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Eligible Hong Kong people are given the right to apply for PRC residence permits

Myles Seto and Campos Cheng

In his report to the 19th National Congress of the Communist Party of China in October 2017, President Xi Jinping pledged to support the integration of Hong Kong into China's national development strategies, and to formulate policies and measures facilitating Hong Kong residents studying, working and living on the Mainland. As a major initiative under such a direction, the State Council announced the Regulations for Application of Residence Permit for Hong Kong, Macau and Taiwan Residents (港澳臺居民居住證申領發放辦法) (**Regulations**) earlier this month. Groups expected to benefit include Hong Kong people working or studying on the Mainland, children born in Hong Kong whose parents are not Hong Kong permanent residents, and retirees living on the other side of the border. It is anticipated that the Regulations will make their lives on the Mainland more convenient.

The Regulations resemble the Interim Regulation on Residence Permits (居住證暫行條例), which is applicable to the mobile PRC population residing in cities away from their places of hukou (permanent residence). Under the Regulations, a Hong Kong, Macau and Taiwan resident may apply for a residence permit if he has lived on the Mainland for over half a year and satisfies one of the following requirements: (i) having legitimate and stable work, (ii) having a legitimate and stable residence or (iii) conducting continuous study. Each residence permit is valid for 5 years, and will be issued by public security organs at county level. The ID numbers for Hong Kong residents will begin with "810000".

According to the Regulations, Hong Kong residents holding a residence permit will be entitled to enjoy 3 categories of rights, 6 basic public services and convenience measures in various areas. These are:-

3 categories of rights (exercisable in the place of residence in accordance with the laws):

- Right to employment
- Right to participate in social insurance
- Right to pay, draw on and use housing provident fund

6 basic public services:

- Compulsory education
- Basic public employment services
- Basic public health services
- Public culture and sports services
- Legal aid and other legal services
- Other basic public services prescribed by the State or the place of residence

Convenience measures in the following areas:

- Taking domestic flights, trains or other transportation
- Staying in hotels
- Attending to banking, insurance, securities and futures and other financial businesses
- Same treatment as PRC residents when shopping, purchasing tickets for parks and cultural and sports venues, and conducting any consumer activity related to culture, entertainment and travel
- Motor vehicle registration at the place of residence
- Applying for driver's licence at the place of residence
- Enrolling and participating in occupational qualification examinations and applying for occupational qualification at the place of residence
- Attending to birth service registration at the place of residence
- Other conveniences prescribed by the State or the place of residence

Some of the rights/services above are already accessible to Hong Kong residents even before implementation of the Regulations. However, the promulgation of the Regulations will provide for a more structured framework under which Hong Kong residents (who hold PRC residence permits) will receive equal treatment as their Mainland Chinese counterparts in daily lives. The measures introduced in the Regulations also serve to resolve some of the practical inconveniences faced by Hong Kong people living across the border (e.g. Hong Kong people holding residence permits should be able to board high-speed trains without first collecting physical tickets, open bank accounts and register for certain mobile applications in the future using their PRC resident cards).

Hong Kong people meeting the criteria aforementioned will be able to apply for resident permits under the Regulations with effect from 1 September 2018. Nevertheless, it may take some more time before holders of the residence permits can fully enjoy the rights, services and convenience measures promised under the Regulations. The Regulations set out the overall policy on a macro level. There are not yet many details on the implementation of such rights, services and convenience measures or how the new initiative will link up with the other governmental authorities or regulations (e.g. social security bureau). Probably more guidance or rules will be issued in the coming future for the actual operation of the arrangement.

Another uncertainty relates to the relationship between the Regulations and the PRC tax law. Whether holding a PRC residence permit will affect one's tax identity in the eyes of the PRC tax authority is not entirely clear yet. The PRC individual tax law is also currently under reform. We hope that the authorities will clarify on this issue very soon.

Informal regulation of charities in Hong Kong

Stefano Mariani

Unlike many other advanced jurisdictions, Hong Kong does not currently have a dedicated charities regulator. The Hong Kong Inland Revenue Department (**IRD**) operates a de facto registration system by approving charities for inclusion in a list maintained on its internet site (accessible at: https://www.ird.gov.hk/eng/tax/ach_search.htm). As a technical matter, however, this is not a regulatory function: the IRD merely acknowledges certain entities as being charitable. It is, however, important to note that merely because an entity is not on the IRD's list does not mean that it is not a charity and, similarly,

merely because an entity is on the IRD's list does not necessarily make it charitable at law. Although the IRD carries out random spot-checks on registered charities to determine whether they are still eligible for inclusion on the list, this is not a systematic process and most such inquiries are, in our experience, relatively superficial.

The Secretary for Justice is, at common law, the protector of charities and is authorised to bring claims for and on behalf of charities. Despite a very extensive report published on 6 December 2013 by the Law Reform Commission of Hong Kong recommending the introduction of a charities regulator in Hong Kong, the Legislature has not currently taken any steps in that direction. Unfortunately, this means that charities still have little in the way of guidance on matters such as compliance, due diligence, and best practices.

