

Investment Migration Working Papers

‘Internal’ Investment Migration: The Case of Investment Migration from Mainland China to Hong Kong

Qishi Fu

All rights reserved.
No part of this paper may
be reproduced in any form
without a proper citation.

Publications in this Working Paper Series should be cited as:
AUTHOR, TITLE, INVESTMENT MIGRATION WORKING PAPER NO./YEAR [URL]

© The Author 2016
ISSN 2504-1541

Editorial Board

Co-Editors

Dimitry Kochenov
Chair in EU Constitutional Law,
University of Groningen

Madeleine Sumption
The Migration Observatory,
University of Oxford

Deputy Editor

Roxana Barbulescu
University Academic Fellow,
University of Leeds

Advisory board

Vincent Chetail
Professor of International law
and Director of the Global
Migration Centre, Graduate
Institute, Geneva

Gareth Davies
Professor of European Law,
Department of Transnational
Legal Studies,
VU University,
Amsterdam

Eberhard Eichenhofer
Professor of Social Law and
Civil Law,
Friedrich Schiller
University Jena

Marc Morjé Howard
Professor of Government,
Georgetown University and
Professor of Law,
Georgetown University
Law Center

Christian Joppke
Chair in General Sociology,
University of Bern

Paul Kalinichenko
Chair in European Law,
Kutafin State Law University,
Moscow

Will Kymlicka
Professor of Philosophy and
Canada Research Chair in
Philosophy,
Queen's University,
Kingston, Canada

Michael Olivas
William B. Bates
Distinguished Chair of Law,
University of Houston
Law Center

Antonello Tancredi
Professor of Public
International Law,
Faculty of Law,
University of Palermo

Peter Spiro
Charles Weiner Chair in
International Law,
Temple University
Beasley School of Law

Yasemin Soysal
Professor of Sociology,
Department of Sociology,
University of Essex

John Torpey
Professor of Sociology and
History and Director of
Ralph Bunche Institute for
International Studies at the
Graduate Center, CUNY

Fernand de Varennes
Dean, Faculty of Law,
Université de Moncton,
Canada

Antje Wiener
Chair of Political Science,
Especially Global Governance,
Faculty of Social Sciences,
University of Hamburg

Information for prospective authors

The editors welcome unsolicited submissions of previously unpublished material that will advance knowledge in the field of investment migration. The Papers do not take copyright, encouraging the authors to republish material elsewhere, provided the text mentions that it has previously appeared in the Investment Migration Papers. Research papers should be between 6,000 and 15,000 words in length, including the references. The Policy Briefs should start at 3,500 words.

Submissions should be made electronically to the following email: 2016academic@investmentmigration.org. The following information should be included at submission: authors full name, postal address, e-mail and institutional affiliation, and a statement that the text has not been previously published elsewhere. The submission should contain an abstract of up to 200 words and 5–10 key-words. All papers are reviewed by the members of the editorial board. We publish fast.

Investment Migration Working Papers

IMC-RP2016/2

‘Internal’ Investment Migration: The Case of Investment Migration from Mainland China to Hong Kong

Qishi Fu*

ABSTRACT: China is a major source country for immigrant investors. Hong Kong, a special administrative region of China, operates one of the most popular investment migration programmes. The Hong Kong ‘Capital Investment Entrant Scheme’ (CIES) was launched in 2003 and has granted residence rights to over 28,000 individuals, until its suspension in 2015. Notably, CIES had a nationality requirement which precluded mainland Chinese from applying. However, an exception was made for those mainland Chinese who have obtained a permanent resident status in a foreign country. This paper argues that the nationality and foreign residence requirements of the CIES are due to the jurisdictional grey area between Hong Kong and the central Chinese government in the area of immigration. Despite the nationality restriction, mainland Chinese constitute the principal applicant group for the CIES nonetheless, due to convenient permanent residence-by-investment programmes offered by West African and Pacific Island states.

KEYWORDS: Investment Migration, Internal Migration, Capital Investment Entrant Scheme, Hong Kong, China

* Qishi Fu, Global Migration Programme, Department of Geography, University College London. Email: stoneeee@126.com.

