

林會長、黎首席副會長、江行政總監：

閣下在 2021 年 7 月 15 日致保安局局長的電郵，重申要求因應 2019 冠狀病毒病疫情獲酌情處理有關非中國籍香港永久性居民連續 36 個月或以上不在香港而可能會喪失其永久性居民身份的期限。我們現就有關事宜回覆如下：

正如我們在 2020 年 5 月 18 日及 7 月 23 日致新界鄉議局的覆函、在 2020 年 10 月 7 日與新界鄉議局代表舉行的會議（貴會代表透過視像會議參與）及在 2020 年 12 月 14 日回覆閣下的電郵所述，根據《入境條例》（第 115 章）附表 1 第 7(a)段，當非中國籍香港永久性居民不再通常居於香港後，有連續 36 個月或以上不在香港時，便會喪失其香港永久性居民身份及香港居留權。換言之，非中國籍香港永久性居民會否喪失其香港永久性居民身份取決於兩個因素，即：

（甲）該人是否及何時開始不再通常居於香港（以下簡稱“不再通常居港因素”）；以及

（乙）該人不再通常居於香港後有否連續 36 個月或以上不在香港（以下簡稱“期限因素”）。

非中國籍香港永久性居民只有在其個人的具體情況同時符合上述甲、乙兩項因素的情況下，才會喪失其香港永久性居民身份。

我們已徵詢律政司意見，確定就上述乙項因素（即期限因素）而言，《入境條例》並沒有任何條文賦權入境事務處（“入境處”）處長可因特殊或不可預見的情況（例如因受 2019 冠狀病毒病所影響的情況）而酌情延長上述 36 個月不在香港的期限，或容許入境處處長可不遵守有關 36 個月不在港期限的法定條文。簡單而言，在期限因素方面，入境處是沒有酌情權的，不論這期限因素的符合與否是出於個人或非個人意願因素。

不過，就上述甲項因素（即不再通常居港因素）而言，《入境條例》第 2(6)條賦權入境處處長可考慮每宗個案的所有情況，以斷定相關人士是否已不再通常居港或只是暫時不在香港，包括：

不在香港的原因、期間及次數；
他是否在香港有慣常住所；
是否受僱於以香港為基地的公司；及
該人的主要家庭成員（配偶及未成年子女）的所在。

因此，入境處在處理上述問題時，在甲項因素有酌情空間。在考慮甲項因素時，相關人士不在香港的原因會在考慮之列。因此，受 2019 冠狀病毒病所影響而不在香港的非中國籍香港永久性居民可向入境處申述其個人具體情況。入境處會根據上述條文考慮該個案的所有情況，才斷定該人是否已符合不再通常居港因素。如入境處信納該人並非已不再通常居港（即上述甲項不適用），則該人不會喪失其香港永久性居民身份。

我們重申，即使非中國籍香港永久性居民喪失了其永久性居民身份，他仍具有香港入境權，即他可隨時進出香港和在香港居住、讀書或工作，而無須事先申領來港的簽證或進入許可，他在香港的逗留期限亦不受限制。此外，他們也可以在香港通常居住連續滿七年及符合《入境條例》其他相關的規定後，再次向入境處申請成為香港永久性居民。

至於屬中國籍的香港永久性居民，只要他們仍是中國公民，不論他們是否長時間不在香港，也不會失去香港永久性居民身份，仍然享有香港居留權。

一如前述，總括來說，某人是否享有及仍然保留其香港永久性居民身份取決於其個人的具體情況，入境處會根據有關法律規定就每宗個案的情況作出考慮，包括上述的甲、乙項因素。

如有關人士就其個別具體個案有進一步查詢，歡迎致電(852) 2829 3983 與入境處總入境事務主任李冠宇先生聯絡，以作跟進。

保安局局長
(黃永衡 代行)

副本送：
入境事務處處長（經辦人：陳雅婷女士）

Thank you for your email dated 15 July 2021 to the Secretary for Security reiterating the request for handling the 36-month requirement with discretion in view of the COVID-19 epidemic, as a Hong Kong permanent resident ("HKPR") who is not of Chinese nationality may lose his/her HKPR status if he/she has been absent from Hong Kong for a continuous period not less than 36 months. Our reply to the matter concerned is as follows:

