

# Exit and Entry Control (Draft) Bill Provisions and Instructions

The Twenty-Fourth Session of the Eleventh National People's Congress first considered the "Exit and Entry Control Law of the People's Republic of China (Draft)." Now "the People's Republic of China Exit and Entry Control Law (Draft)" and its instructions are published to the public for comments. Any person may go to the China National People's Congress's website ([www.npc.gov.cn](http://www.npc.gov.cn)) to provide their comments or send comments to the NPC Standing Committee (No. 1, Qianmen West Street, Xicheng District, Beijing, Zip Code: 100805). Please specify on the envelope that the contents are comments on the Exit and Entry Control Law.

Deadline for Comments: January 31, 2012.

## The People's Republic of China Exit and Entry Control Law (Draft)

### Contents

Chapter I: General Provisions.....	2
Chapter II: Exit and Entry of Chinese citizens.....	3
Chapter III: Exit and Entry of Aliens.....	4
Chapter IV: Aliens Staying or Residing in the PRC.....	6
Chapter V. Exit and Entry Border Inspection on Transportation Vehicles.....	9
Chapter VI. Investigation and Repatriation.....	11
Chapter VII: Legal Liabilities.....	13
Chapter VIII Supplementary Provisions.....	16
Instructions Concerning the Law of the People's Republic of China on the Control of Exit and Entry (Draft).....	17

## Chapter I: General Provisions

**Article 1.** This law is developed in order to standardize management of the Entry and Exit process, maintain sovereignty, security and social order of the People's Republic of China, and promote exchange with and opening-up to the world.

**Article 2.** This Law shall apply to the Entry and Exit of Chinese citizens and aliens, the management of aliens' stay and residence in China, and the inspection of transportation vehicles

**Article 3.** China protects the legitimate rights and interests of Chinese citizens entering and exiting the border.

The Chinese Government protects the legitimate rights and interests of aliens in China. Aliens in China should abide by Chinese laws, and should not harm China's national security, public interest, or undermine the social order.

**Article 4.** The Ministry of Public Security and the Ministry of Foreign Affairs are responsible for their respective duties in regards of Exit and Entry affairs.

The embassies and consulates of the People's Republic of China or other institutions abroad commissioned by the Ministry of Foreign Affairs is responsible for foreign visas issued abroad. Immigration border control agencies will conduct inspections upon exit and entry of the border. Public Security Bureaus and the Entry and Exit management institution of local governments above the county level are responsible for the management of an alien's stay and residence.

The Ministry of Public Security and the Ministry of Foreign Affairs, in their respective areas of responsibility, can entrust the local government's Public Security Bureau and Foreign Affairs Departments above the county level to accept the entry, stay and residence application of aliens.

**Article 5.** In the management of exit and entry affairs, the Ministry of Public Security and the Ministry of Foreign Affairs should strengthen communication and coordination, and closely cooperate with relevant State Council departments in order to share management information.

**Article 6.** China has entry and exit border controls set up in open ports.

Chinese citizens, aliens and transportation vehicles should enter or exit the country from an open port; or, in special circumstances, from locations approved by the State Council or its designated institutions. People and transportation vehicles that enter or exit the border shall be subject to border control inspections.

Border controls are responsible for implementing port management within a designated area. According to the requirements for national security on exit and entry order, border controls can carry out inspections on goods carried by people crossing the border. When necessary, border control officers can inspect goods carried by transportation vehicles crossing the border, and shall notify customs.

**Article 7.** The Ministry of Public Security and the Ministry of Foreign Affairs can issue regulations to retain fingerprints and other biometric information from people who enter or exit the border based on the needs of China's exit and entry control.

Foreign governments with special provisions for visa issuance and exit and entry control on Chinese citizens, the Chinese government can act accordingly by taking reciprocal measures.

## Chapter II: Exit and Entry of Chinese citizens

**Article 8.** Chinese citizens should apply for a passport or other travel documents to cross the border.

Chinese citizens travelling to other countries or regions should also obtain a visa or other entry certificate. This does not apply to countries with which China has signed visa exemption agreements, or the Ministry of Public Security or Ministry of Foreign Affairs otherwise regulates.

Chinese citizens crossing the border as seamen or to work on alien ships should apply for certification of seafarers.

**Article 9.** Chinese citizens shall apply for travel permits to travel between Mainland China and Hong Kong SAR, Macao SAR and Taiwan and comply with the relevant provisions of this Law. Specific implementation measures will be further regulated by the State Council.

**Article 10.** Border control officers will inspect Chinese citizen's passports and other travel permits before allowing border exit or enter.

**Article 11.** Chinese citizens are not permitted to exit the border when situated in one of the following circumstances:

- (1) Been sentenced, but have not served the sentence; or are defendants or suspects in criminal cases;
- (2) involved in unsettled civil cases, where the court forbids the citizen to exit the border;
- (3) Is subject to criminal penalties for impairing border control, or is repatriated abroad for illegal exit, illegal residence or illegal employment, and has not reached the requirement of forbidden years.
- (4) May endanger national interests and security, or the relevant department of the State Council forbids exit;
- (5) Other cases in which the laws and administrative regulations forbids exit.

**Article 12.** If Chinese citizens residing abroad request to settle back in China, they should submit the application to embassies/consulates of the People's Republic of China or other institutions based abroad and commissioned by the Foreign Ministry. They can also submit the application on their own or by their relatives in China, to the local government's Foreign Chinese Affairs Department above the county level.

**Article 13.** Chinese nationals residing abroad can use their passport as identification when registering for financing, education, health care, transportation, telecommunications, social insurance, property registration and other matters in China.

## Chapter III: Exit and Entry of Aliens

### Section One: Visa

**Article 14.** Aliens entering China should apply for a visa from one of the overseas visa centers.

**Article 15.** In accordance with their status and the types of passports they hold, different aliens coming to china shall be issued diplomatic, courtesy, service or ordinary visas.

