

HONG KONG TAX ALERT

ISSUE 14 | September 2018

Hong Kong - Visa for same sex dependants (and civil partnerships / civil unions)

Summary

Following from a recent court case in respect of dependant visa eligibility for same sex partners, the Hong Kong Government has announced that, effective from 19 September 2018, the immigration policy has been revised in respect of applications for same-sex dependants.

Why this matters

With effect from 19 September 2018, a person who has entered into a same-sex civil partnership, same-sex civil union, same-sex marriage, opposite-sex civil partnership or opposite-sex civil union outside Hong Kong with an eligible sponsor will become eligible to apply for a dependant visa/ entry permit for entry into Hong Kong.

Previously, a person who is the other party to one of the above relationships, who would like to accompany the applicant, had to come to Hong Kong as a visitor within the allowed period of stay. As a visitor, he/she was not allowed to take up any employment in Hong Kong. Under the revised policy, same-sex and other spouses who do not fall within the Hong Kong legislation of a spouse¹ will be allowed to stay for the same period as the sponsor's visa period and take up employment in Hong Kong.

Application criteria

The original criteria of the Policy for dependants remain unchanged. An application for admission of a dependant may be favourably considered if it meets the below criteria.

- (i) there is reasonable proof of a genuine relationship between the applicant and the sponsor;
- (ii) there is no known record to the detriment of the applicant; and
- (iii) the sponsor is able to support the dependant's living at a standard well above the subsistence level and provide him/her with suitable accommodation in Hong Kong.

¹ A valid marriage under Hong Kong Law is heterosexual and monogamous.

The Government stated that the revised Policy allows those who are able to provide care and financial support to their dependants to sponsor their non-local dependants to come and reside in Hong Kong.

Further matter

Under the Immigration guidelines, dependants who have ordinarily resided in Hong Kong for a continuous period of not less than seven years may apply for the right of abode in Hong Kong in accordance with the law. A same-sex partner who has been coming to Hong Kong as a visitor previously, may only start counting their period of stay after they have obtained the dependant visa.

KPMG observations

The change in policy is intended to attract and retain talent in Hong Kong.

Employers may need to consider their current benefit policy and/or global mobility policy for dependants. In particular, they will need to consider if the accommodation provided by the employer meets the standard of "well above the subsistence level," which is one the factor to be considered by the Immigration Department for the application.



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