

LEGISLATIVE COUNCIL BRIEF

Immigration Ordinance (Chapter 115)

IMMIGRATION (AMENDMENT) BILL 2005

INTRODUCTION

A At the meeting of the Executive Council on 12 April 2005, the Council ADVISED and the Acting Chief Executive ORDERED that the Immigration (Amendment) Bill 2005 (the Bill), at **Annex A**, should be introduced into the Legislative Council, to empower the Director of Immigration to provide self-service immigration clearance to certain persons through automated means.

JUSTIFICATIONS

2. To improve people and cargo flows at control points and to cope with the ever-increasing passenger and vehicular traffic, the Immigration Department (ImmD) has started to roll out Automated Passenger Clearance Channels (e-Channels) in phases since mid-December 2004. ImmD plans to install about 270 e-Channels at our control points by mid-2006 and to roll out Automated Vehicle Clearance (AVC) kiosks to facilitate the movement of cross-boundary vehicles in phases by the first half of 2005.

3. With the use of smart identity card which contains in its chip the template of the holder's thumb-prints or other fingerprints, it is possible for ImmD to use automated means like e-Channels and AVC kiosks to verify the identity of a Hong Kong permanent resident, who enjoys the right of abode and may land in Hong Kong without the permission of an immigration officer or immigration assistant. Therefore, Hong Kong permanent residents aged 11¹ or above holding a smart identity card may, instead of going through immigration clearance at traditional counters,

¹ A smart identity card issued to a person aged below 11 does not contain the template of the thumb-prints or other fingerprints of the holder and cannot be used at e-Channels and AVC kiosks.

opt for submitting themselves on a voluntary basis for verification of their identity by automated means. Currently this option is provided administratively.

4. As for other persons such as visitors and non-permanent residents whose limit of stay have expired, they require landing permission to be granted upon their arrival in Hong Kong under section 7 of the Immigration Ordinance, Cap.115 (the Ordinance). Where such permission is given, an immigration officer or immigration assistant may impose on them a limit of stay and such other conditions of stay through making an endorsement on their travel documents. Upon such persons' departure from Hong Kong, an immigration officer or immigration assistant will examine if they have overstayed their limit of stay before stamping on their travel documents and allowing them to leave.

5. Without legislative amendments to the Ordinance (e.g. statutory authority to deem permission to land provided by automated means as permission to land given by an immigration officer or immigration assistant under section 11 of the Ordinance), traditional immigration examination for non-permanent residents and visitors cannot be replaced by automated means.

THE LEGISLATIVE PROPOSAL

6. We propose to amend the Ordinance so that a statutory framework is in place under which the Director of Immigration may also allow non-permanent residents² holding a smart identity card with a valid limit of stay and frequent visitors (e.g. travel pass holders) to opt for self-service immigration clearance by automated means.

7. Taking into account the need to safeguard the integrity of our immigration control, our plan for frequent visitors is to first allow those holding a travel pass³ issued by the Director of Immigration to opt for automated means. Travel pass holders who wish to enjoy such facilities may enroll their fingerprints with ImmD. For those who do not wish to use such facilities, they can continue to use the traditional services.

² At end February 2005, some 400,000 non-permanent residents have been issued with smart identity cards.

³ At end February 2005, some 2,200 travel passes are in circulation. Travel pass holders are frequent visitors who are eligible to come to Hong Kong visa-free and have come for visits trouble-free on three or more occasions in the 12-month period immediately preceding the application. A schematic representation of the clearance process is at **Annex B**.

8. To ensure that immigration control will not be compromised, the Bill will provide that an immigration officer or immigration assistant may examine, under section 4(1)(a) of the Ordinance, a person who has submitted himself for verification by automated means.

THE BILL

9. The main provisions of the Bill are -

- (a) Clause 2 adds new sections 4A, 4B and 4C to the Ordinance.
 - (i) Section 4A empowers the Director of Immigration to provide automated means for verification of the identity of certain persons for the purpose of immigration clearance which is voluntary in nature, to approve a person to use automated means, and to provide for the granting of necessary permission to land in Hong Kong (including a limit of stay and any other conditions of stay as necessary) by automated means.
 - (ii) Section 4B is a deeming provision, i.e. any permission to land (including a limit of stay and any other conditions of stay) given under section 4A by automated means shall be deemed to be permission to land (including a limit of stay and any other conditions of stay) given by an immigration officer or immigration assistant under section 11 of the Ordinance.
 - (iii) Section 4C provides that an immigration officer or immigration assistant may examine, under section 4(1)(a) of the Ordinance, a person who has submitted himself for verification by automated means.
- (b) Clause 3 introduces a consequential amendment to section 5(1) of the Ordinance so that the Director of Immigration may also require the owner or captain of a ship or aircraft to produce their passengers for verification of their identity by automated means.
- (c) Clause 4 introduces a consequential amendment to section 38(2) of the Ordinance to make it clear that a person requiring permission to land who submits himself for verification of his identity by automated means shall be deemed not to have landed unless and until permission to land is granted to him.