Aliens with diplomatic or official issues entering China will be issued a diplomatic visa and a service visa respectively; for those aliens who have a special status, a courtesy visa will be issued. The scope and requirements for diplomatic visas, courtesy visas, and service visas will be regulated by the Ministry of Foreign Affairs.

For aliens who enter China for work, study, visit, travel, non-diplomatic business, and official purposes, ordinary visas will be issued in accordance with their status.

**Article 16.** The items required for visa registration include: visa type; name; gender; date of birth; entry time; term of validity; duration of stay; passport number (international travel document), place of issuance, etc.

**Article 17.** Aliens should submit their passport (international travel documents) and other related materials, have an interview, and follow all necessary procedures as required by the authorities to apply for a visa.

**Article 18.** Aliens who are required to provide an invitation letter issued by an individual or organization within China when applying for a visa shall provide the letter as required by the visa issuance authority. The individual or organization who issues the invitation letter shall be responsible for the authenticity of the invitation.

**Article 19.** Aliens who are entering China for an urgent humanitarian cause, invited to China to engage in urgent business, engineering, repair, or have other emergency needs, and have approval from designated authorities to apply for port visas, can apply for a port visa through the Social Security Ministry in ports designated by the Chinese government

A travel agency can apply to the port visa authority for group travel visas when organizing entry travel to China in accordance with relevant regulations.

Aliens should submit passport (international travel documents) and other related materials to the port visa authority to apply for a visa. Aliens should follow all relevant procedures and enter the country from the port where the visa is issued.

Visas issued by port visa authorities are valid for single entry only and the valid duration of stay shall not exceed 30 days.

**Article 20.** Aliens who meet any of the following categories shall not be issued a visa:

- (1) Aliens who were expelled or repatriated within the term limit of entry;
- (2) Aliens who suffer from severe mental disease, infectious tuberculosis or any other infectious disease that may cause significant harm to public health;
- (3) Aliens who may damage national security and interests, disturb the public social order or commit criminal activities;
- (4) Aliens who cheat during the application process or are not financially able to stay in China;
- (5) Aliens who cannot provide the requested materials;
- (6) Other situations where the authority renders as inappropriate to issue a visa.

The visa authority is exempt of explanation for failed visa applications.

**Article 21.** Aliens who belong to any of the following categories shall be exempt from applying for a visa:

- (1) Aliens who belong to visa-free countries according to the visa exemption agreement signed between China and foreign countries;
- (2) Aliens who hold a valid residence permit;
- (3) Aliens who travel internationally by plane, ship or train who transit through China to a third destination country or region and stay in China within 24 hours or within the stipulated time limits in an area designated by the State Council;
- (4) In other situations where the State Department allows visa exemptions.

**Article 22.** Aliens who belong to any of the following categories can apply for temporary entry to the border control:

- (1) Alien seamen and their dependents landing in a port city;
- (2) Aliens belonging to Article 21, item 3, but who have to leave the port;
- (3) Aliens who have to enter China due to force majeure or other emergencies.

The duration of temporary entry shall be no longer than 15 days. Border control officers have the right to ask any alien, vehicle owner or transportation agent who applies for temporary entry to provide the necessary certificate and guarantee.

## **Section 2 Entry and Exit**

**Article 23** Aliens crossing the border are required to provide a passport (international travel documents), visa or other Embarkation/Disembarkation permission to the border control officers for examination. After necessary procedures, examinations, and permission aliens can enter the country.

**Article 24** Aliens may be refused entry into the country in any of the following circumstances:

- (1) In any of the circumstances from item (1) to item (4) in Article 20 of this law.
- (2) If, after entering the country, the alien intends to engage in activities that are not compatible with the type of visa held.
- (3) Other situations where aliens may not be allowed into the country due to specific laws and/or administrative regulations.

**Article 25** The border control officers should order all aliens who are not permitted to enter the country to go back to their country of origin. For those who refuse to return, the offices may force them to do so. During the waiting period before the alien returns to their country of origin, they shall not leave the restricted area designated to them.

**Article 26** Aliens exiting the border are required to provide a passport (international travel documents), visa or other Embarkation/Disembarkation permissions to the border control officers for examination. After necessary procedures, examinations, and permission aliens can exit the country.

**Article 27** Aliens may be refused exit from China in any of the following circumstances:

- (1) Sentenced to criminal penalties and not implemented yet, or judged as defendants in criminal cases and criminal suspects. Sentenced criminals who are to be transferred from one country to another according to agreements between China and other countries.
- (2) When civil cases have not been settled, the People's Court will pronounce those individuals as unable to exit the country
- (3) Those who delay the remuneration to workers, and are sentenced by the relevant departments of State Council or provincial, autonomous regional and municipal people's government to stay in the country
- (4) Other cases whereby laws and administrative regulations stipulate that an alien is not allowed to exit the country

## **Chapter IV: Aliens Staying or Residing in the PRC**

### **Section I. Stay and Residence**

**Article 28.** For durations where the stay does not exceed 180 days, the holder possessing the visa can stay in China for the stated period.

If a visa holder wants to extend the duration of stay in the country, they shall apply with the local public security authority within 7 days of the stated expiration date and submit all relevant materials. If the reasons for extension are regarded as rational and adequate after investigation, the Authority shall grant the extension; if rejected, the holder shall depart China. The sum of the extended period cannot exceed the original duration of stay stated under the specified visa, if any extension is granted.

**Article 29.** If the held visa indicates that the alien requires a residence certificate after entering China, the holder shall apply for the temporary residence certificate in the local public security authority's exit-entry administration within 30 days of entry.

For temporary residence certificate applications, aliens shall submit their passport (international travel certification) relevant materials, and record their biometric information (fingerprint). The public security authority's exit-entry administration shall perform investigations within 15 days of receiving the application and issue the residence certificate.

Temporary residence certificates are valid for a period of at least 180 days, with a maximum period of 5 years.