Contents

1. Introduction	1
2. Overview of Hong Kong Capital Investment Entrant Scheme (CIES)	2
3. Legal aspects of CIES	3
3.1. Constitutional status of Hong Kong	3
3.2. Hong Kong as a separate immigration territory	4
3.3. Jurisdictional grey area and the nationality and residence requirement of CIES	5
4. Legal status of the Hong Kong Permanent Resident	6
4.1. Nationality of HKSAR Permanent Residents	6
4.2. Eligibility for the Hong Kong Permanent Resident status	7
4.3. Rights of Hong Kong Permanent Residents	9
5. The Hong Kong SAR passport	9
5.1. Dual and multiple Passports	9
6. Purchasing convenient permanent residency	11
7. Conclusion	14

1. Introduction

Fuelled by the demand for foreign residence rights and citizenship in emerging economies, an increasing number of states now offer investment-based migration schemes for prospective investors. As a major source country, Chinese migrants have long dominated programmes in the United States, Canada and Australia.² In a 2013 survey jointly conducted by Bain & Company and China Merchants Bank, 44 percent of Chinese high-net-worth individuals were reported to have already emigrated through investment migration schemes or were considering to do so.³ The ongoing outmigration of the ultra-rich has led the Chinese media to speak of an ‘investment migration wave’, often associated with corruption and illicit financial outflows.⁴ In a similar vein, some Chinese scholars situate the phenomenon in the grander ‘third wave of Chinese outmigration’ featured by the increasing share of the talented and the rich in the composition of emigrants.⁵

Apart from the traditional immigration countries in North America and Australasia, Hong Kong is another major destination for Chinese immigrant investors. Despite having a population of 7.2 million, Hong Kong’s Capital Investment Entrant Scheme (hereinafter, CIES) had 9,227

²Sumption, M. and K Hooper, (2014) “Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration” Migration Policy Institute <www.migrationpolicy.org/research/selling-visas-and-citizenship-policy-questions-global-boom-investor-immigration>Accessed 27 March 2016.

³ China Merchants Bank and Bain & Company, (2013).“2015 China Private Wealth Report”<www.bain.com/Images/2013_China_Wealth_Report.pdf> Accessed 27 March 2016.

⁴ For example, A. Yan, ‘移民潮加速中国资本外逃’ [Migration Wave Hastening Chinese Financial Outflows] (HKCD, 24 July 2010) <http://203.85.54.57/content/2010-07/24/content_2562499.htm> Accessed 3 May 2016; F Yang, ‘中国大陆富人现疯狂投资移民潮’ [Mad Investment Migration Wave by the Ultra Rich in Mainland China] (8 February 2015)

<www.rfa.org/mandarin/yataibaodao/shehui/yf1-02082015094310.html>Accessed 27 March 2016; H Chen, ‘近二十年中国大陆海外移民潮之原因与影响’ [The Causes and Effects of Investment Outmigration From Mainland China in the Past Two Decades] <<http://ocah.org.tw/>> Accessed 27 March 2016.

⁵ For example, B Xiang, ‘The Upward Concentration of Chinese Emigration and the Rise of China’ (23 September 2014) <<http://compasoxfordblog.co.uk/2014/09/the-upward-concentration-of-chinese-emigration-and-the-rise-of-china/>>Accessed 27 March 2016; B Xiang, ‘Emigration Trends and Policies in China: Movement of the Wealthy and Highly Skilled’ (2016) Migration Policy Institute <www.migrationpolicy.org/research/emigration-trends-and-policies-china-movement-wealthy-and-highly-skilled> accessed 3 May 2016; H Wang, *Yi Min Chao* [The Migration Wave] (China Citic Press,2013).

successful applicants in 2013 alone, compared with the 7,139 visas issued under the EB-5 programme in the same year.⁶ Among all the individuals securing CIES visas from 2003 to 2012, 90.2 percent were from mainland China.⁷ In addition to this large intake, another important feature of the CIES relates to the constitutional status of Hong Kong. Hong Kong is a special administrative region of China, and thus the legal status conferred through CIES is not of Hong Kong citizenship but of Hong Kong permanent resident status.⁸ However, mainland immigrants could apply for a Hong Kong Special Administration Region passport, as distinct from a People's Republic of China passport, on obtaining permanent residence.

By examining investment migration in the context of – strictly speaking – internal migration, CIES reminds us of the diverse backdrops against which investment migration can occur. This paper examines the mainland China–Hong Kong investment migration, focusing on the CIES-related legal issues and the practice of purchasing third-country permanent residence rights for CIES application.

First, I will briefly introduce the Hong Kong Capital Investment Entrant Scheme. Second, I will discuss the nationality issues of HKSAR permanent residents, the eligibility for and entitlements of HKSAR permanent resident status, as well as the HKSAR passport. Third, I will describe the practice of purchasing third-country permanent residence rights for CIES application.

2. Overview of Hong Kong Capital Investment Entrant Scheme (CIES)

The Capital Investment Entrant Scheme was launched in 2003, when the Hong Kong economy was battered by the Severe Acute Respiratory Syndrome (SARS) crisis.⁹ It offers temporary residence rights (renewable for up to seven years) for individuals who invest no less than HKD

⁶ ‘景鸿料投资移民减三成’ [Jing Hong's Prediction of a 30% Decrease of Investment Migration] (*Apple Daily*, 10 September 2014) <<http://hk.apple.nextmedia.com/financeestate/art/20140910/18860986>> accessed 27 March 2016; U.S. Department of State – Bureau of Consular Affairs, ‘Report of the Visa Office 2013 – Classes of Immigrants Issued at Foreign Service Posts’ <<http://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2013AnnualReport/FY13AnnualReport-TableII.pdf>> accessed 27 March 2016.

