior Immigration Officers.</p>
SLS	<p><b>Supervisory-check requirements:</b> 5% of approved applications</p> <p><b>Audit findings:</b> There was no record in spot-check register showing that the required spot checks had been carried out in periods from March 2012 to July 2012, September 2012 to April 2013, June 2013 to July 2013 and September 2013 to June 2015.</p>

Source: *Audit analysis of ImmD records*

Appendix H  
(para. 6.8 refers)

Analysis of approved ASMTTP entry applications  
by employment sectors  
(2011 to 2015)

Employment sector	Number of approved applications						Total
	2011	2012	2013	2014	2015		
Academic research and education	2,475	2,627	2,470	2,485	2,496		12,553
Architecture/surveying	69	58	61	80	58		326
Arts/culture	2,058	1,987	2,127	2,827	2,137		11,136
Biotechnology	26	18	11	9	9		73
Catering industry	96	46	69	55	44		310
Commerce and trade	743	966	809	784	621		3,923
Engineering and construction	306	450	360	496	391		2,003
Financial services	1,167	973	1,021	1,239	1,547		5,947
Information technology	278	308	269	371	327		1,553
Legal services	137	89	123	101	109		559
Manufacturing industries	98	59	99	49	27		332
Medical and health services	65	61	49	64	66		305
Recreation and sports	140	128	97	140	225		730
Telecommunications	68	73	66	41	94		342
Tourism	15	18	21	27	12		93
Traditional Chinese medicine	5	9	17	6	4		41
Others	342	235	348	539	1,062		2,526
Total	8,088	8,105	8,017	9,313	9,229		42,752

Source: ImmD records

Appendix I  
(para. 6.8 refers)

Analysis of approved QMAS entry applications  
by employment sectors  
(2011 to 2015)

Employment sector	Number of approved applications						Total
	2011	2012	2013	2014	2015		
Academic research and education	10	7	18	9	7		51
Architecture, surveying, engineering and construction	32	23	43	29	32		159
Arts/culture	25	36	16	34	7		118
Broadcasting and entertainment	9	10	12	22	10		63
Business support and human resources	8	7	3	5	7		30
Catering and tourism	2	0	4	0	0		6
Commerce and trade	19	7	4	10	10		50
Financial and accounting services	70	48	52	60	24		254
Human health and veterinary services	2	4	8	2	10		26
Information technology/telecommunications	54	50	87	111	79		381
Legal services	10	14	5	13	13		55
Logistics and transportation	11	9	3	8	4		35
Manufacturing industries	21	19	28	20	26		114
Sports	16	12	12	15	8		63
Others	3	5	3	0	3		14
Total	292	251	298	338	240		1,419

Source: ImmD records

Remarks: The analysis is based on the trade and industry sectors that best represent the skills possessed by successful QMAS applicants.

Appendix K

Acronyms and abbreviations

APPLIES	Application and Investigation Easy System
APT	Achievement-based Points Test
ASMTP	Admission Scheme for Mainland Talents and Professionals
ASSG	Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents
Audit	Audit Commission
C&SD	Census and Statistics Department
CIES	Capital Investment Entrant Scheme
COR	Controlling Officer's Report
EVV Section	Employment and Visit Visas Section
FDH	Foreign domestic helper
FDH Section	Foreign Domestic Helpers Section
GEP	General Employment Policy
GPT	General Points Test
IANG	Immigration Arrangements for Non-local Graduates
ImmD	Immigration Department
LWB	Labour and Welfare Bureau
MPF	Mandatory Provident Fund
PMT	Pre-mature termination
QMAS	Quality Migrant Admission Scheme
QMMR Section	Quality Migrants and Mainland Residents Section
SCPP	Steering Committee on Population Policy
SDT	Special Duty Team
SLS	Supplementary Labour Scheme

Appendix J  
(para. 6.8 refers)