**Article 30.** If any of the following conditions for aliens apply, it is prohibited to issue them a temporary residence certificate:

- (1) The held visa type does not permit the alien to obtain a temporary residence certificate;
- (2) Deliberate deception is practiced during the application process;
- (3) The holder cannot provide the relevant certification materials according to the requirements;
- (4) The holder violates relevant Chinese laws or administrative regulations, is regarded as unsuitable to reside in China, and/or meets other conditions under which the issuing authority rejects the certificate.

Temporary residence certificates can be issued once approved by the local public security authority's exit-entry administration if aliens need to change their visa from a stay to a residence for any of the following reasons; they poses special talents required in China, qualify as an investor by the state's regulations, or for humanitarian reasons.

**Article 31.** If aliens apply to extend their duration of stay and residency, they shall apply at the local public security authority's exit-entry administration within 30 days of their residence certificate's expiration date. If the reasons for extension are rational and adequate they will be permitted to extend their residence period; if rejected, the holder shall leave China as scheduled.

**Article 32.** The information required when applying for a temporary residence certificate includes: the holder's name, gender, date of birth, residence address, reason, period, passport (international travel certification) number, and issuing place etc.

If there are any changes to the above registration items the holder shall go to the local Police Security Authority's Exit-Entry Administration and apply to make the necessary changes.

**Article 33.** After entering China, renewing and/or reissuing a common visa and residence certificate due to damage, lost documents, stolen documents, or any other reason under national regulations, it shall be done by applying at the local public security authority's exit-entry

administration.

**Article 34.** If an alien with exempted visa rights enters China but needs to stay in China after the exemption period, if an alien seamen, their crew and accompanying family members need to leave the port city during their stay in China, or in other applicable situations the temporary stay certificate should be applied according to relevant regulations.

A temporary residence certificate has a maximum valid period of 180 days.

**Article 35.** When an application to extend the temporary residence certificate for common visas is rejected, the decision made by the public security authority's exit-entry administration shall be final.

**Article 36.** While staying or residing in China, aliens are prohibited from undertaking other activities inconsistent with the claimed purpose. In addition, aliens shall leave China before the specified duration of stay expires.

**Article 37.** If aliens aged 16 and older stay in China, they are required to always carry their passport (international travel certification) or temporary residence certificate with them in case of inspection by a public security authority.

Aliens residing in China shall submit their temporary residence certificate to the local public security authority during the scheduled period.

**Article 38.** If staying in a hotel while residing in China, aliens shall complete registration under the relevant regulations of the public order administration of hotels; if staying in other accommodations, aliens shall register themselves with the local public security authority within 24 hours of entry into China.

Hotels accepting aliens shall report and submit their information to the local public security authority according to the relevant regulations of the public order administration of hotels.

**Article 39.** If an alien child is born in China, the parents or their agents shall take the birth certificate to the local public security authority's exit-entry administration for residence registration within 60 days of the birth.

If an alien becomes deceased while in China, their family member, guardian or agent shall take the death certificate to the local public security authority's exit-entry administration within 10 days of the death and write off the relevant temporary residence certificate.

**Article 40.** If working in China, aliens shall obtain a work permit and a temporary residence certificate based on current regulations.

Employers shall inspect work permits and temporary residence certificates of alien employees during their employment. Organizations and individuals are prohibited from employing aliens who do not hold the needed documents.

**Article 41.** The Human Resource, Social Security Bureau and other relevant departments under the State Council regularly formulate job guidelines for aliens in China pursuant to the country's economic development in line with the supply & demand of local human resources. The management regulations on aliens working in China are formulated by the State Council.

The competent education department and other relevant departments under the State formulate the work-study management regulations on alien students including the scope, time limitations, and approved work-study jobs.

**Article 42.** If any of the following actions occur, the alien belongs to illegal employment:

- (1) Aliens who do not hold a work permit or temporary residence certificate that are employed by an organization or other entity that provides remuneration of labor ;
- (2) The job is no included under the stipulated scope of the work;
- (3) Alien students violate the work-study management regulations and work inconsistent to the specified work scope or time limitation;
- (4) Aliens who do not hold a work permit or temporary residence certificate who engage in activities only permitted for those who hold the said documents.

If any disputes occur regarding the illegal employment of aliens, the issue shall be decided by the public security entity at the provincial, autonomous and municipalities level, collaboratively with the same level's human resource, social security, education, industry and commerce, and foreign affairs departments.

**Article 43.** To protect national security and public safety, the public security authority and national security authority can restrict the set-up of residential and/or commercial districts for aliens and foreign agencies; the above authority also has the right to request for relocation within a specified timeframe.

Aliens are prohibited from entering restricted districts without approval.

**Article 44.** When employing aliens or recruiting alien students, the organization shall report the relevant information to the local public security authority according to the specified regulations.

If a citizen, legal person, or other agency discovers illegal immigration, residence or employment of an alien they shall report it to the local public security authority immediately.

**Article 45.** Aliens applying for a refugee status can stay in China with temporary ID cards issued by the public security authority.

## **Section II. Permanent Residence**

**Article 46.** When aliens make outstanding contributions to the development of China's economy or conform to other conditions required for a permanent residence in China, they may obtain a permanent residence qualification after their application has been approved by the Ministry of Public Security.

The approval measures used for assessing an alien's permanent residence status in China are jointly formulated by the Ministry of Public Security, the Ministry of Foreign Affairs and relevant departments under the State Council.

**Article 47.** After obtaining permanent residence qualification Aliens can reside, work, enter or leave China by holding their passport and permanent residence certificate.

**Article 48.** If any of the following conditions occur, an alien's permanent residence qualification in China will be cancelled:

- (1) Aliens cause harm to the national security and interests of China;
- (2) Aliens who are expelled from China;
- (3) Aliens who deceptively obtain a permanent residence qualification in China;
- (4) The alien's staying period in China does not reach the specified time requirement;
- (5) Other conditions under which the alien is not suitable for permanent residence in China.



