

CHINA Legal Bulletin

... Your legal advisors in China



*The China
Legal Bulletin
is produced by*

**Wang Jing & Co.
Law Firm**

Executive Summary

The Implementation of the Exit-Entry Administration Law of the People's Republic of China.



China's new Exit-Entry Administration Law goes into effect on July 1st, along with the new 39-article regulation for foreigners which takes effect on September 1, replacing the previous regulation promulgated in December 1986. The new law has stricter regulations for foreigners wishing to enter the country and stipulates harsher punishments for illegal entry stay or work. On the other hand, it will make it easier for foreign nationals to obtain permanent residency. China is becoming more careful about who it lets in and out of its gates. This article is to summarize the differences between the new laws and the old ones. And try to give a thorough and intuitive way of understanding of the new regulations.

The Implementation of the Exit-Entry Administration Law of the People's Republic of China.

Recently, the new Chinese Administration of Exit and Entry Regulations were released and will take effect on September 1, 2013. The hope of Chinese living abroad is a more lenient policy regarding entry and exit to the P.R.C. This new law creates a new visa, which will be labeled the Q visa and it will be mostly issued to Chinese living abroad in order to allow them to visit relatives still living in China. This Q visa is intended to have a longer period of validity and stay.

Ordinary visas changed to include 8 classes/categories

According to the purposes stated in entry applications, the visas will be divided into D, Z, X, F, L, G, C and J classifications, 8 categories, corresponding to the purpose of visiting such as to live, work, study, visit, take part in tourism, transit and journalism. Among them, the F visa and L visa cover a variety of purposes, for example; a foreigner who holds an L visa may come for tourism, or to visit relatives, or for the handling of private affairs. In order to ensure that the visa categories accurately reflect the reason of entry, the new regulations have created an R visa.

Foreign high-level personnel can apply for a talent visa

In order to attract more overseas talent to China, the law takes "talent introduction" as a reason for visa application. The new regulations have introduced the R (talent) visa, for foreign persons of extraordinary talent for which there are a shortage of in China. In the future, foreigners who meet requirements and conditions can apply for the R visa, and enjoy more relaxed restrictions in the processes of entry and exit of the P.R.C.

Identification Validation

According to article 27 of the ordinance, the finance, education, medical treatment, telecommunications and other services can ask the exit and entry administration agency of the public security organization to verify a foreigners' identity. The public security organization of the exit and entry administration institution and their staff shall issue a certificate of proof of nationality, validation of identity, but not provide detailed personal information in order to safeguard the legitimate rights and interests of foreigners.

Units should timely report information regarding foreigners

According to these new regulations, if the foreign-based visa agencies need to ask relevant departments and units in China to verify relevant information in the issuance of a visa, the relevant departments and units shall cooperate.

EXECUTIVE EDITOR:
WANG JING

EDITOR:
ZHENG XIN



The Implementation of the Exit-Entry Administration Law of the People's Republic of China.

In order to solve the problems of illegal entry, illegal residence and illegal employment of foreigners, the regulations increase the provisions for foreign students attending school work-study and internships. If foreign students need a job, work-study or internship, they should apply to the public security organization of the exit and entry administration institutions and supply a residence certificate after the approval of the school.

Regulations have also made it very clear that organizations that recruit foreign students, interns and employees are required to report all relevant information. These new regulations require foreigners who leave or change their work area to promptly report such change to the exit and entry administration department of the local public security organization at or above the county level.

