

立法會
Legislative Council

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Paper for the House Committee Meeting on 26 June 2009

**Legal Service Division Report on
Immigration (Amendment) Bill 2009**

I. SUMMARY

1. **Objects of the Bill**
 - (a) To expand the scope of, and allow the issue of visa other than by endorsement on, valid travel documents; and
 - (b) To prohibit illegal immigrants and persons subject to removal or deportation orders from taking employment or engaging in business.

2. **Comments**

To facilitate the entry into Hong Kong of Macao permanent residents, as agreed by the Administration with the Macao SAR Government, the Bill proposes to amend the definition of "valid travel document" to allow them to enter solely on the strength of their Macao permanent identity cards.

The amendment will facilitate the implementation of similar convenience measures for visitors from other places. As the limit and conditions of stay or a visa cannot be endorsed on a card-face document, technical amendments are also proposed to allow alternative arrangements.

The Administration considers that prosecuting illegal immigrants (IIs) found working illegally for remaining unlawfully in Hong Kong may not be effective in deterring illegal immigration, especially non-ethnic Chinese IIs. It is therefore proposed that a new offence be created to prohibit the taking of employment or establish/joining in business by IIs, including those subject to removal or deportation orders. The proposed penalty level is a fine of level five (\$50,000) and imprisonment for three years.

3. **Public Consultation**

No consultation apart from that with LegCo Panel is mentioned by the Administration in the LegCo Brief.

4. **Consultation with LegCo Panel**

Panel on Security was consulted on 2 June 2009. Members supported the immigration convenience measure. Members also considered it acceptable to tackle the specific problem of illegal employment by IIs first but review of the wider issue of illegal immigration should be speeded up.

5. **Conclusion**

Members may wish to set up a Bills Committee to consider in detail the Bill's proposal to tackle the problem of unlawful employment by illegal immigrants in the wider context of illegal immigration. The legal and drafting aspects of the Bill are still under our scrutiny.

II. REPORT

Objects of the Bill

The objects of the Bill are -

- (a) to expand the scope of, and allow the issue of visa other than by endorsement on, valid travel documents; and
- (b) to prohibit illegal immigrants and persons subject to removal or deportation orders from taking employment or engaging in business.

LegCo Brief Reference

- 2. SBCR 1/2091/08 issued by the Security Bureau on 17 June 2009.

Date of First Reading

- 3. 24 June 2009.

Comments

Expansion of the definition of "valid travel document"

4. The Bill amends the Immigration Ordinance (Cap. 115) (the Ordinance) for two purposes. One of these is to facilitate the entry into Hong Kong of Macao permanent residents solely on the strength of their permanent identity cards (PIC). As the LegCo Brief explains, this is one of the immigration convenience measures agreed with the Macao Special Administrative Region Government for implementation by the end of 2009 as announced in the context of the 2008 Policy Address.

5. A Macao PIC does not meet the existing definition of a "valid travel document" (VTD) under the Ordinance because it does not indicate the holder's nationality. It is therefore proposed that the definition be expanded to include a valid identity or travel document issued by a competent authority which is able to establish to the satisfaction of an immigration officer the holder's identity and his or her domicile or place of permanent residence and which allows its holder to return to his or her country or territory. According to the Administration, the amendment will also facilitate the implementation of similar convenience measures for visitors from other places in the future.

6. Some technical amendments are also proposed to allow the making of alternative arrangements in respect of the imposition of the limit and conditions of stay and the issuance of visas, which could not be physically endorsed on a card-face document such as the Macao PIC.

New offence against taking employment etc.

7. In a judicial review judgment (*Iqbal Shahid & Others v Secretary for Justice* HCAL 150/2008), the court ruled in early March 2009 that recognizance granted to illegal immigrants who have made torture claims represented an authority from the Director of Immigration for them to remain in Hong Kong. Hence, they had a defence against the charge of the offence of unlawful remaining in Hong Kong. The Department of Justice has lodged an appeal against the ruling.

8. According to paragraph 6 of the LegCo Brief, there was an upsurge since then of illegal immigration of non-ethnic Chinese illegal immigrants (not including Vietnamese). There is thus an urgent need to create a new offence for the taking of employment or establishing/joining in business by illegal immigrants. The proposed new offence will also cover persons subject to removal or deportation orders as these orders would invalidate the conditions of stay of the person concerned, including one barring the taking of employment.

9. The proposed penalty for the new offence is a fine at level 5 (\$50,000) and imprisonment for three years, which are comparable to those for the offences of "unlawful remaining" and "breach of conditions of stay" under sections 38(1)(b) and 41 respectively of the Ordinance.

Public Consultation

10. No consultation apart from that with a LegCo Panel is mentioned by the Administration in the LegCo Brief.

Consultation with LegCo Panel

11. The Panel on Security was consulted at its meeting on 2 June 2009. While members in general supported the proposed immigration convenience measure for Macao visitors, some members expressed concern over the proposal to specify a new offence against the taking of employment by illegal immigrants. They opined that the relevant judgment and its implications had to be studied carefully from a wider perspective. They considered that the Administration should speed up its review of the torture claim screening mechanism and introduce a more comprehensive legislative proposal to tackle all the issues.

12. Some other members were concerned with the substantial increase in the number of non-ethnic Chinese illegal immigrants intercepted in recent months. They agreed that there was an urgent need to introduce a new offence against them taking employment. As the Administration had undertaken to study the implementation of a legislative regime for handling torture claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and consult LegCo by the end of 2009, they considered it acceptable to tackle the specific problem of illegal employment first.

Conclusion

13. Members may wish to set up a Bills Committee to consider the Bills proposal to tackle unlawful employment by illegal immigrants in the wider context of illegal immigration. The legal and drafting aspects of the Bill are still under our scrutiny.

Prepared by
Arthur CHEUNG Ping-kam
Senior Assistant Legal Adviser
Legislative Council Secretariat
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