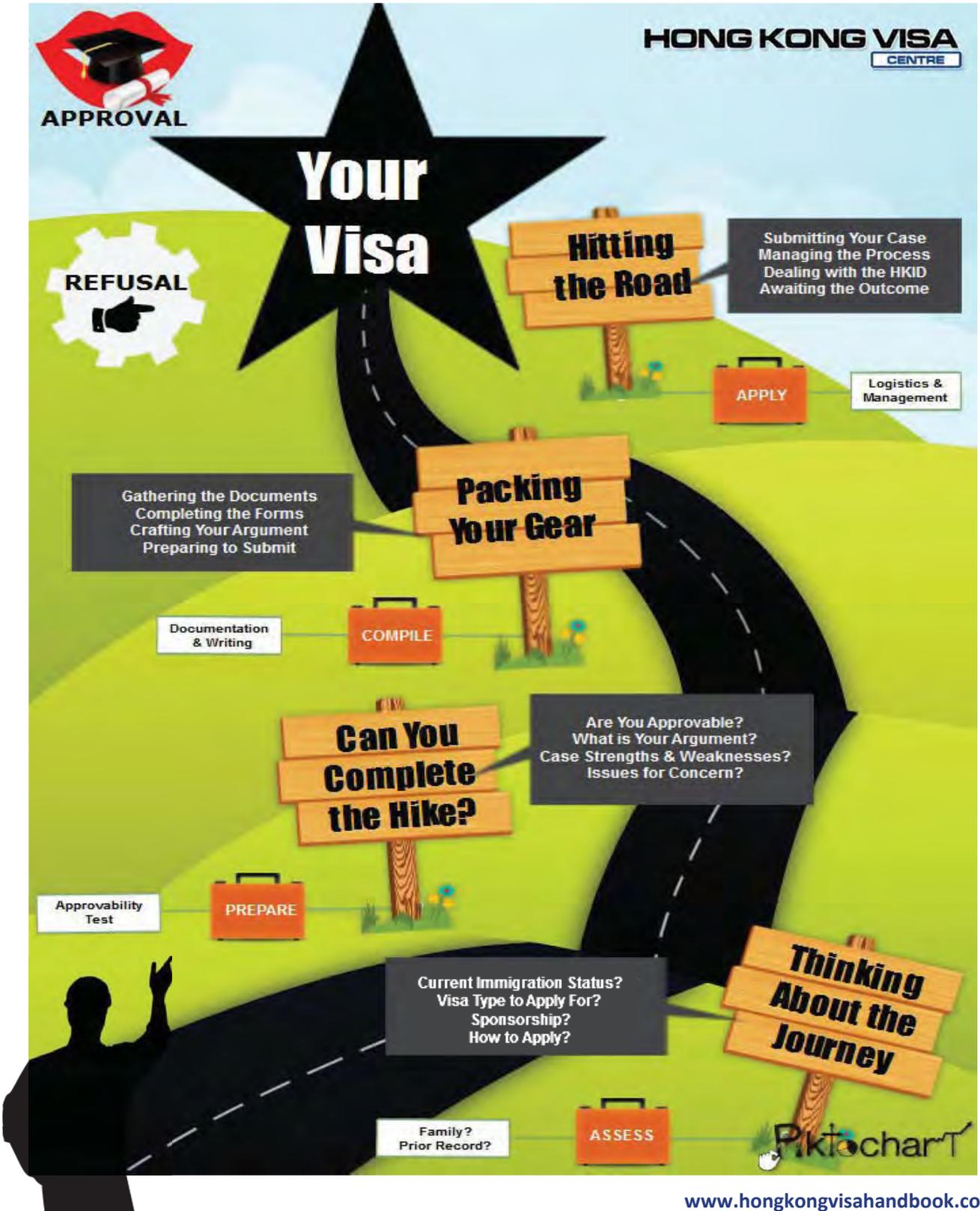
Analysis of approved IANG applications by employment sectors  
(November 2014 to December 2015)

Employment sector	Number of approved applications		
	2014 (Nov – Dec)	2015	Total
Academic research and education	170	1,809	1,979
Architecture/surveying	12	168	180
Arts/culture	10	388	398
Biotechnology	2	86	88
Catering industry	7	71	78
Commerce and trade	92	1,795	1,887
Engineering and construction	33	724	757
Financial services	142	3,014	3,156
Information technology	35	661	696
Legal services	14	244	258
Manufacturing industries	4	132	136
Medical and health services	6	123	129
Recreation and sports	7	91	98
Telecommunications	8	304	312
Tourism	4	53	57
Traditional Chinese medicine	1	9	10
Others	5	234	239
Total	552	9,906	10,458

Source: ImmD records

Remarks: The analysis includes new applications from returning graduates and applications for extension of stay from fresh and returning graduates.