To foreigners, the new law will implement stricter control over their entry, stay in China and employment. Foreign-invested enterprises and foreigners working in China who employ foreign employees should note the following regulations:

1. The new law distinguishes between foreigner work residence permits and non-work residence permits. The validity of non-work residence permits ranges from 180 days to 5 years. However, work residence permits have a shorter validity of 90 days. Foreigners who work in China should obtain work permits and work residence permits in accordance with relevant regulations. No entities or individuals should employ foreigners who have no work permits or work residence permits.
2. For the first time, the new law explicitly defines “unlawful unemployment in China”. There are three circumstances:
3. Working in China without obtaining work permits or work residence permits in accordance with relevant regulations; working in China beyond the scope prescribed in the work permit; or foreign students working beyond their prescribed scope of duties or time limit.
4. In the past, if a foreigner was discovered to be unlawfully employed, Chinese law did not provide measures or actions to be taken. The new law clearly stipulates that authorities can carry out on-the-spot interrogation, continued interrogation and even detention of suspects. If unlawful employment is proven, repatriation can be enforced.
5. The new law also stipulates that foreigners and their Chinese employer should be liable for the contents of their application for visas and residence permits.



Encompassing the above summaries, a few highlights below:

Highlight 1: Transformation from Emphasis on Administration to a Dual Emphasis on Service and Administration

The entry and exit administration law changes the task of these relevant organizations involved in the process to a service and administration focus instead of merely an administration focus. Article 1 of the Exit and Administration Law clearly states that the purpose of the legislation is to “promote foreign exchange and opening to the outside world” and “safeguarding the sovereignty, security and social order of the People’s Republic of China.” In short China plans to promote social and economic development so as to create a better environment, while safeguarding the sovereignty, security and interests of the People’s Republic of China. Article 8 stipulates that, “Departments and institutions that are responsible for the exit/entry administration shall take practical measures, constantly improve service and administration, enforce

laws impartially, provide convenient and efficient service and ensure the security and conveyance of the exit/entry procedures” so as to further facilitate the “going out, and welcoming in” of personnel, effectively serving the states strategy of attracting talent and capital.

The new law also actuates transformations in the ideology of law enforcement agencies. A full implementation of the Exit and Entry Administration Law will drive a continuous improvement in law enforcement skills and capabilities realistically protect the legitimate rights and interests of persons who exit or enter China, promote societal justice and equality and achieve the simultaneous elevation of service and administrative standards.

Highlight 2: Paying Greater Attention to Protecting Human Rights

“The State Respect and Safeguard for Human Rights” was implemented in 2004. Incorporating “The State protection of Chinese citizens’ legitimate rights and interests of exiting and entering the country” and “The legitimate rights and interests of foreigners in China protection by laws” into the Exit and Entry Administration Law is a highlighted in this section.

The Exit and Entry Administrative Law pays greater attention to the protection of Chinese citizens legitimate rights and interests in exiting and entering the country. The new law stipulates that for ports that meet relevant conditions, exit/entry border inspection authorities will provide convenience such as special lanes for the exit and entry of Chinese citizens. This provides the Public Security Bureau with legal authority to implement more measures to facilitate exiting and entering in the future. The new law adjusted the authority regulating Chinese citizen’s residing abroad application in China for permanent residence in the country, further facilitating their handling of relevant procedures. Chinese citizens residing abroad who desire to return to China for permanent residence will, prior to the entry, file applications with Chinese embassies or consulates or other institutions stationed abroad entrusted by the Ministry of Foreign Affairs. They may also file such applications to the overseas Chinese affairs departments under the local people’s government at or above the county level of the proposed places of permanent residence on their own or via their relatives in China. The new law also stipulates that when handling financial affairs or affairs involving education, medical treatment, transportation, telecommunications, social insurance or property registration, where identity certificates are required, Chinese citizens residing abroad may provide their passports for proof of identity.

The Implementation of the Exit-Entry Administration Law of the People's Republic of China.



Highlight 3: Promoting international relations and economics

Boosting the focus to opening up to the outside world and in turn, promoting more lenient exit and entry strategy in hopes of boosting economic development is an important part of the new law. The new law has made a number of roads make entry and exit to and from China more broad.