A recent joint publication entitled the 'Good Practice Guide on Charitable Fund-raising' (**Guidelines**) and issued by the Social Welfare, Home Affairs, and Food and Environmental Hygiene Departments in August of this year is a welcome move in the right direction (accessible at: https://www.gov.hk/en/theme/fundraising/docs/good_practice_guide.pdf). It provides for a non-binding and voluntary regime for charities by clearly setting out what public bodies consider best practices for charitable fundraising. The Guidelines can be broken down into three principal sections: donors' rights, fundraising practices, and financial accountability.

Donor's rights

Donor's rights are regarded as paramount in the Guidelines. Charities should issue receipts to donors as a matter of course and ensure that all fundraising and communications with donors contain sufficient data and disclosures to enable donors to make an informed decision as to whether to donate. Charities should further provide prompt and comprehensive replies to any requests for information from donors. Of particular interest to charities and their in-house functions is that donors and prospective donors should be entitled to prompt examination of the charity's constitution (whether this be a trust deed, which is in general not publicly available, or articles of association, which may be accessed at the Companies Registry internet site) and its most recent audited financial statements. The identities of the officers and/or governors of the charity should further be disclosed to donors.

Fundraising practices

The focus of these recommendations is fair, transparent, and ethical solicitation and processing of donations. Transparency, accurate accounting, and appropriate mechanisms to handle information requests and requests for reimbursements are all covered. Conflicts of interest between the charity and suppliers of goods and services should be avoided; procurement should be on a fair and competitive system. Generally, the Guidelines in this section seek to address frequent complaints from the public on the lack of transparency and responsiveness in charitable fundraising.

Financial accountability

These guidelines require that a charity's financial affairs be conducted in a manner consistent with all applicable legal, ethical, and professional requirements. Financial statements of individual projects should be made available to be public as far as is practicable, and no more should be spent on administration and fund-raising than is required to ensure effective management and resource development. The purpose of this section of the Guidelines is in essence to promote the financial transparency and efficiency of the charity, and ensure that as many resources as possible are actually applied to the charity's objects.

Some conclusions

Although the Guidelines are voluntary and not legally binding, it would be prudent for all charities to consider adopting them. In the absence of any other published guidance, it seems likely that the Guidelines will in practice be used by the IRD as a relevant benchmark for deciding whether a charity is fit and proper to be retained in the list of recognised charities when it conducts its periodic and random spot-checks of registered charities. It also seems likely that if and when formal charities regulation is finally enacted in Hong Kong, it will cover much of the ground in the Guidelines, such that early adopters may be at a comparative advantage.

Hong Kong, Macao, and Taiwan residents employed in the PRC to enjoy Chinese citizens' benefits

Helen Liao and Gary Wong

On 3 August 2018, the PRC State Council announced the *Decision of the State Council to Cancel a Group of Administrative Licensing Items (State Council Announcement)*, under which the requirement of work permits for Hong Kong, Macao and Taiwan (HMT) residents who work in Mainland China (PRC) is abolished. This measure is considered a milestone for HMT employees to enjoy Chinese citizens' benefits in the PRC.

The existing system

Since 2005, the PRC government has implemented the employment pre-approval system, which requires PRC enterprises to register work permits for their HMT staff at the local labour protection administrative authorities. Upon approval of the application for work permits, the employees shall complete the registration of the work permits at the relevant authorities. The validity of the work permits is also subject to annual review. Besides, if an enterprise dismisses HMT staff, it shall apply to the issuing authority for the cancellation of the relevant work permit. The aforementioned procedural requirements are administrative burdens on PRC enterprises who employ HMT personnel.

Implementation of the State Council Announcement

Pursuant to the State Council Announcement, after the abolition of the employment pre-approval system by the PRC State Council, local governments shall announce the ancillary measures within 20 working days after the issuance date (i.e. on or before 30 August) in order to ensure the due implementation of the State Council Announcement. The State Council Announcement does not expressly outline the ancillary measures for the abolition of PRC work permits for HMT personnel. Instead, local governments and relevant authorities may exercise discretion in drawing up the policies and measures applicable in the local context.

After the issuance of the State Council Announcement, the relevant authorities of many provinces and cities have started to put in place various ancillary measures. For example, Beijing and Guangzhou have waived the requirement of PRC work permits for HMT personnel, and Shenzhen and Qingdao no longer accept PRC work permit applications by these personnel.

Impact on PRC enterprises

Positive impact

- The State Council Announcement abolished the requirement of PRC work permits for HMT residents. This has simplified the employment process and lowered the administrative costs in employing HMT personnel.
- Under the employment pre-approval system, PRC enterprises may only employ HMT personnel through the "Full-time Labour Relationship" regime or the "Secundee" regime. After the abolition of the pre-approval system, unless the Ministry of Human Resources and Social Security (MOHRSS) has imposed specific restrictions, PRC enterprises may employ HMT personnel through other low-cost regimes (for example, on a part-time basis or by labour dispatch).
- HMT students in the PRC may participate in internships offered by PRC enterprises without the need for prior administrative approval.