# HONG KONG VISA APPLICATION ROADMAP



# APPLICATION ROADMAP

PAGE 2

CURRENT VISA STATUS?	CURRENT PERIOD OF STAY EXPIRY?
FAMILY ARRANGEMENTS?	
PRIOR IMMIGRATION RECORD IN HONG KONG?	
RATIONALE FOR WANTING TO STAY IN HONG KONG?	SPONSORSHIP?
VISA TYPE UNDER CONSIDERATION?	SUBMISSION APPROACH?
APPROVABILITY TEST CHALLENGES	
LINE(S) OF ARGUMENT	

ASSESS

PREPARE



Preparing Your Case



Visa Information



How to Apply



Discussion

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

# APPLICATION ROADMAP

CASE STRENGTHS GENERALLY

CASE WEAKNESSES

OPPORTUNITIES

CONCERNS



PREPARE



Preparing Your Case



Visa Information



Discussion

# APPLICATION ROADMAP

DOCUMENTATION STRENGTHS

DOCUMENTATION WEAKNESSES

ADJUSTMENT TO ARGUMENTS

POINTS TO NOTE



COMPILE



Preparing Your Case



Visa Information



Discussion



Application Templates



Completing the Forms



Pre-Submission Check List

# APPLICATION ROADMAP

DOCUMENTATION STRENGTHS (2ND REVIEW)

DOCUMENTATION WEAKNESSES (2ND REVIEW)

ADJUSTMENT TO ARGUMENTS (IF ANY)

SUBMISSION

COMPILE

APPLY



Application Templates



Pre-Submission Check List



How to Apply

# APPLICATION ROADMAP

<b>SECOND SUBMISSION ISSUES ARISING</b>	<b>SECOND SUBMISSION DOCUMENTATION CONSIDERATIONS</b>
<b>THIRD SUBMISSION ISSUES ARISING</b>	<b>THIRD SUBMISSION DOCUMENTATION CONSIDERATIONS</b>
<b>FOURTH SUBMISSION ISSUES ARISING</b>	<b>FOURTH SUBMISSION DOCUMENTATION CONSIDERATIONS</b>



APPLY

APPROVAL FORMALTIES or CASE REFUSAL NEXT STEPS



# HONG KONG VISA EXTENSION KIT

## Your Hong Kong Visa Extended!

Chinese or English Language

3 Weeks

Return Interview?  
Wait  
Submit

HKD160  
per  
Passport

Must be in Hong Kong on the Day of Submission & Day of Collection

**HONG KONG VISA**  
CENTRE

Application

Immigration Tower

2-3-3 Year Extension Pattern

Documents

ID91

Forms

### What Do I Need?

Is There Any Chance I Will be Refused?

Where Do I Go?

Walk-in?

On-line?

Should I Attend in Person?

Can I Appoint A Representative?

Will I be Waiting Long?

Will I be Interviewed?

How Long to Complete?