⁷ Hong Kong Immigration Department, ‘Statistics on the Capital Investment Entrant Scheme’ <www.immd.gov.hk/eng/facts/visa-control.html> accessed 27 March 2016.

⁸ Provided that the seven-year residence requirement has been met.

⁹ ‘Immigration Control’ (Population and Immigration – Hong Kong, 2004) <www.yearbook.gov.hk/2004/en/20_03.htm> accessed 27 March 2016.

10 million (approximately EUR 1.1 million) into ‘permissible investment asset classes’, including equities, certificates of deposits, subordinate debts and others. The programme was suspended in January 2015.¹⁰

Notably, the CIES has a nationality requirement which precludes Chinese nationals (excluding those from Macau and Taiwan) and citizens of Afghanistan, Cuba and North Korea from applying. Along with this general rule is an exception providing that mainland Chinese citizens who have obtained permanent resident status in a foreign country are eligible to apply.¹¹ Of the mainland Chinese who have secured CIES visas, 6639 (57.3%) hold Gambian permanent residence rights, 2057 (17.8%) are permanent residents of Guinea-Bissau, 1020 (8.8%) of Canada, 490 (4.2%) of the Philippines, 295 (2.5%) of New Zealand, 291 (2.5%) of Niger, 232 (2.0%) of Australia, 168 (1.5%) of the United States, 165 (1.4%) of Singapore, 84 (0.7%) of Nauru and 144 (1.2%) from all other countries.¹² The two small West African states – Gambia and Guinea-Bissau – account for 75% of the total. As I will demonstrate later, the convenient permanent residence programmes offered by some West African and Pacific Island states form the backdrop for these statistical outcomes. Nevertheless, it is important first to lay out the constitutional arrangements which enabled the mainland China–Hong Kong investment migration in the first place.

3. Legal aspects of CIES

3.1. Constitutional status of Hong Kong

After the defeat of China in the First Opium War in 1842, Hong Kong was colonised by the British with the cession of Hong Kong Island, followed by the Kowloon Peninsula and the New Territories. Negotiations between the UK and China began in the 1980s and led to the adoption of the 1984 Sino-British Joint Declaration, which proclaimed the resumption of Chinese sovereignty over Hong Kong in 1997. On 30 June 1997, the former British colony became a

¹⁰ However, the suspension of the CIES does not affect applications received by the Immigration Department before the suspension date; Hong Kong Immigration Department, ‘Capital Investment Entrant Scheme’ (GovHK) <www.immd.gov.hk/eng/services/visas/capital_investment_entrant_scheme.html> accessed 1 May 2016.

¹¹ Ibid.

¹² The figures are based on data as of 29 February 2012; provided in ‘Chinese African in HK’ (15 April 2012) <<http://webb-site.com/articles/CIES.asp>> accessed 27 March 2016.

special administrative region of the People's Republic of China (PRC).¹³

The Hong Kong Special Administrative Region (HKSAR) is a local administrative region of the PRC and comes directly under the Central People's Government.¹⁴ However, according to the Basic Law (the constitutional document of the HKSAR), Hong Kong enjoys a 'high degree of autonomy' and 'executive, legislative and independent judicial power, including that of final adjudication'.¹⁵ HKSAR maintains its immigration policy independently of mainland China.¹⁶

3.2. Hong Kong as a separate immigration territory

Hong Kong's autonomy in immigration control is a complex issue. On the one hand, the Basic Law recognises Hong Kong's autonomy in administering its 'external' borders. 'The Government of the HKSAR may apply immigration controls on entry into, stay in and departure from the Region by persons from foreign states and regions'.¹⁷ On the other hand, there is no similar legal basis authorising the HKSAR to apply immigration control over people entering the HKSAR from the mainland. Instead, Article 22(4) of the Basic Law provides that, 'for entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval'.¹⁸

The provision was later elaborated in the Interpretation of the 'Standing Committee of the National People's Congress Regarding Paragraph 4 in Article 22 and Category (3) of Paragraph 2 in Article 24 of the Basic Law of the Hong Kong Special Administrative Region of the PRC in 1999' (1999 Interpretation). It provides that, 'people from all provinces, autonomous regions, or municipalities directly under the Central Government [...] who wish to enter the HKSAR for whatever reason, must apply to the relevant authorities of their residential districts for approval [...] and must hold valid documents issued by the relevant authorities before they

¹³Crawford, J. *The Creation of States in International Law* (2nd edn, OUP, 2007) 245–250.

¹⁴ Art 12 Basic Law <www.basiclaw.gov.hk/en/basiclawtext/chapter_2.html> accessed 27 March 2016.