The Exit and Entry Administrative Law further improved relevant regulations, and focused on raising the efficiency of the entry and exit of foreigners and the expedience of residing within the country. The new law stipulates that appropriate types of standard visas will be issued to foreigners who enter China due to non-diplomatic or official reasons including work, study, family visit, travel, business activities and talent introduction. The legal basis for a special visa aimed at talent introduction is established and this creates a positive effect in introducing talent to the country. The new law regulates the port visa system, and consolidates the structure of the application of port visa, adding a number of rules allowing travel agencies that organize inbound tourism to apply for group tourist visas, continuing its properties of using simple procedures and high practicality. The new law states four circumstances where foreigners may be exempted from applying for visas. In doing so, it allows the State Council to implement a more flexible visa entry policy, which will take into account the state of social development and whether it is suitable in the particular area and period of time to use visa-free entry and exit. The Exit and Entry Administrative Law initiated a temporary entry system, allowing an application for temporary entry by foreign seamen and their accompanying family members at cities where the ports of disembarkation are located, and foreigners who need to enter China temporarily due to force majeure or for any other urgent reason. This system displays the virtuous nature of the exit and entry administration. The new law also provides convenience for qualifying foreigners who want to temporarily stay or reside in the country. Foreigners with expertise and foreign investors who conform to relevant State regulations or foreigners who need to change their status from stay to residence for humanitarian or other reasons can apply for foreign residence permits. Foreigners who have entered on visas can change the reason for their temporary stay and can apply for a reissue of visa for convenient entry. The new law further improves China's "Green Card" system, allowing foreigners who have made remarkable contributions to China's economic and social development or met other conditions for permanent residence in China to apply for permanent residence. It also makes explicit that foreigners who have obtained permanent residence status may reside or work in China and exit or enter China with their passports and permanent residence permits.

Highlight 4: Defining illegal employment of foreigners

Illegal entry, residence and employment of foreigners are a by-product of our State's state of social and economic development. At the moment, the problem is generally stable and under control. However, additional attention must be given and more potent solutions need to be implemented so as to prevent it from becoming a serious, hidden threat to exit and entry order. The new law toughened control and monitoring of the sources, and improved within-border administrative measures to more effectively address the problem:

1. A strict visa issuance system is implemented, aiming at the source of the problem. Criteria are set for organizations or individuals inviting foreigners to China. Entities or individuals that issue written invitations will be liable for the fidelity of the contents. Any fraudulent act in the visa application process or where there is an absence of guarantee of expected expenses required for the stay will result in a refusal of visa and entry. Refusal will also be given to a foreigner who may engage in activities that do not conform to the type of visa issued after entering China
2. The management of stay and residence of foreigners will be strict. Foreigners stay or residence documents processing, residential record inspection and regular inspection systems will be further regulated. Foreigners are not allowed to conduct activities inconsistent with their reasons for staying or residing in the country. Citizens, legal persons or other organizations who find foreigners who enter, reside or work illegally in China have to duly report such matter to the local public security organizations.
3. The management of foreigners working in China will be further regulated. Foreigners working in China need to obtain work permits and work-type residence permits. Unlawful employment is clearly defined: working in China without obtaining work permits or work residence permits in accordance with relevant regulations; working in China beyond the scope prescribed in the work permits; or foreign students working in violation of their prescribed scope of duties or time limit are now unlawful.
4. The measures and legal responsibilities for deporting perpetrators are now further regulated. Measures for on-the-spot interrogation, continued interrogation, detention for investigation, movement restriction and repatriation will be enforced by public security organizations under local government at or above the county level or by exit/entry border inspection authorities. Repatriated persons will not be allowed to enter China for one to five years. Those involved with entering, residing or working illegally may be fined, arrested or ordered to exit China within a prescribed time limit.



Highlight Five: The Authorization of Fingerprint Data

The Exit and Entry Administrative Law explicitly incorporates human biometrics into exit and entry administration. Upon approval by the State Council, the Ministry of Public Security and the Ministry of Foreign Affairs may, on the basis of the need for exit/entry administration, set forth regulations on the collection and maintenance of fingerprints and other biometric identification information of the persons who exit or enter China. The regulation will ensure human biometrics information is kept confidential.

“The collection and storage of exiting and entering personnel's biometric identification information can, on comparison with exit/entry



The Implementation of the Exit-Entry Administration Law of the People's Republic of China.

administration, effectively screen exiting and entering personnel's identities, improving the efficiency of ports passage, and is an international general method."

