

**立法會**  
**Legislative Council**

LC Paper No. LS16/01-02

**Paper for the House Committee Meeting  
of the Legislative Council  
on 30 November 2001**

**Legal Service Division Report on  
Immigration (Amendment) Bill 2001**

**Object of the Bill**

To provide that State officials working in Hong Kong shall not be treated as ordinarily resident in Hong Kong.

**LegCo Brief Reference**

2. SBCR 2/2071/99 issued by the Security Bureau dated 26 October 2001.

**Date of First Reading**

3. 28 November 2001.

**Comments**

4. The Bill on the face of it, deals with a single issue, i.e. the acquisition of permanent resident status by Mainland officials posted to work in Hong Kong in their capacity as State officials after fulfilling the requirement of "ordinarily resident" in Hong Kong for a continuous period of not less than 7 years (7 years' rule). However, it may also raise the important issue of whether it would contravene the Basic Law, as pointed out by some members at the meeting of the LegCo Panel on Security on 8 November 2001.

5. At present, the principal ordinance specifically provides that certain categories of persons, such as a refugee, a member of a consular post, a domestic

helper and a member of the Hong Kong Garrison etc. are not to be treated as ordinarily resident in Hong Kong during the period of their stay as such. The significance is that the period of such stay will not be counted for the purpose of fulfilling the 7 years' rule for acquiring permanent resident status. State officials posted to work in Hong Kong (with the possible apparent exception of members of the Hong Kong Garrison) are currently not listed as one of the categories.

6. Members will note from paragraph 5 of the LegCo Brief that "[upon] a recent review and clarification from the Mainland authorities", the Administration has decided that such State officials should not be treated as "ordinarily resident" during their stay as such persons. It is also pointed out that "it was not intended that they enter Hong Kong for the purpose of settlement in accordance with Article 22 of the Basic Law" and "[these] officials are required by the CPG to return to the Mainland upon expiry of their working assignment in Hong Kong".

7. In legislative terms, the Bill therefore simply provides that a new category be added to the existing categories of persons, namely a holder of a Central People's Government travel document called "因公往来香港澳门特别行政区通行证", which bears an endorsement stating that "持证人系国家公职人员，受委派在香港、澳门特别行政区工作。".

### **Public Consultation**

8. No public consultation is mentioned in the LegCo Brief.

### **Consultation with the LegCo Panel**

9. The LegCo Brief, together with the Bill, was referred to the LegCo Panel for Security for comment at its meeting on 7 November 2001.

### **Conclusion**

10. Although the Bill appears to be quite simple and straightforward, a number of issues have been raised at the meeting of the Panel on Security which Members may wish to explore further in a Bills Committee. An extract of the draft notes of that meeting is attached for ease of reference.

11. A number of drafting and other points have also been raised with the Administration, in a letter copy of which is attached.

Encl.

Prepared by

CHEUNG Ping-kam  
Assistant Legal Adviser  
Legislative Council Secretariat  
26 November 2001

SBCR 2/2071/99  
LS/B/5/01-02  
2869 9283  
2877 5029

Secretary for Security  
Security Bureau  
(Attn: Ms Linda SO  
PAS(S)C)  
Room 646, East Wing  
CGO, Hong Kong

By Fax (2147 3165) & By Post

22 November 2001

Dear Madam,

**Immigration (Amendment) Bill 2001**

I shall be grateful for your clarification, by 27 November 2001 if practicable, on the following aspects of the Bill :-

- (a) Is it sufficient simply to say that "a person shall not be treated as ordinarily resident in Hong Kong during any period in which he remains in Hong Kong as a holder of a prescribed Central People's Government travel document", without specifying whether the document is or is not endorsed by any permission to stay granted by the Immigration Department?
- (b) Are there any other travel documents held by Mainland officials posted to Hong Kong under the directive of the State in their official capacity by virtue of which a permission of stay is granted (in particular State diplomatic staff or military personnel in transit or otherwise)?
- (c) Do members of the Hong Kong Garrison (now already covered by section 2(4)(a)(viii)) carry the prescribed CPG travel document. If so, should the Hong Kong Garrison as a separate category under the section be subsumed under the proposed new paragraph (ix)?

/ P. 2 ....

- (d) Are provincial or other local governments in the Mainland entitled to post their officials to Hong Kong on official duties other than under the directive of the State? If so, under what travel documents or by virtue of what travel documents will they be permitted to stay?
- (e) Is any condition attached to the permission to stay to ensure that the travel document holder work in the specific offices, approved Chinese enterprises and the Garrison? What are the consequences for contravention of such a condition of stay, if any?
- (f) Would it be more flexible in the definition of "prescribed CPG travel document" to describe the endorsement as merely having the effect of "持证人系国家公职人员，受委派在香港特别行政区工作"?
- (g) Could any Basic Law implications or absence thereof be elaborated?

Yours faithfully,

(Arthur CHEUNG)  
Assistant Legal Adviser