

Domicile Ordinance (Cap. 596)

by Legislative Council of Hong Kong



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DOMICILE ORDINANCE

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 4 OF 2008



Donald TSANG
Chief Executive
28 February 2008

An Ordinance to consolidate and reform the law for determining the domicile of individuals.

[]

Enacted by the Legislative Council.

PART 1 PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Domicile Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Justice by notice published

in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires

—
“child” (□□□□) means an individual who has not attained the age of 18 (whether or not the individual is married under the law of any country or territory and whether or not the individual is a parent), and “adult” (□□□) shall be construed accordingly;

“court” (□□) includes a magistrate;

“parent” (□□), in relation to a child, means—

- (a) the natural father or natural mother of the child (whether or not the natural father and natural mother are married to each other);
- (b) a parent of the child by adoption; or
- (c) a stepfather or stepmother of the child.

(2) For the purposes of the definition of “parent”—

- (a) an adoption means—
 - (i) an adoption under an adoption order made in accordance with the Adoption Ordinance (Cap. 290); or

- (ii) an adoption recognized as valid by the law of Hong Kong;
- (b) where a child is so adopted and subject to paragraph (c), the adopter or adopters, and not any other person, is or are treated as the parent or parents of the child; and
- (c) where—
 - (i) a person married to a natural parent of a child has adopted the child under an adoption within the meaning of paragraph (a); and
 - (ii) by virtue of paragraph (c)(i) of section 13(1) of the Adoption Ordinance (Cap. 290), the child stands to the adopter and that natural parent exclusively in the position of a child born to them in lawful wedlock in respect of the relevant matters within the meaning of that section 13(1), or by virtue of any law of the country or territory of adoption other than Hong Kong, the child stands to the adopter and that natural parent exclusively in such a position in respect of such matters,the adopter and that natural parent, and not any other person, are treated as the parents of the child.

(3) In this Ordinance, a reference to a country or territory, in relation to an individual whose domicile at any time is in question, is a reference to a country or territory that has its own system of law at that time.

PART 2

DETERMINATION OF DOMICILE

3. General rules

(1) Every individual has a domicile.

(2) No individual has, at the same time and for the same purpose, more than one domicile.

(3) Where the domicile of an individual is in issue before any court in Hong Kong, that court shall determine the issue in accordance with the law of Hong Kong.

4. Domicile of children

(1) A child is domiciled in the country or territory with which he is for the time being most closely connected.

(2) Where the child's parents are domiciled in the same country or territory and the child has his home with either or both of them, it shall be presumed, unless the contrary is proved, that the child is most closely connected with that country or territory.

(3) Where the child's parents are not domiciled in the same country or territory and the child has his home with one of them, but not with the other, it shall be presumed, unless the contrary is proved, that the child is most closely connected

with the country or territory in which the parent with whom he has his home is domiciled.

5. Domicile of adults

(1) On becoming an adult, an individual retains (subject to subsection (2)) the domicile that he had immediately before he becomes an adult.

(2) Subject to sections 6, 7 and 8, an adult acquires a new domicile in a country or territory if—

(a) he is present there; and

(b) he intends to make a home there for an indefinite period.

6. Acquiring a domicile in Hong Kong

(1) An adult does not acquire a domicile in Hong Kong under section 5(2) unless he is lawfully present in Hong Kong.

(2) An adult's presence in Hong Kong shall be presumed to be lawful unless the contrary is proved.

(3) In exceptional circumstances where it is proved that strict adherence to subsection (1) would result in injustice, an adult may despite subsection (1) acquire a domicile in Hong Kong even though his presence in Hong Kong is unlawful.

7. Acquiring a domicile in another country or territory

In determining for the purposes of section 5(2) whether an adult has acquired a domicile in a country or territory other than Hong Kong—

(a) account shall be taken of whether his presence in that country or territory is lawful by the law of that country or territory; but

(b) even if his presence in that country or territory is unlawful by the law of that country or territory, that fact does not preclude a determination that he has acquired a domicile in that country or territory.