As introduced, in 2005, public security authorities may retain biometric identification information from exiting and entering personnel who volunteer. There has been a positive public response and over four million travelers have voluntarily provided fingerprint information.

Highlight 6: Emphasis on Communication and Information Sharing Among Various Departments

Exit/entry administration involves a wide range of issues and requires cooperation from multiple departments. In 2007, 16 departments, including the Ministry of Public Security, the Ministry of Foreign Affairs and the Ministry of Education established the management of foreigners coordination system. In 2011, 20 departments, including the Ministry of Public Security and the Ministry of Foreign Affairs, established the overseas Chinese personnel service management system, increasing the cooperation between departments. To further strengthen the cooperation between departments, the Exit and Entry Administrative Law stipulates that; "in the administration of exit/entry affairs, the Ministry of Public Security and the Ministry of Foreign Affairs shall strengthen communication and cooperation, cooperate closely with relevant departments under the State Council, and exercise functions and powers and bear liabilities within the scope of their respective responsibilities in accordance with the law." It also states that; "The State shall establish a uniform exit/entry administration information platform to share information among relevant administrative departments." The formation of joint management provides the legal basis for further consolidation of information resources.

In order to better understand the spirit of the new law, an excerpt from a question and answer session with the Ministry of Public Security's director is below:

Question:

As international exchanges strengthen, there is an increasing number of foreigners coming to China, How does the Exit and Entry Administrative Law further strengthen and improve the exit/entry of foreigners service and administration.

Answer:

On improving service, firstly, the Exit and Entry Administrative Law provides the legal basis for realizing the talent visa system. It stipulates that appropriate types of ordinary visas shall be issued to foreigners who enter China due to non-diplomatic or official reasons including work, study, family visit, travel, business activities and talent introduction.

Secondly, it enlarges the scope of exemption from applying for visas. The 24 hours exit/entry and exemption policy is extended from airports to ports of sea and land. The State Council is authorized to approve stay in specific zones for more than 24 hours to promote the construction of international air hubs and the development of tanker economics, attracting more foreigners to China for tourism and business.

Thirdly, it improves the temporary entry system.

Fourthly, it offers convenience in stay and residence for foreign talents and investors. The new law stipulates that foreigners with expertise and foreign investors who conform to relevant State regulations or foreigners who need to change their status from stay to residence for humanitarian or other reasons are offered convenience in stay and residence.

Fifthly, it improves the Chinese "Green Card" system. The new law states that foreigners who have made remarkable contributions to China's economic and social development or meet other conditions for permanent residence in China may obtain permanent residence status upon application approved by the Ministry of Public Security. This leaves room for a gradual relaxation of the "Green Card" application requirements, contributing to the introduction of talents and capital.

by Zheng Fengyu & Li Lihua

GUANGZHOU

Tel. (+8620) 8393 0333
Fax (+8620) 3873 9633
info@wjnc.com

SHANGHAI

Tel. (+8621) 5887 8000
Fax (+8621) 5882 2460
shanghai@wjnc.com

TIANJIN

Tel. (+8622) 5985 1616
Fax (+8622) 5985 1618
tianjin@wjnc.com

XIAMEN

Tel. (+86592) 268 1376
Fax (+86592) 268 1380
xiamen@wjnc.com

BEIJING

Tel. (+8610) 5785 3316
Fax (+8610) 5785 3318
beijing@wjnc.com

SHENZHEN

Tel. (+86755) 8882 8008
Fax (+86755) 8284 6611
shenzhen@wjnc.com

QINGDAO

Tel. (+86532) 8666 5858
Fax (+86532) 8666 5868
qingdao@wjnc.com

FUZHOU

Tel. (+86591) 885 22000
Fax (+86591) 8354 9000
fuzhou@wjnc.com

HAIKOU

Tel. (+86898) 6672 2583
Fax (+86898) 6672 0770
hainan@wjnc.com