

Judgment Update



Introductory Commentary

In the 1st issue of this Bulletin published in March 2001, we covered four pending cases on the right of abode issue under the Basic Law. One of these, namely, *Ng Siu Tung & Others* was heard by the CFA on 28 May 2001 to 1 June 2001, 19 - 21 June 2001 and 6 - 7 September 2001. Judgment of the CFA is reserved (for summary of the CA judgment, please see *Judgment Update* of the 1st issue at pages 3 and 13). The CFA has delivered judgments in the remaining three cases, namely the cases of *Chong Fung Yuen*, *Tam Nga Yin & Others* and *Fateh Mubammad* on 20 July 2001. Although the CFA heard the *Chong Fung Yuen* appeal in March, it decided to defer giving judgment until after hearing the other two appeals. This was because a number of questions were common as between the *Chong Fung Yuen* appeal and one or both of the other two appeals. These questions included the proper approach to considering whether the CFA has to make a judicial reference of the BL article in question to the NPCSC for interpretation. They also included the proper approach to the interpretation of BL 24. In those circumstances the CFA thought it right that the judgments in all three appeals should be dealt with and handed down at the same time.

The judgment summary is based on the summary prepared by the Judiciary and is not part of the judgment and has no legal effect. Each judgment summary is preceded by a flow chart showing the development of the case from the CFI, CA to the CFA.

Related Article in the Basic Law Article 24 (1) and (2)

Residents of the Hong Kong Special Administrative Region (“Hong Kong residents”) shall include permanent residents and non-permanent residents.

The permanent residents of the Hong Kong Special Administrative Region shall be:

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) 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);
- (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.