
Asia Labor and Employment Client Service Group

To: Our Clients and Friends

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New Entry-Exit Law Targets Illegal Foreigners in China

On June 30, 2012, the Standing Committee of the National People's Congress passed the Entry and Exit Administration Law of the People's Republic of China ("Law"). The Law, which will become effective on July 1, 2013, will replace the previous laws governing the entry and exit administration for foreigners and Chinese nationals, namely the 1985 Entry and Exit Administration Law of the People's Republic of China and its subsequent implementing regulations ("Previous Rules"), and the 1985 Exit and Entry Administration Law for Citizens of the People's Republic of China. These two laws will be canceled when the Law becomes effective.

In addition to laying out the basic framework of the entry and exit administration for both foreigners and Chinese citizens, the Law increases the severity of punishments for foreigners illegally living and working in China and for the employers who illegally employ them. Below is a summary of several key provisions related to foreigners provided by the Law, focusing on how they differ from the Previous Rules:

Residence Certificates

Pursuant to Article 30 of the Law, work residence certificates are valid for a minimum of 90 days up to five years. Non-work residence certificates are valid for a minimum of 180 days up to five years.

Under the Previous Rules, the validity period of a foreigner's residence certificate ranged from one to five years.

Pursuant to Article 30 of the Law, foreigners applying for residence certificates must provide their fingerprints and other biometric data along with their passports and other relevant material.

Under the Previous Rules, foreigners were not required by law to include such information in their applications.

Reporting of Illegal Foreigners

Article 45 of the Law states that citizens, legal persons or other organizations that become aware of a foreigner's illegal immigration, illegal residence, or illegal employment should notify their respective local public security bureaus.

The Previous Rules did not include any such language on reporting illegal foreigners.

Punishments for Illegal Residence

Pursuant to Article 78 of the Law, foreigners illegally residing in China will first be given a warning. If the case is serious, the illegal foreign resident will be fined RMB 500 per day, totaling no more than RMB 10,000, or be detained for five to 15 days.

The Previous Rules stipulated that such foreigners were subject to a warning or a fine of RMB 500 per day, totaling no more than RMB 5,000, or be detained for three to 10 days. In serious cases, an order to leave China could be given along with one of the above penalties.

Punishments for Illegal Employment

Article 80 of the Law introduces fines for foreigners illegally working in China and their employers. Foreigners illegally working in China may be fined between RMB 5,000 and RMB 20,000. In serious cases, such foreigners may receive a fine between RMB 5,000 and RMB 20,000 and be detained for five to 15 days.

Under the Previous Rules, foreigners working in China without the necessary approval would receive a fine no greater than RMB 1,000. In serious cases, the foreigner would be ordered to leave China.

Article 80 of the Law also states that employers illegally employing foreigners will be fined RMB 10,000 per foreigner, up to a maximum of RMB 100,000. All gains stemming from such employment will be confiscated.

The Previous Rules stated that such employers would receive a fine between RMB 5,000 and RMB 50,000 and would have to bear the costs of deporting such foreigners.

Departure and Deportation

Article 81 of the Law lays out circumstances where foreigners may be ordered to leave China and, in more serious circumstances, be deported. The Law states that foreigners engaging in or remaining in China for activities that are inconsistent with their purpose of residence, or otherwise violating Chinese laws and regulations and deemed unsuitable to remain in China, may be ordered to leave the country.

Foreigners that violate the provisions of the Law may be deported by the Ministry of Public Service if the case is serious but does not constitute a crime. Such decision will be final, and any foreigner that has been deported will not be allowed to reenter China for 10 years upon the date of deportation.

The Previous Rules included language exposing such foreigners to deportation, as described in the above sections, but did not include the 10-year limit on reentry.

Conclusion

While the Previous Rules addressed many issues related to the illegal employment of foreigners, the Law streamlines the basic legal concepts into a unified body, establishes more severe punishments and fines, and introduces new administrative measures to better regulate the entry and exit administration of foreigners in China.

Bryan Cave professionals will closely examine the implementation of the Law and track any further implementing regulations to monitor how this issue develops.

For additional information on this topic, please contact a member of Bryan Cave LLP's [Asia Labor and Employment Client Service Group](#).