- C 10. The existing provisions being amended are at **Annex C**.

LEGISLATIVE TIMETABLE

11. The legislative timetable is as follows -

Publication in the Gazette	15 April 2005
First Reading and commencement of Second Reading debate	27 April 2005
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no sustainability implications. The proposal has economic, financial and civil service implications as set out at **Annex D**.

D

13. The Bill does not affect the existing binding effect of the Ordinance.

PUBLIC CONSULTATION

14. We consulted the Legislative Council Panel on Security on our legislative proposal on 1 March 2005. Members supported our proposal. While Members supported that frequent visitors should be allowed to enjoy automated means, some cautioned that further extension of the automated facilities to other visitors should not be at the expense of our quality immigration control. We also consulted the cross-boundary drivers' associations⁴ and they indicated support to our proposal.

PUBLICITY

15. A press release will be issued on 13 April 2005. A spokesman will be available to answer enquiries.

⁴ These include the Container Transportation Employees General Union, Hong Kong Container Drayage Services Association Ltd., Hong Kong Container Tractor Owner Association Ltd., Hong Kong Guangdong Transportation Association, Lok Ma Chau China-Hong Kong Freight Association, Organisation of Hong Kong Drivers and the Sino-Hong Kong Private Cars' Rights Association.

ENQUIRY

16. Enquiries may be directed to Mr Alan K M CHU, Principal Assistant Secretary for Security at 2810 2506 or Mr Raymond WONG, Assistant Director of Immigration at 2829 3829.

Security Bureau
13 April 2005

IMMIGRATION (AMENDMENT) BILL 2005

A BILL

To

Amend the Immigration Ordinance to provide for the verification of identity of certain persons, giving them permission to land and the imposition of a limit of stay and other conditions of stay by automated means; and to provide for matters incidental thereto or connected therewith.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Immigration (Amendment) Ordinance 2005.

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

2. Sections added

The Immigration Ordinance (Cap. 115) is amended by adding -

"4A. Verification of identity of certain persons by automated means

(1) For the purposes of this Ordinance, the Director may provide automated means -

- (a) to verify the identity of a person to whom this subsection applies;
- (b) to give permission to land in Hong Kong to any person referred to in paragraph (a) who by virtue of section 7(1) may not land in Hong

Kong without the permission of an immigration officer or immigration assistant; and

- (c) to impose a limit of stay and such other conditions of stay, if permission is given to a person to land in Hong Kong under paragraph (b).

(2) Subsection (1) applies to a person who -

- (a) is approved by the Director to use the automated means for the purposes set out in subsection (1); and

- (b) voluntarily submits himself to have his identity verified by the automated means -

- (i) on his arrival or landing in Hong Kong; or
 - (ii) prior to his departure from Hong Kong.

**4B. Permission to land given
by automated means**

(1) Any permission to land given by an automated means provided under section 4A shall be deemed to be permission to land given under section 11(1), and the other provisions of section 11 shall apply accordingly.

(2) Any limit of stay and other conditions of stay imposed on a person by such an automated means shall be deemed to be a limit of stay and other conditions of stay imposed under section 11(2), and the other provisions of section 11 shall apply accordingly.

4C. Examination of persons after the verification of identity by automated means

Notwithstanding that a person has submitted himself voluntarily for verification of identity by an automated means provided under section 4A, any immigration officer or immigration assistant may examine the person under section 4(1)(a).".

3. Powers of Director and requirements in relation to examinations under section 4 and verifications of identity under section 4A

Section 5(1) is amended by adding "and verification of identity by an automated means provided under section 4A" after "section 4(1)(a)".

4. Prohibition of landing and remaining without permission, and penalty for carrying illegal immigrant

Section 38(2) is amended -

- (a) by adding "or for the purpose of verification of identity by an automated means provided under section 4A" after "4(1)(a)";
- (b) by adding "or verification of identity" after "such examination".

Explanatory Memorandum

The main purposes of this Bill are -

- (a) to empower the Director of Immigration to verify the identity of certain persons by automated means;
- (b) to provide that permission to land in Hong Kong given to any person and the limit of stay and conditions of stay imposed on any person by automated means are deemed to be given and imposed by an immigration officer or immigration assistant.