## **Chapter V. Exit and Entry Border Inspection on Transportation Vehicles**

**Article 49** Transportation vehicles leaving or entering the country are subject to border inspection when they leave or arrive at the port. Transportation vehicles entering the country shall be inspected at the port where it first arrives, while those leaving the country shall be done at the final port where it exits. Under special circumstances, the border inspection may be performed at a location designated by the competent authorities. The transportation vehicle may not load or unload goods or pick up or drop off passengers without having been inspected.

**Article 50** The persons or agency in charge of the transportation vehicle entering or exiting the country shall, as required, notify the inspection station concerned in advance of the vehicles arrival or departure time, parking location, and truthfully report information on the employees, passengers and goods.

**Article 51** The persons or agency in charge of the transportation vehicle entering or exiting the country shall assist in the border inspection and immediately report any acts in violation of this law.

Where the transportation vehicle carries persons who are prohibited from entering and/or leaving the country, or who illegally leave or enter the country, the person in charge of the transportation vehicle shall be responsible for returning the individuals at their own cost.

**Article 52** The border inspection stations have the power to exercise supervision over transportation vehicles leaving or entering the country when they are under any of the following circumstances:

- (1) From the time of the exit inspection to the time of their departure from the country, from the time of their arrival in the country to the time of entry inspection, and during the period of inspection;
- (2) When in close proximity to the borderline and in the location where exit and entry border inspection takes place;
- (3) When alien ships navigate in Chinese rivers; or
- (4) Any other circumstances where supervision is necessary.

**Article 53** Persons who have to board or disembark alien ships for the purpose of unloading goods, maintenance, and visits shall apply to the exit and entry border inspection authority for a certificate to board the ship.

Where a Chinese and alien ship or alien ships join together for work purpose, the captain or agency responsible for exit and entry shall go through the procedures with the border inspection stations for a joint ship.

**Article 54** Transportation vehicles leaving or entering the county shall proceed along the routes specified in China.

Ships and aircrafts leaving or entering the country may not enter locations other than the open ports. In case of entry due to unforeseeable emergencies or force majeure, the ship or aircraft shall immediately report to the adjacent exit or entry border inspection station or the local public security entity and accept the supervision and management enforced.

**Article 55** Transportation vehicles under any of the following circumstances are prohibited from leaving the country and those that have left the port may be ordered to return:

- (1) Leaving or entering the country without inspection and approval;

- (2) Changing ports of exit or entry without permission;
- (3) Believed to be carrying any persons who are prohibited from entering and/or leaving the country, or who illegally leave or enter the country;
- (4) Believed to be carrying any goods harmful to national security, interests or social order;
- (5) Any other circumstances where the transportation vehicle refuses to submit itself to administration by border inspection stations.

**Article 56** The Agencies who assist transportation vehicles on their entry or exit shall create a record for both the organization and their employees with the exit and entry border inspection stations

## Chapter VI. Investigation and Repatriation

**Article 57** Persons who are suspected of violating the exit and entry rules may be cross-examined on the spot and receive continual cross-examination according to Chinese laws, under any of the following circumstances:

- (1) Being suspected of illegally leaving or entering the country;
- (2) Being suspected of assisting others in illegally leaving or entering the country;
- (3) Being forbidden to leave the country;
- (4) Being suspected of endangering national security and its interests, disrupting public order or being involved in other illegal or criminal activities.

**Article 58** Aliens who are suspected of illegally entering the country, illegally staying, illegally obtaining employment, or are under any of the circumstances as listed in Article 57 may be detained for examination.

In cases of detention for further examination, the department concerned shall examine the suspect within 24 hours of the detention. The detention shall be terminated immediately if the allegations cannot be substantiated.

**Article 59** The duration of detention for examination may be no longer than 30 days and may be extended to 60 days, upon approval, if the case is complex. The period of detention for examination of aliens with unknown nationality and identity shall count from the day when their nationality and identity are ascertained.

**Article 60** Aliens who fall under any of the following circumstances shall not be detained for examination but may be restricted in terms of their scope of activities:

- (1) Being seriously ill;
- (2) Being pregnant or breastfeeding a child less than one year of age;
- (3) Being less than 14 years old or over 70 years old;
- (4) Any other circumstances where detention for examination is inappropriate.

Aliens whose scope of activities is restricted shall submit themselves to examination as required and may not leave specified areas unless approval is obtained by the in charge public security bureau. The period when the alien is restricted may be no longer than 60 days. The period of restriction of aliens with unknown nationality and identity shall count from the day when their nationality and identity are ascertained.

**Article 61** Aliens who fall under any of the following circumstances may be repatriated:

- (1) Being ordered to leave the country within a specified time period but failing to do so;
- (2) Being forbidden to enter the country;
- (3) Illegally entering the country, illegally staying, or illegally obtaining employment;
- (4) Required repatriation as a result of violation of this law or other laws and administrative regulations of China.

Aliens who are repatriated are forbidden to enter the country within 5 years since the date of repatriation.

**Article 62** The measures as stipulated herein, such as ongoing cross-examination, detention for examination, restriction on the scope of activities and repatriation, shall be determined by the in charge public security bureau of the people's local government at county level or above and exit and entry border inspection agencies.

Aliens who are subject to detention for examination or sentenced to be repatriated but are unable to be leave immediately shall be detained within detention houses or locations designated for alien

repatriation.

**Article 63** Aliens who are not satisfied with the measures taken by public security, such as ongoing cross-examination, detention for examination, restriction on the scope of activities, and repatriation may apply for administrative reconsideration according to Chinese law and the results of such reconsiderations shall be the final decision.

**Article 64** The authorities which determine those who are not allowed to leave or enter the country shall inform the exit and entry border inspection agencies; where the reasons for being prevented from leaving or entering the country disappears, the determining authority shall cancel its decision on preventing them from leaving or entering the country and inform exit and entry border inspection agencies.