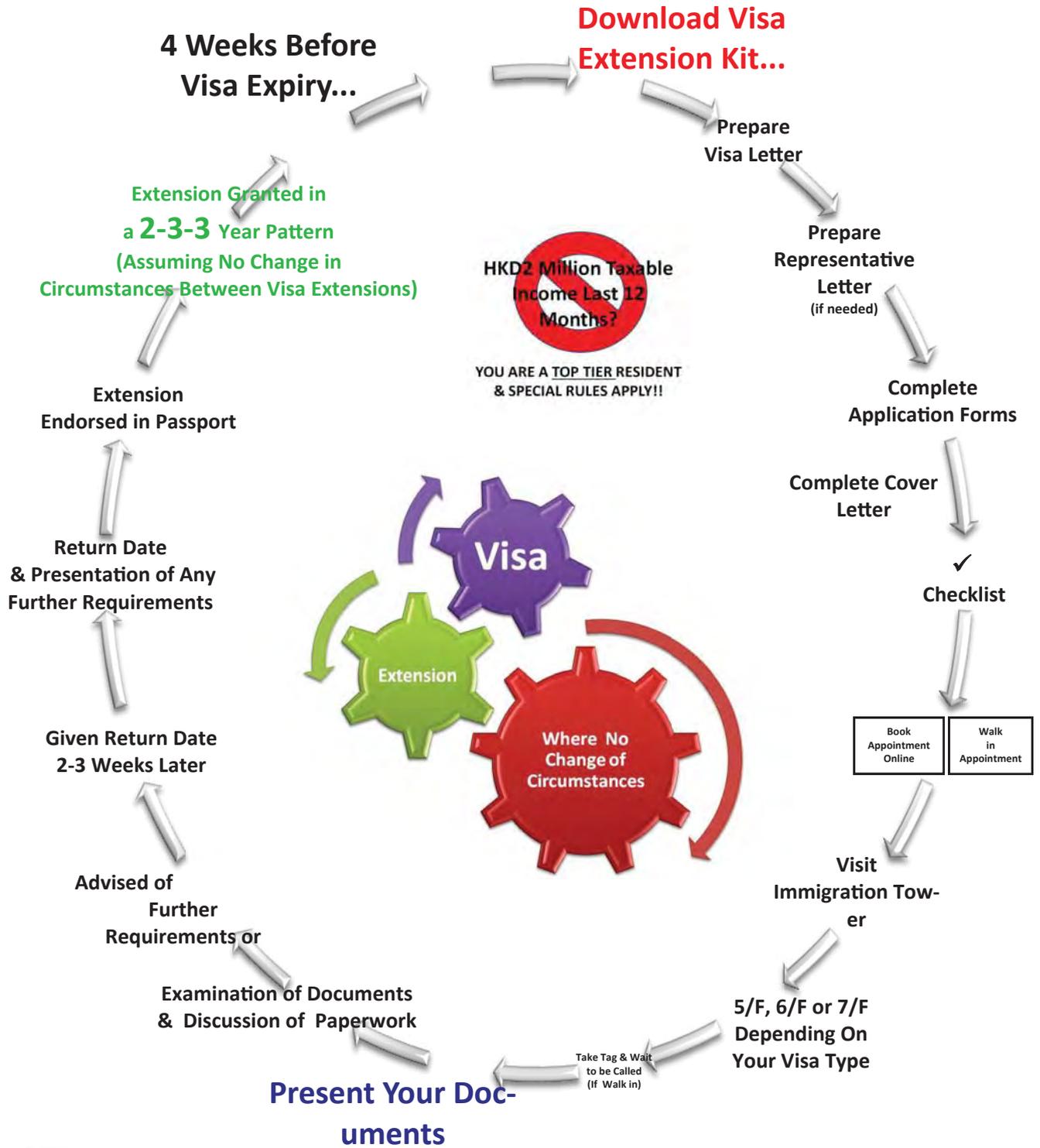
How Much Will it Cost?

Burning Questions

Quick Process

Employment Visa	Investment Visa	Mainland Talent Scheme	Dependant Visa
Form ID91	Form ID91	Form ID91	Form ID91, ID 481(A) and (B)
Extension Section, 5/F, Immigration Tower	Extension Section, 5/F, Immigration Tower	Mainland Residents Section, 6/F Immigration Tower	Extension Section, 5/F, Immigration Tower
Passport, Employment Confirmation Letter	Passport, Business Confirmation Letter	Passport, Employment Confirmation Letter, HKID Card, Contract	Passport, HKID Card, Sponsor's Passport or HKID Card
<i>Not applicable if there is a change of employer</i>	<i>More documents will be needed if case is subject to Business Review</i>	<i>Not applicable if there is a change of employer</i>	<i>Usually extended in tandem with Sponsor's application</i>

# VISA EXTENSION KIT



## APPLICATION-IN-PERSON

# VISA EXTENSION KIT

PAGE 3

You can go to one of the sub branches of the HKID around Hong Kong but we recommend you undertake all your immigration dealings down at the mothership of Immigration Tower in Wanchai. 90% of all visa extension applications are processed on the 5/F (Extension Section). Capital Investors and their dependants go to the 7/F (Other Visa & Permits Section) and QMAS & Mainland Talents Scheme visa holders and their dependants to the 6/F (Quality Migrants & Mainland Residents Section).

## Where Do I Go?

It's not necessary to attend in person. You are allowed to appoint a representative who can process the paperwork for you and who can, at the very least, get the application started. Very occasionally, the HKID may request that you attend an interview. When this happens, you WILL need to present personally. If you appoint a representative s/he must be authorised in writing (see the authorisation letter template enclosed within this Extension Kit) and you must be physically present in Hong Kong on the day of application and also the day your extension is issued.

## Should I Send A Representative?

You can file your application 4 weeks before the date of your current visa expiry, no later than 2. It normally takes 21 days or so for the HKID to finalise a visa extension application so applying one month before your expiry is good practice. This assumes that there have been no change in your circumstances since your visa was first issued or last extended. If there have been such changes the application could get complicated and will more than likely take much longer than the standard 3 week processing time.