Chapter:	115	IMMIGRATION ORDINANCE	Gazette Number	Version Date
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Section:	5	Powers of Director and requirements in relation to examinations under section 4		30/06/1997
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- (1) The Director may require-
 - (a) the owner of a ship or aircraft or his agent; or
 - (b) the captain of a ship or aircraft,
 to produce in such manner as the Director may specify for examination under section 4(1)(a)-
 - (i) the passengers arriving or departing in that ship or aircraft; and
 - (ii) the members of the crew of that ship or aircraft.
- (2) A requirement under subsection (1)-
 - (a) may relate to all or any of the passengers or all or any of the members of the crew or to all or any of both;
 - (b) may be made generally for all occasions or, without prejudice to any general requirement which may be in force, for any particular occasion.
- (3) An immigration officer or immigration assistant may require a person to proceed to such place as he may specify for the purpose of examination under section 4(1). (Amended 15 of 1980 s. 10)
- (4) Any person of or over the age of 16 years, other than a serviceman, being examined under section 4(1)(a) shall- (Amended 79 of 1982 s. 4; 31 of 1987 s. 5)
 - (a) produce a valid travel document, entry permit or re-entry permit; and
 - (b) subject to subsection (9), furnish an arrival or departure card in the prescribed form, duly completed.
- (5) Where a person being examined under section 4(1)(a) is of or over the age of 7 years and under the age of 16 years and- (Amended 79 of 1982 s. 4; 31 of 1987 s. 5)
 - (a) is accompanied by an adult, the adult shall-
 - (i) produce a valid travel document, entry permit or re-entry permit relating to such person; and
 - (ii) subject to subsection (9), furnish in respect of such person an arrival or departure card in the prescribed form, duly completed;
 - (b) having arrived or being about to depart in a ship or aircraft, is not accompanied by an adult, the owner of the ship or aircraft shall-
 - (i) produce a valid travel document, entry permit or re-entry permit relating to such person; and
 - (ii) subject to subsection (9), furnish in respect of such person an arrival or departure card in the prescribed form, duly completed.
- (6) An immigration officer or immigration assistant may require any person, other than a serviceman, being examined under section 4(1) to-
 - (a) declare whether or not he is in possession of any documents of any description specified by that officer or that assistant, being a description relevant for the purposes of the examination; and
 - (b) produce to the officer or the assistant any such documents which are in his possession. (Amended 57 of 1972 s. 3)
- (7) An immigration officer or immigration assistant may require a person being examined under section 4(1) to furnish to him such information as he may require for the purposes of this Ordinance. (Amended 15 of 1980 s. 10)
- (8) An immigration officer or immigration assistant may give such directions as he considers necessary for preventing any person from evading examination under section 4(1). (Amended 57 of 1972 s. 3)
- (9) The Director of Immigration may exempt from subsection (4)(a), (4)(b), (5)(a)(ii) or (5)(b)(ii) any person or any class or description of persons. (Amended 21 of 1987 s. 2)

Chapter:	115	IMMIGRATION ORDINANCE	Gazette Number	Version Date
Section:	38	Prohibition of landing and remaining without permission, and penalty for carrying illegal immigrant		30/06/1997

PART VIII

OFFENCES AND FORFEITURE

- (1) Subject to subsection (2), a person who-
- (a) being a person who by virtue of section 7 may not land in Hong Kong without the permission of an immigration officer or immigration assistant, lands in Hong Kong without such permission; or (Amended 15 of 1980 s. 10)
 - (b) having landed in Hong Kong unlawfully, remains in Hong Kong without the authority of the Director,

shall be guilty of an offence and shall be liable on conviction to a fine at level 4 and to imprisonment for 3 years. (Amended 75 of 1990 s. 3; L.N. 25 of 1996)

(2) A person may land in Hong Kong, without the permission of an immigration officer or immigration assistant, for the purpose of examination under section 4(1)(a) in accordance with arrangements in that behalf approved by the Director, and if he submits himself forthwith to such examination shall be deemed for the purposes of subsection (1) not to have landed unless and until permission to land is granted to him. (Amended 15 of 1980 s. 10)

(3) The Governor may by order provide that subsection (1) shall not apply to an immigrant who lands from a ship or aircraft in such circumstances as may be specified in the order.

- (4) If a person lands from a ship in contravention of subsection (1)(a)-
- (a) the captain of the ship; and
 - (b) the owner of the ship and his agent,

shall be guilty of an offence and shall be liable-

- (i) on conviction on indictment, to a fine of \$600000 and to imprisonment for 7 years; and (Amended L.N. 25 of 1996)
- (ii) on summary conviction, to a fine of \$600000 and to imprisonment for 3 years, (Amended L.N. 25 of 1996)

unless he proves that all reasonable steps had been taken to ensure that persons did not land from the ship in contravention of subsection (1).

ECONOMIC IMPLICATIONS

The extension of automated means to non-permanent residents of Hong Kong and frequent travellers will further enhance the efficiency of our control points and is conducive to the economic development of Hong Kong.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. The Finance Committee of the Legislative Council approved in January 2003 a non-recurrent commitment of \$352.8 million for the implementation of the APC and AVC systems at the existing eight control points. The systems require recurrent cost of \$46.2 million per annum for maintenance. With the implementation of these systems, ImmD will be able to release 207 Senior Immigration Assistants and 10 Immigration Officers for redeployment progressively from 2004-05 onwards. These staff will be redeployed to meet other operational needs such as manning the new control points at the Shenzhen Western Corridor and Lok Ma Chau Spur Line which are scheduled for operation in mid-2006 and mid-2007 respectively. The projected annual staff savings amounts to about \$93.4 million.¹

¹ The recurrent cost of \$46.2 million per annum for maintenance and the annual staff savings of \$93.4 million are calculated by the staff cost at 2002 level. The updated figures at 2004 level are \$45.6 million and \$80.6 million respectively.