¹⁵ Art 2 Basic Law <www.basiclaw.gov.hk/en/basiclawtext/chapter_1.html> accessed 27 March 2016.

¹⁶ Hong Kong Immigration Department, 'Immigration Clearance' <www.immd.gov.hk/eng/services/immigration_clearance.html> accessed 27 March 2016.

¹⁷ Art 154 Basic Law <www.basiclaw.gov.hk/en/basiclawtext/chapter_7.html> accessed 27 March 2016.

¹⁸ Art 22(4) Basic Law <www.basiclaw.gov.hk/en/basiclawtext/chapter_2.html> accessed 27 March 2016.

enter the HKSAR'.¹⁹ Implemented in practice, the 'PRC Permit for Proceeding to Hong Kong and Macau' and the 'Exit Endorsement' with which mainland Chinese are granted leave to enter the HKSAR (for short stays) are both issued by the mainland Chinese Ministry of Public Security instead of the HKSAR Immigration Department.²⁰

Nonetheless, for long stays such as employment and study, an 'Entry Permit' issued by the HKSAR Immigration Department is also required.²¹ Instead of full autonomy, shared authority between the central government and the HKSAR is a better description of the arrangement in place for Hong Kong in the area of immigration.²²

3.3. Jurisdictional grey area and the nationality and residence requirement of CIES

This jurisdictional grey area is also reflected in the layout of the entry categories set by the HKSAR government. There is a divide between categories applicable to mainland Chinese and to foreigners, even for the same entry purposes.²³ For example, to take up highly-skilled employment in Hong Kong, foreign nationals need to obtain a visa under the 'General Employment Policy' category; for the same purpose, mainland Chinese are required to enter through the 'Admission Scheme for Mainland Talents and Professionals'.²⁴ Similar arrangements can also be found in other visa types.²⁵

In addition, exceptions are made for entry schemes which are in principle not applicable to mainland Chinese. As noted earlier, the CIES is applicable to mainland Chinese who have obtained permanent resident status in a foreign country. The 'Investment as Entrepreneurs'

¹⁹ Interpretation by the Standing Committee of the National People's Congress Regarding Paragraph 4 in Article 22 and Category (3) of Paragraph 2 in Article 24 of the Basic Law of the Hong Kong Special Administrative Region of the PRC <www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383897.htm> accessed 27 March 2016.

²⁰ Hong Kong Immigration Department, 'Entry Arrangement for Mainland, Macao, Taiwan, & Overseas Chinese Residents' <www.immd.gov.hk/eng/services/visas/overseas-chinese-entry-arrangement.html> accessed 27 March 2016.

²¹ Ibid.

²² In some cases, entry into HK is unilaterally authorised by the mainland authorities, whereas in some other cases authorisations from both sides are required in order for a mainland Chinese national to legally reside in the HKSAR.

²³ Hong Kong Immigration Department, 'Visas' <www.immd.gov.hk/eng/services/index.html> accessed 27 March 2016.

²⁴ Ibid.

²⁵ For example, Hong Kong Immigration Department, 'Students' <www.immd.gov.hk/eng/services/visas/study.html> accessed 27 March 2016.

entry scheme is not only open to mainland Chinese with permanent resident status in a foreign country but also to those who ‘have been residing overseas for at least one year immediately before the submission of application and that the application is submitted from overseas’.²⁶

The existence of this jurisdictional grey area, I think, is the primary reason for the inclusion of the third-country permanent residence requirement in the CIES. Emphasising mainland applicants’ foreign resident status is an attempt on the part of the HKSAR government to avoid crossing the jurisdictional boundary drawn by Article 22(4) of the Basic Law and the 1999 Interpretation. This makes the CIES fall within the scope of Article 154 Basic Law where the HKSAR enjoys full control over its ‘external’ borders.²⁷ From a pragmatic perspective, letting the CIES fall within the jurisdiction of central government is to empower the mainland Ministry of Public Security to require exit permission from those who want to transfer 10 million Hong Kong dollars out of its own jurisdiction through the CIES. This is a particular concern, as this migratory flow was often portrayed by the media as associated with corruption and illicit financial outflows.

4. Legal status of the Hong Kong Permanent Resident

4.1. Nationality of HKSAR Permanent Residents

The current rules on the acquisition of Chinese nationality are in the Chinese Nationality Law 1980.²⁸ The principle mode of acquisition of Chinese nationality at birth is *jus sanguinis*, provided in Article 4 and 5. Article 4 stipulates that, ‘any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality’.²⁹ Article 5 reads that, ‘any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose

²⁶ Hong Kong Immigration Department, ‘Capital Investment Entrant Scheme’ <www.immd.gov.hk/eng/services/visas/capital_investment_entrant_scheme.html> accessed 27 March 2016; Hong Kong Immigration Department, ‘Investment as Entrepreneurs’ <www.immd.gov.hk/eng/services/visas/investment.html> accessed 27 March 2016.

