

**LEGISLATIVE COUNCIL BRIEF**

Immigration Ordinance  
(Chapter 115)

**IMMIGRATION (AMENDMENT) BILL 2001**

**INTRODUCTION**

At the meeting of the Executive Council held on 23 October 2001, the Council ADVISED and the Chief Executive ORDERED that the Immigration (Amendment) Bill 2001 (at Annex A) should be introduced into the Legislative Council to exclude Mainland officials from being treated as ordinarily resident in Hong Kong during any period in which they are directed to work in Hong Kong in their official capacity.

**BACKGROUND AND ARGUMENT**

**Eligibility for Permanent Resident Status**

2. Article 24(2) of the Basic Law sets out the different categories of permanent residents of the Hong Kong Special Administrative Region (HKSAR). According to Article 24(2)(2) of the Basic Law as implemented by paragraph 2(b) of Schedule 1 to the Immigration Ordinance, a Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR is a permanent resident.

3. Section 2(4)(a) of the Immigration Ordinance (copy at Annex B) excludes certain categories of persons from being treated as ordinarily resident during the period they remain in Hong Kong -

- (a) with or without the authority of the Director of Immigration, after landing unlawfully;
- (b) in contravention of any condition of stay;
- (c) as a refugee;
- (d) while detained in Hong Kong under section 13(D) of the Immigration Ordinance pending a decision on whether permission to remain in Hong Kong should be granted or removal action should be taken;
- (e) while employed as a contract worker, who is from outside Hong Kong under a Government importation of labour scheme;
- (f) while being employed as a domestic helper from outside Hong Kong;
- (g) as a member of a consular post within the meaning of the Consular Relations Ordinance; or
- (h) as a member of the Hong Kong Garrison.

### **Mainland Officials Working in Hong Kong**

4. It has been a longstanding policy to allow Mainland residents to enter Hong Kong under official sponsorship by the CPG to work in State organizations or enterprises in Hong Kong. Since the resumption of sovereignty, Mainland residents have been entering Hong Kong on the strength of Chinese Travel Permits (CTPs) (因公往來香港澳門特別行政區通行證) bearing a relevant exit endorsement for travelling to Hong Kong for employment.

5. Upon a recent review and clarification from the Mainland authorities on the duties of Mainland officials, we have decided that those who are posted to Hong Kong under the directive of the State in their official capacity should not be treated as ordinarily resident in Hong

Kong. They include officials sent by the CPG to work in the Liaison Office, the Office of the Ministry of Foreign Affairs in Hong Kong, Chinese enterprises which have been set up in Hong Kong with the approval of the Mainland authorities and staff sent from the Mainland to the Hong Kong Garrison. It was not intended that they enter Hong Kong for the purpose of settlement in accordance with Article 22 of the Basic Law. These officials are required by the CPG to return to the Mainland upon expiry of their working assignment in Hong Kong.

6. It is provided in section 2(4)(a) of the Immigration Ordinance that members of the Garrison, amongst others, shall not be regarded as ordinarily resident in Hong Kong. Section 2(4)(a) should be amended to cover other Mainland officials directed by the CPG to work here.

### **The Proposal**

7. The CPG has implemented with effect from 11 October 2001 a new administrative measure to clearly identify Mainland officials directed to work in Hong Kong. A special endorsement will be stamped on the CTPs of the officials concerned stating that “Holder of this document is a public official of the State directed to work in the Hong Kong/Macao Special Administrative Region.” (“持證人係國家公職人員，受委派在香港、澳門特別行政區工作。”). To tie in with the new administrative measure implemented by the Mainland, we propose that a legislative amendment to the Immigration Ordinance be introduced to exclude Mainland officials holding CTPs with the special endorsement from being treated as ordinarily resident in Hong Kong for the purpose of the Ordinance during their stay as such holders.

8. Once the amendment has been enacted, the Director of Immigration will have the necessary power to reject applications for permanent resident status from CPG officials directed to work in Hong Kong, even though they may have stayed here for seven years or more. Although the CPG has already started issuing the special endorsement from 11 October, the proposed legislative amendment will have no retrospective effect.

## **THE BILL**

9. The main provisions are –
- (a) Clause 2(a) of the Bill defines CTP and the special endorsement; and
  - (b) Clause 2(b) adds the holders of those CTPs to the list of people who are not treated as ordinarily resident in Hong Kong.

## **LEGISLATIVE TIMETABLE**

10. The legislative timetable is as follows –

Publication in the Gazette	16 November 2001
First Reading and commencement of Second Reading debate	28 November 2001
Resumption of Second Reading debate, Committee Stage and Third Reading	to be notified

## **BASIC LAW IMPLICATIONS**

11. The Department of Justice advises that the proposed legislative amendment does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

12. The Department of Justice advises that the proposed legislative amendment is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE LEGISLATION**

13. The proposed amendment will not affect the current binding effect of the Immigration Ordinance.

## **PUBLIC CONSULTATION AND PUBLICITY**

14. We intend to brief the Panel on Security of the Legislative Council before gazetting the Bill in mid November.

## **CONTACT PERSON FOR ENQUIRIES**

15. Enquiries about this brief may be made to Ms Linda K P So, Principal Assistant Secretary for Security (C) at 2810 2330.

Security Bureau  
26 October 2001