## How Long Will It Take?

In 99% of all cases no interview is required. Typically the HKID are simply just affirming the 'status quo' and ensuring that the paperwork they need to keep your visa status current is up to date. However, if there has been a change in your circumstances since your visa was first issued or last extended and the HKID are only now just getting to learn about those changes an interview could be requested. Consequently it is always best practice to advise the HKID of any change in your circumstance as soon as they occur.

## Will I Be Interviewed?

In 99% of cases there is little or no risk of a refusal of your extension application. There's always the possibility that you could be refused if the circumstances in your life which gave rise to your visa approval in the first place (or where present when your visa was last extended) have changed. For example, if you have gotten divorced since your dependant visa was last issued the conditions for a renewal of your visa are not in place. Similarly, if you have left your job and started a business for yourself (for example).

## Will My Application Be Refused?

Presently it is a stock standard HKD160 per passport. It's worth noting that this fee is extremely cheap for the service user (you) and really doesn't even come close to covering the actual cost of providing the service. Similar residence visa extension services in Australia, the UK and Japan (for example) come in at between 6 and 15 times this sum!

## How Much Will it Cost?

Yes, there is. You can undertake your extension application entirely on line or book an appointment for an 'in-person' extension application via the web. However, there are strict conditions that you have to meet in terms of how to qualify to use the on line service options so please refer to the 'Doing it Online' sections of this Extension kit for complete information.

## Is There an Online Option?



# VISA EXTENSION KIT

PAGE 4

## Booking An Appointment For An Extension Application-in-Person

You Can Book an Appointment to Submit Your Extension  
Application-in-Person at Immigration Tower if You Hold An...

Employment visa

Business Investment visa

Mainland Talents Scheme visa

Non-local Graduate visa

Dependant visa where your family sponsor has the  
Right of Abode, Right to Land or Unconditional Stay

**The Appointment Booking  
process starts here:**

<http://www.gov.hk/en/residents/immigration/nonpermanent/bookextensionstay.htm>



**DOING IT ONLINE** OPTION **1**

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

# VISA EXTENSION KIT

PAGE 5

## Applying For Your Extension Entirely Online

**You & Your Dependants Can Apply Entirely Online if You Hold An...**

Employment visa

Business Investment visa

Mainland Talents Scheme visa

Non-local Graduate visa

Dependant visa where your family sponsor has the Right of Abode, Right to Land or Unconditional Stay

**The entirely Online  
Visa Extension process  
Starts here:**

<http://www.gov.hk/en/residents/immigration/nonpermanent/applyextensionstay/othernpr.htm>

**You Are Ineligible If...**

You are **not** physically present in Hong Kong at the time of submission

You will **not** be physically present in Hong Kong at the time of collection of your extension of stay label

Your remaining limit of stay is more than 4 weeks

Your limit of stay has expired

You need to depart Hong Kong and will not return before the expiry of your limit of stay

Your circumstances have changed since your visa first issued or your last extension of stay was granted

You have been notified that your next extension of stay will be subject to Review by the Immigration Department

You were admitted as a Non-local graduate and have not secured employment in Hong Kong



## DOING IT ONLINE OPTION 2

[www.hongkongvisahandbook.com](http://www.hongkongvisahandbook.com)

# VISA EXTENSION KIT

PAGE 6

Ensure you are eligible to use the entirely online service in your circumstances (the website explains if you are or not)

Submit a single application or family group up to a total of 4 people

Input your data and upload your scanned supporting documents

Receive an online acknowledgment of receipt of submission

7-10 days later receive via email or letter post an Official Receipt for your application or a return date for New Visa Collection

**If You Have Heard Nothing At All From the HKID After 10 Days Contact Them Immediately to Find Out What is Going On (Your Online Submission Process May Not Have Worked)**

IF YOU RECEIVE AN OFFICIAL RECEIPT ONLY (NO NEW VISA COLLECTION DATE) IT MEANS THE HKID ARE TREATING YOUR APPLICATION AS NON-ROUTINE AND IT WILL BE 2-3 WEEKS BEFORE YOU HEAR FROM THEM – WHEN THEY SEND YOU EITHER A NEW VISA COLLECTION LETTER OR A REQUEST FOR FURTHER INFORMATION



## ENTIRELY ONLINE WHAT TO EXPECT

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