²⁷ Art 154 Basic Law <www.basiclaw.gov.hk/en/basiclawtext/chapter_7.html> accessed 27 March 2016.

²⁸ National laws are in principle not applicable in the HKSAR according to Article 18 Basic Law. However, the same article also provides that national laws listed in Annex III to the Basic Law should be applied in the HKSAR. Chinese Nationality Law 1980 was listed in Annex III in the original Basic Law and thus has been in force in Hong Kong since 1997; Nationality Law of the People’s Republic of China <www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384056.htm> accessed 27 March 2016; Annex III Basic Law <www.basiclaw.gov.hk/en/basiclawtext/annex_3.html> accessed 27 March 2016.

²⁹ Art 4 Nationality Law of the People’s Republic of China.

parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality’.³⁰

The requirement of having at least one Chinese national parent to acquire Chinese nationality sits uncomfortably with the fact that a large proportion of Hong Kong residents held British National (Overseas) status prior to the handover.³¹ One year before the transfer of sovereignty, in May 1996, the Standing Committee of the National People’s Congress in Beijing stipulated in 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’ (1996 Explanations) that ‘where a Hong Kong resident is of Chinese descent and was born in the Chinese territories (including Hong Kong), or where a person satisfies the criteria laid down in the Nationality Law of the People’s Republic of China for having Chinese nationality, he is a Chinese national’.³² It follows that according to Chinese nationality law, the distinction between the mainland and Hong Kong legal statuses is not one of ‘nationality’. For mainland immigrants, CIES and the eventual obtainment of HKSAR-PR status do not trigger a change in nationality.

4.2. Eligibility for the Hong Kong Permanent Resident Status

As pointed out by Ghai, ‘the Basic Law goes further than any scheme in providing for a local identity, which not only separates regional residents from other nationals, but also facilitates the participation and integration of non-nationals’.³³ According to Article 24 of the Basic Law, six categories of people are HKSAR permanent residents. The first three apply to Chinese citizens:

1. Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;

³⁰ In addition, Article 6 provides a supplementary mode, ‘any person born in China whose parents are stateless or of uncertain nationality and have settled in China shall have Chinese nationality’; Arts 5 and 6 Nationality Law of the People’s Republic of China.

³¹ British Nationality (Hong Kong) Act 1990 <www.legislation.gov.uk/ukpga/1990/34/contents> accessed 27 March 2016.

³² 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 <www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383896.htm> accessed 27 March 2016.

³³ Y Ghai, ‘Citizenship and Politics in the HKSAR: The Constitutional Framework’ (2001) *Citizenship Studies* 143, 150.

2. Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
3. Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2).³⁴

There are also three categories of non-Chinese citizens:

4. Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
5. Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
6. Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.³⁵

To obtain HKSAR permanent residency, mainland immigrants admitted through the CIES would need to satisfy the residence requirements set out in section 2 of the above article: that is, ‘ordinarily resided in Hong Kong for a continuous period of not less than seven years’. However, neither the Basic Law nor HKSAR immigration law specify what exactly constitutes ‘ordinary residence’. The only related official statement is the Immigration Department’s ‘Explanations of Key Terms’. It provides that ‘a person has ordinary residence in Hong Kong if he/she remains in Hong Kong legally, voluntarily and for a settled purpose (such as education, employment or residence), whether of short or long duration’. In addition, a number of determinants are mentioned, such as the ‘reason, duration and frequency of absence’ and the ‘whereabouts of family members’.³⁶ Nevertheless, the fact remains that a ‘minimum duration

³⁴ Art 24 Basic Law <www.basiclaw.gov.hk/en/basiclawtext/chapter_3.html> accessed 27 March 2016.

³⁵ Ibid.

³⁶ Hong Kong Immigration Department, ‘Meanings of Right of Abode and Other Terms’ <www.immd.gov.hk/eng/services/roa/term.html> accessed 2 May 2016.

of residence' required for establishing ordinary residence is absent in the HKSAR immigration law.

4.3. Rights of Hong Kong Permanent Residents

Permanent residents of the HKSAR enjoy a right of abode which confers the right 'to land in HKSAR, to be free from any condition of stay (including a limit of stay) in HKSAR, not to be deported from HKSAR, and not to be removed from HKSAR'.³⁷ Besides the more conventional rights associated with permanent residence, such as the right to work and the right to social benefits, HKSAR permanent residents also enjoy electoral rights. Permanent residents aged 18 or over can register to vote regardless their nationality.³⁸ However, for mainland immigrants, the benefits of HKSAR-PR status are not confined to the rights and entitlements they can claim within Hong Kong.