8. Domicile of adults under disability

(1) An adult lacking the capacity to form the intention necessary for acquiring a domicile is domiciled in the country or territory with which he is for the time being most closely connected.

(2) Whether an adult lacks that capacity is a question of fact.

(3) When that capacity is restored to an adult, he retains the domicile that he had immediately before the capacity was restored.

9. Continuity of domicile

Where an individual is domiciled in a country or territory as determined in accordance with this Ordinance, he continues to be so domiciled until he acquires another domicile, whether under section 4, 5, 8 or 10.

10. Domicile in country comprising 2 or more territories

In any case where—

(a) an adult is present in a country comprising 2 or more territories and intends to make a home in that country for an indefinite period; but

(b) the application to him of the other provisions of this Ordinance does not show that he is domiciled in any particular territory within the country,

then (notwithstanding the other provisions of this Ordinance) he shall be treated, until he acquires another domicile (whether under section 5 or 8 or this section), as domiciled in the territory within that country with which he is for the time being most closely connected.

11. Closest connection

(1) In determining for the purposes of section 4, 8 or 10 the country or territory with which an individual is for the time being most closely connected, account may be taken of any relevant matter.

(2) In determining for the purposes of section 4 the country or territory with which a child is for the time being most closely connected, account shall be taken of any preference that the child may have as to the country or territory in which to have his home.

(3) In determining for the purposes of section 8 the country or territory with which an adult lacking the capacity to form the intention necessary for acquiring a domicile is for the time being most closely connected, account shall be taken of any intention that he might have, immediately before losing that capacity and as an adult, as to the country or territory in which to make a home for an indefinite period.

(4) Any matter taken into account under subsection (1), (2) or (3) may be given such weight as is appropriate in all the circumstances of the case.

12. Standard of proof

Any fact that needs to be proved for the purposes of this Ordinance shall be proved on a balance of probabilities.

13. Domicile before commencement date

The domicile that an individual had at a time before the commencement date of this Ordinance shall be determined as if this Ordinance had not been enacted.

14. Domicile on or after commencement date

(1) The domicile that an individual has at a time on or after the commencement date of this Ordinance shall be determined as if this Ordinance (other than section 13) had always been in force.

(2) For the purposes of a determination under subsection (1), this Ordinance (other than section 13) applies in place of—

(a) the rules of common law for determining the domicile of an individual to the extent that those rules are inconsistent with this Ordinance (other than section 13); and

(b) section 11C(2) of the Matrimonial Causes Ordinance (Cap. 179),

which section is repealed by this Ordinance.

(3) For the purposes of subsection (2)(a), the rules of common law for determining the domicile of an individual include (without limitation)—

(a) the rule that a domicile of origin is given to every individual at birth by operation of law;

(b) the rule that a child has a domicile of dependency;

(c) the rule that a married woman has at all times the domicile of her husband;

(d) the rule on the acquisition of the domicile of choice based on residence and intention of permanent

residence;

(e) the rule on the revival of the domicile of origin;

(f) the rule that a mentally incapacitated adult retains the domicile that he had when he became mentally incapacitated for so long as he remains in that condition; and

(g) the rule that the standard of proof required to prove that an individual's domicile changes from a domicile of origin to a domicile of choice is more onerous than that required to prove a change from a domicile of choice to another.

(4) Except as provided in this section, nothing in this Ordinance affects any rules of common law.

PART 3

CONSEQUENTIAL AMENDMENTS

Matrimonial Causes Ordinance

15. Interpretation (Part III)

Section 11C(2) of the Matrimonial Causes Ordinance (Cap. 179) is repealed.

16. Certain existing rules of recognition to continue in force

Section 59(a) is amended by repealing “the spouses’ domicile” and substituting “either spouse’s domicile”.

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