**Article 65** As required for safeguarding national security and maintaining the order of exit and entry administration, exit and entry border inspection agencies may physical examination persons leaving or entering the country, if necessary.

**Article 66** Where the exit and entry certificates, such as the visa and temporary residence certificate, of aliens are lost, stolen or are found having been issued to an unqualified person, the issuing authority shall declare that such exit and entry certificates are cancelled.

Exit and entry certificates which have been altered, counterfeited, obtained through fraud or declared invalid by the issuing authority are invalid.

Public security entities may cancel or confiscate the exit and entry certificates illegally held and used by those who leave or enter the country and engage in other activities with exit and entry certificates which have been altered, counterfeited, obtained through fraud, fraudulently used, or declared invalid by the issuing authority.

**Article 67** Public security entities may seize transportation vehicles which are used for organizing, transporting and supporting others for illegal exit or entry and any articles which are needed as evidence.

Public security entities shall seize and dispose of any contraband documents and data involving national secrets and tools used for activities in violation of the exit and entry rules and in accordance with applicable laws and administrative regulations of China.

## Chapter VII: Legal Liabilities

**Article 68** Unless otherwise provided herein, the administrative punishment shall be decided by the public security entity and the exit-entry border inspection authority of the people's government at county or higher level; a warning or a fine of RMB 5,000 or less may be decided by the exit-entry administrative arm of the public security entity.

**Article 69.** A fine of 1,000 RMB ~ 5,000 RMB shall be imposed or, where the case is serious, a detention for 5~10 days shall be imposed along with a fine of 1,000 RMB ~ 5,000 RMB plus investigation into criminal responsibility where any crime is constituted:

- (1) Holds an exit-entry certificate that is forged, altered or obtained through cheating for exit and entry;
- (2) Makes fraudulent use of another person's exit-entry certificate for exit entry;
- (3) Evades exit-entry border inspection;
- (4) Uses other modes for illegal exit-entry.

For any assistance in the illegal exit-entry of others, a fine of 2,000 RMB ~ 10,000 RMB shall be imposed or, where the case is serious, a detention for 10~15 days shall be imposed along with a fine of 2,000 RMB ~ 10,000 RMB; illegal gains, if any, shall be confiscated.

**Article 70.** If aliens obtain temporary residence certificate and other exit-entry certificates through deception, a fine of 2,000 RMB ~ 5,000 RMB shall be imposed or, if the case is serious, a detention for 10~15 days shall be imposed along with a fine of 5,000 RMB ~ 20,000 RMB plus investigation into criminal responsibility if any crime is constituted.

If an entity commits any of the above acts, a fine of 10,000 RMB ~ 50,000 RMB shall be imposed, while the principal and other people directly responsible for it shall be punished as described above.

**Article 71** If any entity or individual person in China violates the provisions hereof by issuing a letter of invitation or other application materials to any alien, a fine of 2,000 RMB ~ 10,000 RMB shall be imposed; illegal gains, if any, shall be confiscated; the entity or person shall be ordered to bear the exit costs of the alien so invited.

**Article 72** For anyone who provides others with forged or altered visas or temporary residence certificates and other exit-entry certificates, or sells exit-entry certificates, the illegal gains shall be confiscated and a detention for 10~15 days with a fine of 2,000 RMB ~ 10,000 RMB plus investigation into criminal responsibility if a crime is constituted.

If any person rents, lends or transfers visa or foreigner stay or residence certificate and other exit-entry certificates, the illegal gains shall be confiscated and a fine of 2,000 RMB ~ 5,000 RMB shall be imposed.

**Article 73** If a Chinese citizen who illegally goes to another country or region after leaving China and gets repatriated, the exit-entry border inspection authority shall take his/her exit-entry certificate and the authority issuing the exit-entry certificate shall issue no exit-entry certificate to the person in a period ranging from 6 months to 3 years starting from the day of repatriation.

**Article 74** A warning and a fine of 2000 RMB or less shall be imposed on any alien who:

- (1) Does not carry their exit-entry certificate according to regulations or refuses to accept inspection by the public security entity;
- (2) Does not submit their temporary residence certificate for inspection according to regulations;
- (3) Does not process the birth registration and death reporting of aliens according to

regulations;

- (4) Does not process documents and/or certificates when any change has occurred in their registration of temporary residence;
- (5) Makes fraudulent use of another person's exit-entry certificate, thereby disrupting the stay and residence management order;
- (6) Does not process registration as provided in Article 38.1 of this law.

For a hotel that does not report and submit the lodging registration information of aliens to the public security entity according to regulations, a warning shall be given and, if the case is serious, a fine of 1,000 RMB ~ 5,000 RMB shall be imposed.

**Article 75** Aliens who enter any area out of bounds to aliens without approval shall be ordered to leave immediately and, if the case is serious, detained for 5 ~ 10 days. Any written records, AV data and other articles obtained by the alien illegally shall be taken or destroyed.

For aliens and foreign institutions that violate this law by refusing to implement the decision made by the public security entity a warning shall be given and, if the case is serious, the responsible parties shall be detained for 5 ~ 15 days.

**Article 76** For aliens who reside illegally a warning shall be given and, if the case is serious, a fine of 500 RMB for each day of illegal residence under a ceiling of 10,000 RMB or a detention for 5 ~ 15 days shall be imposed plus an order for the person to leave within a prescribed time limit.

If a guardian or other persons vested with the responsibility for guardianship fails to discharge the obligation of guardianship, thereby causing a foreigner of less than 14 years of age to reside illegally, the guardian shall be given a warning and receive a fine of less than 2,000 RMB.

**Article 77** For anyone who accommodates or hides any aliens of illegal entry or illegal residence or assists any aliens of illegal entry or illegal residence in evading inspection, a fine of 2,000 RMB ~ 10,000 RMB shall be imposed and, if the case is serious, a detention for 5 ~ 15 days together with a fine of 2,000 RMB ~ 10,000 RMB shall be imposed.