5. The Hong Kong SAR passport

Mainland immigrants can, upon obtaining permanent residence, apply for a Hong Kong Special Administration Region passport as distinct from the People's Republic of China passport. A person is eligible to apply for a HKSAR passport if he or she is 'a Chinese citizen, a permanent resident of the HKSAR and a holder of a valid Hong Kong permanent identity card'.³⁹ As Hong Kong is authorised to conclude visa waiver agreements with foreign states, 154 countries or territories have granted visa-free access or visa-on-arrival to HKSAR passport holders.⁴⁰ This contrasts with the 50 countries granting visa-free travel or visa-on-arrival to PRC passport holders.⁴¹

³⁷Ibid.

³⁸ The Government of the Hong Kong Special Administrative Region, 'Voter Registration' <www.voterregistration.gov.hk/eng/register-gc.html> accessed 27 March 2016.

³⁹ Hong Kong Immigration Department, 'Application for HKSAR Passport' <www.immd.gov.hk/eng/service/travel_document/apply_for_hksar_passport.html> accessed 27 March 2016.

⁴⁰ Art 155 Basic Law <www.basiclaw.gov.hk/en/basiclawtext/chapter_7.html> accessed 1 May 2016; Hong Kong Immigration Department, 'Visa-Free Access for HKSAR Passport' <www.immd.gov.hk/eng/service/travel_document/visa_free_access.html> accessed 27 March 2016.

⁴¹ Henley & Partners, 'The Henley & Partners Visa Restrictions Index 2016' <www.henleyglobal.com/files/download/HP/hvri/HP%20Visa%20Restrictions%20Index%20160223.pdf> accessed 1 May 2016.

5.1. Dual and multiple passports

In addition to visa-free travel, another ‘external’ benefit of HKSAR-PR status (for Chinese nationals) is the *de facto* exemption from the principle of non-recognition of dual nationality in Chinese nationality law. The Nationality Law 1980 explicitly states that China does not recognise dual nationality for any Chinese national.⁴² Yet there are currently 3.4 million British National (Overseas) passport holders in Hong Kong.⁴³ An exception has been made for dual and multiple passports for Hong Kong in the 1996 Explanations. It provides that:

All Hong Kong Chinese compatriots are Chinese nationals, whether or not they are holders of the British Dependent Territories Citizens passport or British National (Overseas) passport. With effect from 1 July 1997, Chinese nationals mentioned above may, for the purpose of travelling to other countries and territories, continue to use the valid travel documents issued by the Government of the United Kingdom but they shall not be entitled to British consular protection in the HKSAR and other parts of the PRC on account of their holding the above mentioned British travel documents. Likewise, Chinese nationals of the HKSAR with right of abode in foreign countries may, for the purpose of travelling to other countries and territories, use the relevant documents issued by the foreign governments and again they will not be entitled to consular protection in the HKSAR and other parts of the PRC on account of their holding the above mentioned documents.⁴⁴

Similar arrangement has also been made for Macau. In 1998, one year before the return of Macau to China, the Standing Committee promulgated 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 Macau Special Administrative

⁴² Art 3 Nationality Law of the People’s Republic of China <www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384056.htm> accessed 27 March 2016.

⁴³ ‘The UK and Hong Kong as Partners’ <www.publications.parliament.uk/pa/cm201415/cmselect/cmfa/649/64907.htm#note27> accessed 27 March 2016.

⁴⁴ 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 <www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383896.htm> accessed 27 March 2016.

Region’ (hereinafter, 1998 Explanations).⁴⁵ Just as the 1996 Explanations serves as the legal basis of the exception made for Hong Kong, the 1998 Explanations has the same effect for Chinese nationals that are Macau permanent residents. In both cases, the Chinese government allows the holding of dual or multiple passports by its nationals (not limited to those issued by the two previous metropolises, namely, the UK and Portugal). Therefore, the primary difference between the effects of these two arrangements lies not in the stances of the Chinese government but in the different types of legal statuses granted to their previous subjects or citizens by the UK and Portugal, after the transfers of sovereignty.

The UK grants the British National (overseas) status to a large portion of Hong Kongers but this status does not confer its holders a right of abode in the UK.⁴⁶ Portugal, however, did not create different categories of Portuguese nationality and a significant portion of Macau residents are thus entitled to the ‘actual’ and full Portuguese citizenship.⁴⁷ At the EU level, , the ‘Macau Chinese Portuguese’ are also EU citizens enjoying all the rights conferred through EU citizenshipunlike the British National (overseas) passport holders in Hong Kong.

Although these preferential treatments were rarely criticised in their own right, it was used by Chinese scholars as an argument for the recognition of dual nationality for all Chinese nationals. For them, recognising dual nationality for only one class of Chinese citizens damages the integrity of Chinese nationality law and hinders the transnational mobility of overseas Chinese of mainland origin.⁴⁸

⁴⁵全国人民代表大会常务委员会关于《中华人民共和国国籍法》在澳门特别行政区实施的几个问题的解释 [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 Macau Special Administrative Region]

<http://www.npc.gov.cn/npc/gad bz l/amdbdj_12/2012-06/06/content_1724386.htm> accessed 17th June 2016.