As mentioned in our replies to the Heung Yee Kuk New Territories ("HYKNT") on 18 May and 23 July 2020, at the meeting with the representatives of HYKNT (your Committee's representatives joined the meeting through video conferencing) on 7 October 2020 and the email reply to you on 14 December 2020, pursuant to paragraph 7(a) of Schedule 1 to the Immigration Ordinance (Cap. 115), a HKPR who is not of Chinese nationality ("non-Chinese HKPR") will lose his/her HKPR status and right of abode in Hong Kong if he/she has been absent from Hong Kong for a continuous period of not less than 36 months since he/she ceased to have ordinarily resided in Hong Kong. In other words, whether a non-Chinese HKPR will lose his/her HKPR status is subject to two factors, namely:

(A) whether and since when the person concerned ceased to have ordinarily resided in Hong Kong (hereinafter referred to as "factor of cessation of ordinary residence in Hong Kong"); and

(B) whether the person concerned has been absent from Hong Kong for a continuous period of not less than 36 months after ceasing to have ordinarily resided in Hong Kong (hereinafter referred to as "factor of duration").

A non-Chinese HKPR will lose his/her HKPR status only if his/her specific individual circumstances meet both factors (A) and (B) above.

Regarding factor (B) above (i.e. the factor of duration), we have sought the advice of the Department of Justice to ascertain that there is no provision in the Immigration Ordinance that empowers the Director of Immigration, at his discretion, to extend the 36-month period of absence from Hong Kong mentioned above, or allows him to waive compliance with the legal provision about the 36-month period of absence from Hong Kong on grounds of special or unforeseen circumstances (e.g. under the impact of the COVID-19 epidemic). In short, the Immigration Department ("ImmD") has no discretion in respect of the factor of duration, regardless of whether compliance with the factor of duration is out of personal wishes or not.

On the other hand, regarding factor (A) above (i.e. the factor of cessation of ordinary residence in Hong Kong), section 2(6) of the Immigration Ordinance empowers the Director of Immigration to determine whether the person concerned has ceased to be ordinarily resident in Hong Kong or is only temporarily absent from Hong Kong by taking into consideration all the circumstances of each case, including:

- the reason, duration and frequency of any absence from Hong Kong;
- whether he/she has habitual residence in Hong Kong;
- employment by a Hong Kong based company; and
- the whereabouts of the principal members of his/her family (spouse and minor children).

Accordingly, in handling the above issue, there is room for ImmD to exercise discretion in respect of factor (A). Among others, the reason for absence from Hong Kong will be taken into account when considering factor (A). As such, a non-Chinese HKPR absent from Hong Kong due to the COVID-19 epidemic may make a representation about his/her specific individual circumstances to ImmD. ImmD will, according to the above provisions, take into account all the circumstances of the case and determine whether the person meets the factor of cessation of ordinary residence in Hong Kong. If ImmD is satisfied that the person concerned has not ceased to be ordinarily resident in Hong Kong (i.e. factor (A) above is not applicable), the person will not lose his/her HKPR status.

We reiterate that in the event that a non-Chinese HKPR loses his/her HKPR status, he/she still has the right to land in Hong Kong, whereby he/she can enter Hong Kong any time to live, study or work without the need for prior application for a visa or an entry permit to Hong Kong. He/she is also not subject to any limit of stay in Hong Kong. Moreover, if the person has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and meets other relevant requirements under the Immigration Ordinance, he/she can apply to ImmD for HKPR status.

For HKPR of Chinese nationality, as long as the person remains a Chinese citizen, he/she will not lose his/her HKPR status no matter whether he/she has been absent from Hong Kong for a long period of time, and will continue to enjoy the right of abode in Hong Kong.

As stated before, overall speaking, whether a person enjoys or still retains his/her HKPR status is to be determined by the specific individual circumstances of that person. ImmD will consider the circumstances of each case in accordance with the relevant legal provisions, including both factors (A) and (B) above. For further enquiries about an individual case, please contact Mr Michael LEE, Chief Immigration Officer of ImmD, at (852) 2829 3983 for follow-up.