**Article 78** For aliens who are employed illegally, a fine of 5,000 RMB ~ 20,000 RMB shall be imposed and, if the case is serious, a detention for 5 ~ 15 days with a fine of 5,000 RMB ~ 20,000 RMB shall be imposed.

For any introduction of aliens to illegal employment or supplying illegal employment, a fine of 5,000 RMB shall be imposed for each person introduced or employed under a ceiling of 50,000 RMB.

**Article 79** Aliens may be ordered to leave within the prescribed time limit if they pursue any activity inconsistent with the cause for stay or residence or are unfit to reside further in China due to violation of Chinese laws and/or administrative regulations.

If aliens have seriously violated the provisions of this law, but the violation does not constitute a crime, the Ministry of Public Security may deport them. The punishment decision made by the Ministry of Public Security is final.

The deported alien shall be prohibited from entering within 10 years starting from the day of deportation.

**Article 80** A warning and a fine of 2,000 RMB may be imposed on:

- (1) Anyone who disrupts the management order of any port area;
- (2) Any alien sailor and accompanying dependent(s) who have landed without going through the formalities for temporary entry;
- (3) Anyone who embarks on or disembarks from an alien ship without a boarding card.

**Article 81** A fine of 5,000 RMB ~ 50,000 RMB shall be imposed on anyone in charge of a transport vehicle that:

- (1) Leaves or arrives at a port without inspection and approval or changes the port of exit-entry without approval;
- (2) Does not report the information on employees, passengers and cargo according to regulations or refuses to assist in exit-entry border inspection;
- (3) Loads and unloads people and goods without exit-entry border inspection.

For a transport vehicle that carries people prohibited for exit-entry, people of illegal exit-entry, or other people with no approval for exit-entry, a fine of 5,000 RMB ~ 10,000 RMB shall be imposed on each person so carried. The punishment may be mitigated or even exempted if the person in charge of the transport vehicle can prove that reasonable precautions have been taken.

**Article 82** A fine of 2,000 RMB ~ 20,000 RMB shall be imposed on the person in charge of a transport vehicle that:

- (1) Is a Chinese or alien ship moving alongside an alien ship for operation without approval;
- (2) Is an alien ship or aircraft sailing or flying away from the prescribed route in China;
- (3) Is an inbound ship or aircraft arriving at an area other than an open port.

**Article 83** A punishment shall be imposed and, where a crime is constituted, criminal responsibility shall be investigated according to Chinese laws to address any staff members vested with exit-entry management duties, who:

- (1) Violates discipline and administrative regulations by issuing a visa, temporary residence certificate and other exit-entry certificates to any ineligible alien;
- (2) Violates discipline and administrative regulations by examining, verifying and clearing ineligible people or transport vehicles for exit-entry;
- (3) Discloses the personal information obtained in the course of work, thereby infringing upon the legitimate rights and interests of citizens;
- (4) Fails to turn over the fees and fines collected and the illegal gains confiscated according to law to the state treasury according to regulations;
- (5) Divides privately, encroaches on and appropriates fines, confiscated or detained goods or collected fees;
- (6) Misuses power, ignores duties, plays favoritism, resorts to cheating and commits other acts of failing to discharge duties according to law.

**Article 84** The exit-entry border inspection authority may decide on a punishment on the spot, if a fine of no more than 500 RMB is imposed to address any violation of exit-entry management.

Where a fine is imposed to address any act violating exit-entry management, the person punished shall pay the fine at the designated bank within 15 days after receipt of the letter of decision on punishment. The fine may be collected on the spot from the person punished if no permanent residence in the local place has been established, enforcement will be difficult if the fine is not collected on the spot or it is difficult indeed to pay the fine at a designated bank in the port.

## Chapter VIII Supplementary Provisions

**Article 85** The following terms have been defined as:

**Exit** means the departure from mainland China to another country or region, to Hong Kong Special Administrative Region, to Macao Special Administrative Region and to Taiwan.

**Entry** means arrival in mainland China from another country or region, from Hong Kong Special Administrative Region, from Macao Special Administrative Region and from Taiwan.

**Alien** means a person who is not of Chinese nationality.

**Article 86** If any international treaty that the People's Republic of China has concluded or acceded to contains provisions that are different from those contained herein, such provisions shall prevail, excluding the provisions about which the People's Republic of China has declared its reservations.

**Article 87** Subject to approval of the State Council, the provinces and autonomous regions bordering upon neighboring countries may formulate regulations on the travel of residents in the adjoining areas according to the border management agreement signed by the Chinese government with the related countries.

**Article 88** For members of diplomatic representative missions and consulates in China and other aliens enjoying privilege and immunity, the management of their entry shall be subject to the relevant regulations of the Ministry of Foreign Affairs and the Ministry of Public Security.

**Article 89** Aliens who apply for a visa, temporary residence certificate and other exit-entry certificates or apply for an extension and/or change to their documents shall pay visa fees and certificate fees according to regulations.

**Article 90** This law shall be implemented from \_\_\_\_\_, when the Law of the People's Republic of China on Management of the Exit-Entry of aliens and the Law of the People's Republic of China on Management of the Exit-Entry of Citizens promulgated on November 22, 1985 shall become abolished.



# **Instructions Concerning the Law of the People's Republic of China on the Control of Exit and Entry (Draft)**

## **1. Necessity of Making the Law**

In 1985, the Standing Committee of the People's National Congress formulated the Law on the Control of the Exit and Entry of Chinese Citizens and the Law on the Control of the Exit and Entry of Aliens; and in 1986, the State Council respectively formulated the detailed rules for their implementation. The implementation of these laws and administrative regulations have played an important role in standardizing the order of exit and entry, bringing convenience to people's travels to and from the country and serving the reform and opening up.