Negative impact

- Prior to the abolition of the employment pre-approval system, if a HMT employee did not hold a PRC work permit, he or she would not be protected by the PRC Labour Law. In the event of a labour dispute, the HMT employee would not be entitled to statutory rights under the PRC Labour Law (e.g., double pay under a non-written employment contract, non-fixed term employment contract, paid annual leave, statutory severance, etc.) Accordingly, after the abolition of the employment pre-approval system, HMT personnel will enjoy the benefits of Chinese citizens and the protection under the PRC Labour Law even without a PRC work permit. Therefore, from the perspective of PRC enterprises, there will be an increase in liability costs.
- Besides, with the abolition of the employment pre-approval system, the implementation of PRC residency system and the takeover of social insurance contribution collection by PRC tax authorities, contributions to social insurance and housing funds for HMT personnel would no longer be optional. In this regard, we foresee that the costs of employing HMT personnel will increase.

Notes to human resources personnel

We recommend that human resources personnel should:

- Closely monitor the implementation of the State Council Announcement by local governments, especially the transitional arrangements (e.g. whether to cancel the existing PRC work permits and the new standards and threshold for quality immigration).
- Promptly review the policies regarding HMT personnel, and ensure that relevant policies satisfy the requirements for social insurance, housing funds and pension contributions.
- Pay close attention to the developments of PRC employment policies on foreigners as the abolition of the requirement for PRC work permits applies only to HMT permanent residents (excluding non-residents with only the permanent right of abode in Hong Kong or Macau).

If there are new developments on this topic, we will keep you updated.

Events/Conferences

Cynthia Chung re-ran popular employment training for Hong Kong Institute of Chartered Secretaries



Cynthia Chung, Partner, was invited by the Hong Kong Institute of Chartered Secretaries (HKICS) to re-run the seminar “How to avoid and handle employment disputes?” on 28 June after her successful presentation on this topic to the HKICS earlier this year.

Cynthia spoke on the common types of labour disputes including calculation of wages, entitlement to payments, wrongful termination, discrimination allegations, harassment allegations, breach of post-employment restrictions, and conflict of interest. Cynthia also provided updates on employment law in Hong Kong. The seminar was very well received and attended by over 200 HKICS members.

Our employment team is recognised as a thought leader in the market and our partners are frequently requested to deliver employment trainings and seminars.

Machiuanna Chu recently attended the 2018 IAPP Asia Privacy Forum in Singapore



Machiuanna Chu, Partner, attended the International Association of Privacy Professionals (IAPP) Asia Privacy Forum in Singapore between 23 and 24 July.

The Forum featured keynote presentations from a number of prestigious speakers including the Commissioner of Personal Data Protection Commission of Singapore and the Chairman and Commissioner of the Philippines National Privacy Commission.

The event addressed a number of topical issues including the development of data protection regimes in the ASEAN countries, compliance with EU GDPR in Asia and the impact of blockchain technology on data protection. The conference was well attended by in-house counsels and data protection officers.

Myles Seto attended the Wenzhou promotional symposium



Myles Seto, Partner, recently attended the Wenzhou promotional symposium and MOU signing ceremony which took place on 24 July. The symposium was hosted by The Hong Kong Trade Development Council and the Wenzhou Municipal People's Government, with the purpose of promoting the latest business opportunities in Wenzhou.

Deacons was invited to sign the MOU of Strategic Cooperation with the Wenzhou government to further strengthen collaborations in capital markets.

The symposium was well attended by around 100 delegates, including the Wenzhou government officials, and representatives from major corporations in Wenzhou and Hong Kong.

Elsie Chan spoke about summary dismissal of employees at the seminar organised by the HKIHRM



Elsie Chan, Partner, was recently invited by the Hong Kong Institute of Human Resource Management to deliver an employment seminar on the topic of "What does an employer need to show to justify summary dismissal of an employee?" Participants included senior HR practitioners from government bodies and multinational corporations.

Elsie provided a summary on a number of key issues including manners of termination of employment, grounds for summary dismissal with case studies, what employers should do in practice to support summary dismissal, entitlements of an employee upon summary dismissal, unlawful termination of employment, and remedies for wrongful termination. The seminar was very well received by the participants.

Want to know more?

Cynthia Chung
Partner
cynthia.chung@deacons.com.hk
+852 2825 9297

Machiuanna Chu
Partner
machiuanna.chu@deacons.com.hk
+852 2825 9630

Myles Seto
Partner
myles.seto@deacons.com.hk
+852 2825 9754

Toh Guat Kim
Partner
kim.toh@deacons.com.hk
+852 2738 1438

Edwarde Webre
Partner
edwarde.webre@deacons.com.hk
+852 2825 9730

Elsie Chan
Partner
elsie.chan@deacons.com.hk
+852 2825 9604

Stefano Mariani
Counsel
stefano.mariani@deacons.com.hk
+852 2825 9314

Helen Liao
Counsel
helen.liao@deacons.com.hk
+852 2825 9779

Whilst every effort has been made to ensure the accuracy of this publication, it is for general guidance only and should not be treated as a substitute for specific advice. If you would like advice on any of the issues raised, please speak to any of the contacts listed.
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