⁴⁶ The United Kingdom Government, ‘Types of British Nationality’ (GOV.UK)

<<https://www.gov.uk/types-of-british-nationality/british-national-overseas>> accessed 17th June 2016.

⁴⁷Mendes, C.A., *Portugal, China and the Macau Negotiations, 1986-1999* (Hong Kong University Press, 2013) 56.

⁴⁸ For example, Y Xiao and M Guo, ‘全球化视野下的双重国籍’ [Dual Nationality From the Perspective of Globalization] (2006)

<www.cnki.net/KCMS/detail/detail.aspx?QueryID=2&CurRec=1&recid=&filename=WSLD200605000&dbname=CJFD2006&dbcode=CJFQ&pr=&urlid=&yx=&v=MjgxNDVyRzRldGZNcW85RlpJUjhlWDFMdXhZUzdEaDFUM3FUcldNMUZyQ1VSTHlmWStadUZpcmxWYnpCTW03SGE>Accessed 27 March 2016; G Liu, ‘境外外国籍法的新发展与中国国籍法的渐进改革’ [The Recent Development of Foreign Nationality Law and the Incremental Reform of Chinese Nationality Law] (2008)

<www.cnki.net/KCMS/detail/detail.aspx?QueryID=6&CurRec=2&recid=&filename=STXF200809001025&dbname=CPFD9908&dbcode=CPFD&pr=&urlid=&yx=&v=MDQ4Mjdobmo5OFRuanFxeGRFZU1PVUtyaWZa dUJ2RWlubFVyM0xJVndkTm puVGFMRzRldG5NcG85Rlplc05DUk5LdWhk> accessed 27 March 2016.

6. Purchasing convenient permanent residency

Despite the CIES's third-country permanent residency requirement for mainland applicants, the vast majority of successful applicants are mainland Chinese.⁴⁹ The practice of first acquiring convenient permanent residency in a small state and then applying for CIES with the acquired status is termed 'double investment migration' by a senior Hong Kong investment migration consultant.⁵⁰

Gambia is one of the main suppliers of such programmes. The documents required to obtain Gambian PR status include a copy of the passport, a passport photo, a police certificate and a medical certificate, as well as a birth certificate, marriage certificate or certificate of kinship for dependants. The application fee is approximately EUR 11 thousand for each applicant and a EUR 2.7 thousand (approximate) charge for each dependant. The application process takes around 15 working days.⁵¹

The Vanuatu PR programme is also widely used by mainland immigrant investors. Unlike the Gambian programme which was used for CIES applications for more than a decade, the Vanuatu scheme only entered the market in 2011. As a consequence, it is not featured in the aforementioned figures on the 'residency' composition of successful mainland applicants.

The documents required to obtain Vanuatu permanent residence include those needed for the Gambian programme in addition to a proof of income, a certified letter of undertakings and certificate of registration. Certificate of registration refers to a certificate of incorporation of a Vanuatu registered company.⁵²

Registering a corporation in Vanuatu is required but incurs no additional cost (the application fee is similar to that of the Gambian programme).⁵³ This requirement can be regarded as an

⁴⁹ Webb-site Reports, 'Chinese African in HK' (15 April 2012) <<https://webb-site.com/articles/CIES.asp>> accessed 27 March 2016.

⁵⁰ '投资移民非洲之路' [The African Route of Investment Migration], (Apple Daily, 16 April 2012) <<http://hk.apple.nextmedia.com/news/art/20120416/16251393>> accessed 27 March 2016.

⁵¹ In addition to secondary sources, I drew on interviews I conducted with three Chinese investment migration consultants specialized in mainland China–Hong Kong migration for details of the Gambian and Vanuatu PR programmes.

⁵² PRG Consulting Limited, '永久居留权' [Permanent Residence Rights] <www.hkprg.com/PublishWebSite/hkprg/gallery/getCMSPage.asp?url=/PublishWebSite/hkprg/big5/contentPage41404.htm> accessed 2 May 2016.

⁵³ Government of Vanuatu, 'Vanuatu Immigration Visa Regulation Order No 180 of 2011' <<https://governmentofvanuatu.gov.vu/images/Regulations/Immigration/order%20no.%20180%20of%202011.pdf>>

attempt to promote the Vanuatu Offshore Financial Services, another programme which Vanuatu has been forcefully marketing in China. Despite the additional documents and company registration procedure required, the application process takes only 1 to 2 working days.

