Chapter Nine
The Right of Travelling to or from the HKSAR, MSAR and Taiwan

INTRODUCTION

As a result of the advanced level of political and economic development in the HKSAR, MSAR and Taiwan, regulations for Chinese citizens travelling to or from those regions are similar to regulations governing their exit from and entry to foreign countries, with some distinct features. Statistics from the BEEA under the MPS in 2001–2002 revealed that 73.54% of people travelling to China came from the HKSAR and MSAR. Of people travelling abroad, 71.90% went to the HKSAR and MSAR. Travel to and from Taiwan is proportionately much less. In 2001, 3.77% of people travelling to China came from Taiwan, and 3.25% of people travelling abroad went to Taiwan. This extent of travel, and the principles underlying special arrangements for the regions, suggests that careful attention needs to be paid to the limits imposed on the right of travelling to or from the HKSAR, MSAR and Taiwan.

9.1 LIMITS ON MAINLAND CHINESE TRAVELLING TO OR FROM THE HKSAR OR MSAR

The Provisional Measures on the Control over Chinese Citizens Travelling for Private Affairs to or from the Regions of Hong Kong or Macao 1986 (PRC), which
was promulgated in accordance with Article 17 of the *Law on the Control of Exit and Entry of Citizens* 1985 (PRC) by the MPS, is the key law governing the control of Mainland Chinese travelling to or from the HKSAR and MSAR. The MPS and the State Council Hong Kong and Macao Affairs office (SHMO) have also issued some interpretative regulations.\(^1\)

These provisions have established the special system governing Mainland Chinese travelling to or from the HKSAR or MSAR. Although reforms discussed in Chapter five improved this system, some problems still need scrutiny. The focus of the special system has four administrative principles (i) unilateral examination and approval of the Mainland government (ii) the examination and approval of fixed quotas (iii) strict conditions of applying for travel to the HKSAR or MSAR, and (iv) different treatment of Mainland Chinese as opposed to the HKSAR and MSAR Chinese. This section will question these four principles, which have until now been uncritically accepted by the government and academics alike.

### 9.1.1 Unilateral examination and approval of the Mainland government

The Mainland government is unilaterally responsible for examining and approving the application of Mainland Chinese for travel to the HKSAR or MSAR. According to Article 3 of the *Provisional Measures on the Control over Chinese Citizens Travelling for Private Affairs to or from the Regions of Hong Kong or Macao* 1986 (PRC), Mainland Chinese travelling to the regions for private affairs must have the passes to Hong Kong and Macao or the passes to and from Hong Kong and Macao signed and issued by the public security departments of Mainland China. This special administration seems to stem from the sovereignty of China over the HKSAR and MSAR.

Unilateral examination and approval of the Mainland government existed after 1951.\(^2\) After China resumed sovereignty over the HKSAR in 1997 and the MSAR

\(^1\) Such as the *Explanation of Some Matters on Implementation of Provisional Measures on the Control over Chinese Citizens Travelling for Private Affairs to or from the Regions of Hong Kong or Macao* 1987 (PRC); the *Provisional Measures on the Control over Mainland Residents Travelling for Such Business, Training, Employment as Non-Public Affairs to or from Hong Kong Special Administration Regions* 1998 (PRC); and the *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 People’s Republic of China* 1999 (PRC).

\(^2\) Prior to 1951, residents in Hong Kong, Macao and the Mainland China could travel between the three regions without passes or visas. The *Proclamation of the MPS, the Central People’s Government on the control over Passengers Travelling to and from the Regions of Hong Kong or Macao* 1951 (PRC) established the current system, and a series