With the rapid development of China's economy and society and the continuous expansion of opening up to the outside world, international exchanges are becoming increasingly frequent and the number of Chinese citizens leaving the country and aliens entering the country increases drastically. There have appeared some new circumstances and problems in the control of exit and entry: first, while a great number of aliens coming to China for tourism, visit and business activities has brought opportunities for China's economic and social development, it has also brought forward higher requirements for national security and social administration; second, the visa system and the residence management system stipulated in the current effective laws are not sound and there still exists loopholes in management; and third, the problem of aliens' "illegal entry, illegal residence and illegal employment" (hereinafter referred to as "three illegals") is remarkable and it is needed to take pertinent measures to further improve relevant systems.

To solve the abovementioned problems, the Ministry of Public Security, based on summing up the experience in implementing China's current control system on exit and entry, Drafted the Law of the People's Republic of China on the Control of Exit and Entry (Draft for Examination) and reported it to the State Council for deliberation. On this basis, the Office of Legislative Affairs of the State Council along with such departments as the Ministry of Public Security and the Ministry of Foreign Affairs repeatedly considered and revised the Draft for examination, formed the Draft and solicited the opinions from relevant central units and local people's governments. Currently, the Draft has been discussed and adopted by the 174<sup>th</sup> standing meeting of the State Council.

## **2. General Thinking for Making the Law**

The control of exit and entry has a bearing on the overall situation of China's national security, economic and social development, reform and opening up. In the process of examining the Draft, we have endeavored to properly handle these two relations: the first is the balanced consideration of the relation between safeguarding sovereignty and security, and serving economic and social development. It should both display the functional role of the exit and entry control in safeguarding national security and to also serve as a means to open up to the outside world and provide support for economic and social development. In the institutional design, it should meet the control needs to stop those whose entry is not allowed, control those who need to be controlled, and should also prevent inconvenience from being brought to persons for normal exit and entry; the second is to properly handle the relations between the Draft and other laws such as the Passport Law and the Customs Law to highlight important points and avoid conflicts.

## **3. Main Content of the Draft**

The Draft consists of eight chapters with 90 articles and mainly provides for the control of Chinese citizens' exit and entry, aliens' exit and entry and aliens' stay and residence in China as well as the investigation, repatriation and punishment of the acts that violate the exit and entry control.

### (1) About the Scope of Adjustment

In the current effective system of China's exit and entry control, laws have been made respectively for Chinese citizens and aliens. In 2006, the Passport Law considered and adopted by the NPC Standing Committee incorporated in it the content of the Law on the Control of Chinese Citizens' Exit and Entry concerning the application for and receipt of passports. The Law on the Control of the Exit and Entry being made now needs to integrate the Law on the Control of Chinese Citizens' Exit and Entry of which the content concerning the application for and receipt of passports is excluded, and the Law on the Control of Aliens' Exit and Entry. Therefore, the Draft stipulates this law (Article 2) is applicable to the control of Chinese citizens' exit and entry, aliens' exit and entry and aliens' stay and residence in China as well as the border inspection on exit and entry of traffic and transportation. After this law is implemented, the current effective Law on the Control of Chinese Citizens' Exit and Entry and the Law on the Control of Aliens' Exit and Entry shall be withdrawn at the same time. It needs to be further explained that, in the international military exchange and cooperation activities (such as Chinese-foreign joint military exercise, peace keeping, convoy and fleet visit), the exit and entry of military personnel in organic units shall be handled according to the provisions of the state and the army and the provisions of the international treaties concluded by China with foreign countries.

### (2) Introducing Human Biometric Identification Technology into the Control on Exit and Entry

By collecting and storing the fingerprints and other human biometric information of persons leaving and entering the country and making comparisons at exit and entry border inspection controls, it can effectively distinguish the identity of persons leaving and entering the country, help improve the efficiency of customs clearance at ports and be of positive significance for strengthening the exit and entry and safeguarding national security.

The collection of fingerprints and other human biometric information is in the basic rights of Chinese citizens and aliens and needs to be authorized by law; the specific work on control needs to be flexibly handled in light of national diplomatic strategies. Therefore, the Draft stipulates that, the Ministry of Public Security and the Ministry of Foreign Affairs may, based on the needs for exit and entry control, retain the fingerprints and other human biometric identification information of persons leaving and entering the country. (Paragraph 1 of Article 7)

### (3) About the Exit and Entry Control of Chinese Citizens

First, the exit and entry control certificates. The exit and entry certificates of Chinese citizens are mainly passports used to and from Hong Kong, Macao and Taiwan. The Passport Law has made special provisions for citizens' applications for and receipt of passports; and the Temporary Management Measures for Chinese Citizens' Travels to and from Hong Kong and Macao for private purposes and the Management Measures for Chinese Citizens' Travels to and from Taiwan formulated by the State Council have made provisions for citizens' applications for and receipt of relevant pass certificates. Therefore, the Draft stipulates that Chinese citizens leaving and entering the country should apply for handling passports or other travel certificates according to Chinese law (Paragraph 1 of Article 8). Chinese citizens should apply for handling the pass certificates according to law for their travel between Mainland and Hong Kong Special Administrative Region and Macao Special Administrative Region and for their travels between Mainland and Taiwan (Article 9).

Second, the control of exit and entry. The Draft stipulates that Chinese citizens must be subject to examination and permission by border inspection entities before they can leave and enter the country (Article 10). Approval to exit from the country shall be granted to Chinese citizens belonging to any of the following categories: convicted persons that haven't finished serving their sentences or defendants in criminal cases or criminal suspects; persons who, as decided by a people's court, shall be denied exit owing to involvement in unresolved civil cases; persons who have been repatriated due to illegal exit, illegal residence and illegal employment and whose time

limit for denied exit has not expired; and persons whose exit from the country may be harmful to national security and interests and is thereby denied by competent departments of the State Council (Article11).