In addition, the legal basis of the PR programme is provided in Vanuatu Immigration Visa Regulation Order No 180 of 2011 (of the Immigration Act No 17 of 2010).⁵⁴ Virakwahe, a Vanuatu immigration officer, is delegated the powers to implement the regulation. A trade commission has also been created in Hong Kong to promote both the PR programme and Vanuatu's offshore financial services. Furthermore, PRG Consulting Limited, a Hong Kong-based company, was appointed the sole distributor of the PR programme.⁵⁵ All applications are referred to PRG Consulting Limited before being considered by the Vanuatu authorities.

In addition to competition between intermediaries, the existence of competing convenient permanent residency programmes and the different alliances formed between the supplying states and the intermediaries can create conflicts of interest. In 2012 Virakwahe, the immigration officer in charge of the Vanuatu PR program, filed a law suit in the Hong Kong High Court against Kwan, a director of a large Hong Kong migration intermediary, over his comments on Vanuatu's permanent residence programme which were quoted in a Hong Kong magazine.

According to the magazine article, Kwan considered Vanuatu as 'politically unstable' and there was 'no certainty and security in any co-operation with the Vanuatu government' and that 'he had also turned down the offer to be a consultant for Vanuatu'. Virakwahe alleged that the publication of the article has seriously affected the Vanuatu permanent residency programme's reputation and applications have declined substantially as a consequence. He also mentioned that 'the defendant is in the business of immigration services and is an agent for the marketing

f> accessed 2 May 2016.

⁵⁴ The regulation notes that the programme applies only in Greater China (mainland China, Hong Kong, Macau and Taiwan); Vanuatu Government, 'Vanuatu Immigration Visa Regulation Order No 180 of 2011' <<https://governmentofvanuatu.gov.vu/images/Regulations/Immigration/order%20no.%20180%20of%202011.pdf>> accessed 2 May 2016.

⁵⁵ PRG Consulting Limited, 'Statement by Embassy' <www.hkprg.com/PublishWebSite/hkprg/gallery/7818a2a2-b9c3-4613-a8c4-73ac0c2a389f.pdf> accessed 2 May 2016.

of the permanent residence status of Gambia which is in competition with [Vanuatu] and must have made and published the defamatory words with an intent to defeat the PR Visa Program'.⁵⁶

7. Conclusion

As a special administrative region of China, Hong Kong is a separate immigration territory from the mainland. The rights and opportunities associated with Hong Kong permanent resident status along with the usefulness of the HKSAR passport are strong 'pull' factors for mainland immigrant investors to participate in CIES. Although this scheme is in principle designed for foreign nationals, the vast majority of its successful applicants are from the mainland. Interestingly, the tactical requirement of third-country permanent residency for mainland applicants has fuelled a demand for convenient permanent residency programmes which are met by supply from small West African and Pacific Island states.

⁵⁶ PRG Consulting Limited, 'Statement by the Honorable Moana Carcasses (MP), Prime Minister of the Republic of Vanuatu' <www.hkprg.com/PublishWebSite/hkprg/gallery/67f4a68e-deb8-430f-878e-11cb2efd54f0.pdf> accessed 2 May 2016; A Chiu, 'Vanuatu Sues Immigration Agent For Libel Over Visa Scheme' (21 December 2013) <www.scmp.com/news/hong-kong/article/1387061/vanuatu-sues-immigration-agent-libel-over-visa-scheme> accessed 27 March 2016.

Publications in the Investment Migration Working Papers


Research Papers

Gamlén A., C. Kutarna and A. Monk. *Re-thinking Immigrant Investment Funds*, IMC-RP 2016/1.

Fu, Q. *'Internal' Investment Migration: The Case of Investment Migration from Mainland China to Hong Kong*, IMC-RP 2016/2.

Policy Briefs

Poleshchuk, V. *'Making Estonia Bigger': What E-residency in E-Estonia can do for you, what it can do for Estonia*, IMC-BP 2016/1.



Investment Migration Papers is a multi-disciplinary peer-reviewed academic publication dedicated to the analysis of the proliferation of citizenship and residence by investment around the world. The series aims to advance understanding of the law, politics, economics and history of investment migration, including residence and citizenship by investment. The papers analyse the processes and long-term implications of investment migration and examine how investment migration programmes function in different countries around the globe.

Two types of papers are published:

Research papers provide a venue for communicating high quality academic research in the field of investment migration.

Policy briefs provide a venue for practitioners and analysts to share their insights regarding relevant developments in a particular country/region of interest to the readers of the Papers.

Investment Migration Papers are published by the Investment Migration Council (IMC). The IMC is the worldwide association for Investor Immigration and Citizenship-by-Investment, bringing together the leading stakeholders in the field and giving the industry a voice. The IMC sets the standards on a global level and interacts with other professional associations, governments and international organisations in relation to investment migration. The IMC helps to improve public understanding of the issues faced by clients and governments in this area and promotes education and high professional standards among its members.

Investment Migration Council
16 rue Maunoir
1211 Geneva
Switzerland
+41 22 533 1333
info@investmentmigration.org