

A BILL

To

Amend the Immigration Ordinance and its subsidiary legislation to expand the scope of valid travel documents; to prohibit certain persons from taking employment or establishing or joining in any business; to provide that a visa may be issued otherwise than by means of an endorsement on a valid travel document; and to revise the meaning of lawfully employable persons.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Immigration (Amendment) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

3. Interpretation

Section 2(1) of the Immigration Ordinance (Cap. 115) is amended by repealing the definition of “valid travel document” and substituting—

““valid travel document” (有效旅行證件) means—

- (a) a passport furnished with a photograph, or any other document establishing to the satisfaction of an immigration officer or immigration assistant the identity and nationality of the holder of the document and the domicile or place of permanent residence of the holder of the document, which—

- (i) indicates in specific or general terms that it is not invalid for Hong Kong;
 - (ii) indicates that it is still valid according to the laws of the country or territory by or on behalf of which it was issued;
 - (iii) allows its holder to return to the country or territory by or on behalf of which it was issued; and
 - (iv) complies with section 61; or
- (b) a document issued by or on behalf of a competent authority of any country or territory to its holder for the purpose of identification or travel, which—
- (i) establishes to the satisfaction of an immigration officer or immigration assistant the identity of its holder and the domicile or place of permanent residence of its holder;
 - (ii) indicates that it is still valid according to the laws of that country or territory;
 - (iii) allows its holder to return to that country or territory; and
 - (iv) complies with section 61;”.

4. Interpretation

- (1) Section 17G(2)(c) is amended by repealing “is the holder of”.
- (2) Section 17G(2)(c)(i) is repealed and the following substituted—
 - “(i) is the holder of a valid travel document and, having landed in Hong Kong lawfully, is not prohibited from taking employment, whether paid or unpaid, under any condition of stay, and in respect of whom no removal order or deportation order is in force;”.
- (3) Section 17G(2)(c)(iii) is amended by adding “is the holder of” before “a”.
- (4) Section 17G(2)(c)(iv) is amended by adding “is the holder of” before “a”.
- (5) Section 17G(2)(c)(v) is amended by adding “is the holder of” before “any”.

5. Section added

The following is added before section 38A—

“38AA. Prohibition of taking employment and establishing business, etc.

- (1) A person—
- (a) who, having landed in Hong Kong unlawfully, remains in Hong Kong without the authority of the Director under section 13; or
 - (b) in respect of whom a removal order or a deportation order is in force,

must not take any employment, whether paid or unpaid, or establish or join in any business.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 years.”.

6. Travel document to bear visa

- (1) The heading of section 61 is repealed and the following substituted—
“Visa issued in respect of valid travel document and its holder”.
- (2) Section 61(1) is amended—
- (a) by repealing “travel document shall not be valid” and substituting “document is not a valid travel document”;
 - (b) by adding “, or its holder has obtained,” after “bears”;
 - (c) by repealing “the person to whom the travel document relates” and substituting “its holder”.

Related Amendment

Immigration (Unauthorized Entrants) Order

7. Declaration of unauthorized entrants

Paragraph 2(2)(a) of the Immigration (Unauthorized Entrants) Order (Cap. 115 sub. leg. D) is repealed and the following substituted—

- “(a) any person holding a valid travel document—
- (i) who is exempted from section 61(1) of the Ordinance under section 61(2) of the Ordinance; or
 - (ii) who has obtained a visa issued by or on behalf of the Director of Immigration, if the visa has not expired; and”.

Explanatory Memorandum

This Bill amends the Immigration Ordinance (Cap. 115) (“the Ordinance”) and its subsidiary legislation and its main objects are—

- (a) to expand the scope of valid travel documents to include documents which do not indicate the holders’ nationality and are issued for the purpose of identification or travel;
- (b) to create a new offence prohibiting illegal immigrants and persons who are subject to removal or deportation orders from taking employment, whether paid or unpaid, or establishing or joining in any business;
- (c) to provide that a visa may be issued otherwise than by means of an endorsement on a valid travel document; and
- (d) to revise the meaning of lawfully employable persons.

2. Clauses 1 and 2 provide for the short title and the commencement of the Bill when enacted.

3. Clause 3 amends the definition of “valid travel document” in the Ordinance by including documents which do not indicate the holders’ nationality and are issued for the purpose of identification or travel.

4. Clause 4 amends section 17G of the Ordinance by providing that a person who is not required to be registered under the Registration of Persons Ordinance (Cap. 177) is a lawfully employable person if that person holds a valid travel document and, after having landed in Hong Kong lawfully, is not subject to any condition of stay prohibiting the taking of employment, whether paid or unpaid, and in respect of whom no removal or deportation order is in force.

5. Clause 5 adds a new section 38AA to the Ordinance to prohibit illegal immigrants and persons who are subject to removal or deportation orders from taking employment, whether paid or unpaid, or establishing or joining in any business.

6. Clauses 6 and 7 amend section 61(1) of the Ordinance and paragraph 2(2) of the Immigration (Unauthorized Entrants) Order (Cap. 115 sub. leg. D) respectively by providing that a visa may be issued otherwise than by means of an endorsement on a valid travel document.