#### (4) Improving the Visa System for Aliens' Entry

To strengthen visa management, the Draft improves the visa system in the current effective law and makes the following provisions:

First, standardize the acts of invitation. For aliens' visa applications, in some cases, the domestic organizations or individuals need to issue a letter of invitation. To avoid the issuance of falsified letters of invitation, the Draft stipulates that organizations or individuals issuing the invitation letters should be responsible for the truthfulness of the invitation (Article18) and whoever cheats through falsification may have a penalty imposed on them and/or detention. If the circumstances of the case are serious enough to constitute a crime, criminal responsibility shall be investigated in accordance with the law. Those who violate this law in issuing an invitation letter or other application materials to aliens shall be fined and if they have illegal gains, such gains shall be confiscated and they shall be ordered to bear the expenses for the exit of the invited aliens (Article71).

Second, clearly specify the circumstances under which no visa is issued. By clearly specifying the circumstances under which no visa is issued, the Draft provides an institutional guarantee for the visa-issuing entity to exercise national sovereignty. The Draft stipulates that no visas shall be issued to aliens belonging to any of the following circumstances: aliens who have been deported or repatriated from the country and whose time limit for denied entry has not expired; aliens who may be harmful to China's national security and interests; and aliens who are unable to guarantee the expenses needed during their stay in China.

Third, standardize the visa extension process. The Law on the Control of Exit and Entry of Aliens and the rules for its implementation have stipulated that visas may be extended but failed to limit the term of the extension. This Draft stipulates that the accumulative term of extension shall not exceed the term originally indicated on the visa. (Paragraph 3 of Article28)

Fourth, improve port visa processing. Port visas are a convenient entry measure established in the Law on the Control of Exit and Entry of Aliens and has played an active role in promoting China's economic development, but in practice, it has also shown some problems of not complying with its positioning and needs to be improved. Therefore, the Draft stipulates that common visas issued by the visa-granting entity at ports shall be effective only for one entry and the term of stay shall not exceed 30 days. The applicant should enter the country at the port where he applies for the visa. (Paragraphs 3 and 4 of Article19).

#### (5) About the Control of Aliens' Stay and Residence

The control of aliens after their entry constitutes an important element of the exit and entry control. The Draft stipulates as follows:

First, distinguish stay control and residence control. The Draft takes 180 days as the borderline between stay and residence. The Draft stipulates that, if the term of stay as indicated on the visa held by aliens is not more than 180 days, they shall stay according to the visa and the term of stay as indicated on the visa; if it is more than 180 days they should, within 30 days as of the day of their entry, apply to the entry control department of local public security entity for handling the temporary residence certificate for aliens and leave fingerprint information (Paragraphs 1 and 2 of Article29). During their stay or residence in China, aliens shall not be engaged in any activity that does not comply with the cause of their stay or residence and should leave the country before the expiration of the term of their stay or residence (Article36). Aliens should take their effective certificates with them for examination by the public security entity, should register for

accommodation and without approval, shall not enter the areas that aliens are restricted to enter (Paragraph 1 of Article37, Article38 and Paragraph 2 of Article43).

Second, the system of permanent residence. The system of permanent residence has an active role in introducing talent and investment to China; it is the international common practice. The Draft stipulates that aliens who have made outstanding contributions to China's economic and social development or comply with other conditions for permanent residence in China may obtain the qualifications for permanent residence upon approval by the Ministry of Public Security. The specific measures shall be prescribed by the Ministry of Public Security, the Ministry of Foreign Affairs and relevant departments of the State Council. (Article46).

In addition, China entered into the Refugee Status Convention. To perform related international obligations, the Draft stipulates that aliens applying for refugee status may stay within China by virtue of the temporary identity certificates issued by the public security entity during the period of distinguishing their refugee status. (Article45)

#### (6) Measures for Solving the Problem of "Three Illegals"

The problem of the "three illegals" partially resulted from China's economic and social development. The solution to this problem not only needs to improve visa issuing quality and reinforce the control of aliens' stay and residence but also needs to proceed from standardizing employment. Therefore, the Draft stipulates as follows:

First, standardize aliens' employment in China. In the management of aliens' employment in China, we need to manifest a policy that introduces high-end talent while strictly controlling average laborers. The Draft stipulates that the competent department of human resource of the State Council should work with relevant departments of the State Council to formulate and regularly adjust the Catalog guide for Aliens Working in China according to the needs of economic and social development and the conditions of human resource supply and demand. The measures for aliens working in China shall be prescribed by the state council (Paragraph 1 of Article41). Aliens working in China should obtain work permit and work-related temporary residence certificates according to the provisions (Paragraph 1 of Article40). The organizations engaging aliens should examine the alien applicants' work permit and work-related temporary residence certificates (Paragraph 2 of Article40). The Draft stipulates relevant penalties for aliens' illegal employment, introduction to aliens' illegal employment and illegal engagement of aliens (Article78).

Second, specify the definition of illegal employment. The Draft stipulates that the following acts belong to illegal employment: aliens who have not obtained a work permit or work-related temporary residence certificates that are engaged (employed) by employing organizations or engaged in other activities for gaining payment; working beyond the scope of their work permit; and alien students working beyond the prescribed scope of post or time limit. If there is any dispute concerning whether aliens' employment is illegal or not, it shall be certified by the public security entity of the people's government of the province, autonomous region or municipality directly under the Central Government together with the departments of human resources and social security, education, business, industry and commerce and foreign affairs of the people's government at the same level (Paragraph 2 of Article42).

Third, stipulate the measures for checking and repatriating the persons of "three illegals". In practice, the seized persons of "three illegals" usually do not tell their true names or hold no legal certificates, and it needs relevant means and necessary time for investigation to verify their identity. Therefore, the Draft stipulates that aliens suspected of "three illegals" may be placed in detention for examination. For aliens of unidentified nationalities and identities, the term of detention for examination shall be counted from the day when their nationalities and identities are determined (Paragraph 1 of Article58 and Article59). Aliens of "three illegals" may be repatriated. The repatriated aliens shall not be allowed to enter the country within 5 years as of the day of their repatriation.