

立法會

Legislative Council

LC Paper No. LS24/04-05

**Paper for the House Committee Meeting
on 7 January 2005**

Legal Service Division Report on Transfer of Sentenced Persons (Amendment) (Macau) Bill

I. SUMMARY

- 1. Object of the Bill** To amend the Transfer of Sentenced Persons Ordinance (Cap. 513) (“the Ordinance”) to make the Ordinance applicable to the arrangements for the transfer of sentenced persons between Hong Kong and Macau.
- 2. Comments** The Ordinance provides for transfer of sentenced persons between the HKSAR and places outside People’s Republic of China. To implement a recent transfer of sentenced persons arrangement agreed between the HKSAR and Macau Special Administrative Region (“MSAR”), it is therefore necessary to amend the Ordinance to extend its application to include the MSAR.
- 3. Public Consultation** No public consultation has been carried out.
- 4. Consultation with LegCo Panel** The Panel on Security was briefed on the legislative proposal contained in the Bill at its meeting on 2 November 2004.
- 5. Conclusion** No legal difficulties have been detected and subject to members’ views on the policy aspects, the Bill is ready for resumption of Second Reading debate.

II. REPORT

Object of the Bill

To amend the Transfer of Sentenced Persons Ordinance (Cap. 513) (“the Ordinance”) to make the Ordinance applicable to the arrangements for the transfer of sentenced persons between Hong Kong and Macau.

LegCo Brief Reference

2. SBCR 34/2857/97 Pt. 4 issued by the Security Bureau on 17 December 2004.

Date of First Reading

3. 5 January 2005.

Comments

4. The Ordinance provides for transfer of sentenced persons between the HKSAR and places outside People’s Republic of China (“PRC”). To implement a recent transfer of sentenced persons arrangement agreed between the HKSAR and Macau Special Administrative Region (“MSAR”), it is therefore necessary to amend the Ordinance to extend its application to include the MSAR.

5. Clause 3 amends the definition of “arrangements for the transfer of sentenced persons” in section 2 of the Ordinance to extend its application to the arrangements for the transfer of sentenced persons between the HKSAR and MSAR.

6. Clause 4 amends section 4 of the Ordinance to empower the Chief Executive (“CE”) to issue an outward warrant for the transfer to Macau a sentenced person who is a permanent resident of the MSAR or, in the CE’s opinion, has close ties with it. In response to our enquiry, the Administration has confirmed that the term “permanent resident of Macau” is defined in Article 24 of the Basic Law of the MSAR (Annex A) and Law No. 8/1999 of the MSAR (Annex B, only Chinese version). Also in response to our enquiry, the Administration has explained that the term “close ties” is not defined under the Ordinance and is generally a question to be determined according to the facts of an individual case. The Administration has further explained that whilst it is a matter for the discretion of the CE in each case, an example of “close ties” may be strong family connections (e.g. where the person does not have permanent residency in Macau but his immediate family members are all permanent residents of Macau).

7. Clause 5 amends section 9 of the Ordinance so that the requirement of the CE to notify the Central People's Government ("CPG") about requests for transfer of sentenced persons will not be applicable to transfers between the HKSAR and MSAR. In response to our enquiry, the Administration has explained that the notification requirement is not required because the transfer of sentenced persons between the HKSAR and MSAR is a matter between two SARs of the PRC.

Public Consultation

8. No public consultation has been carried out.

Consultation with LegCo Panel

9. The Panel on Security was briefed on the legislative proposal contained in the Bill at its meeting on 2 November 2004.

10. Members did not raise specific concerns about the Administration's proposal. However, a member sought clarification whether the proposed transfer of sentenced persons arrangement would only be applicable to permanent residents of the HKSAR and permanent residents of the MSAR. The Administration responded that under the arrangement between the HKSAR and the MSAR, a sentenced person would not be eligible for transfer unless he was a permanent resident of, or had close ties with, the receiving jurisdiction.

11. Another member asked whether and why the CE was required to notify the CPG of every relevant request for transfer of a sentenced person between the HKSAR and a jurisdiction other than the MSAR. The Administration explained that the CE had to notify CPG of every relevant request for transfer of a sentenced person, as this was a form of international bilateral mutual legal assistance with other jurisdictions.

Conclusion

12. No legal difficulties have been detected and subject to members' views on the policy aspects, the Bill is ready for resumption of Second Reading debate.

Encl

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
5 January 2004

Please note that Official Languages of MSAR are Chinese and Portuguese. The attached translation of the Basic Law of MSAR is just for the MSAR Government to promote the Basic Law of MSAR in 1999 and for your reference only.

Basic Law of the Macao Special Administrative Region of the People's Republic of China

(Adopted by the Eighth National People's Congress at its First Session on 31 March 1993)

Chapter III Fundamental Rights and Duties of the Residents

Article 24 Residents Of the Macao Special Administrative Region ("Macao residents") shall include permanent residents and non-permanent residents. The permanent residents of the Macao Special Administrative Region shall be:

- (1) Chinese citizens born in Macao before or after the establishment of the Macao Special Administrative Region and their children of Chinese nationality born outside Macao;
- (2) Chinese citizens who have ordinarily resided in Macao for a continuous period of not less than seven years before or after the establishment of the Macao Special Administrative Region and their children of Chinese nationality born outside Macao after they have become permanent residents;
- (3) The Portuguese who were born in Macao and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;
- (4) The Portuguese who have ordinarily resided in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;
- (5) Other persons who have ordinarily resided in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;
- (6) Persons under 18 years of age born in Macao of those residents listed in category (5) before or after the establishment of the Macao Special Administrative Region. The above mentioned residents shall have the right of abode in the Macao Special

Administrative Region and shall be qualified to obtain permanent identity cards. The non-permanent residents of the Macao Special Administrative Region shall be persons who are qualified to obtain Macao identity cards in accordance with the laws of the Region but have no right of abode.

For Clause 4

澳門特別行政區

第 8/1999 號法律

澳門特別行政區永久性居民及居留權法律

請查閱：居留權法律制度

立法會根據《澳門特別行政區基本法》第七十一條（一）項，制定本法律。

第一條

永久性居民

一、澳門特別行政區永久性居民包括：

（一）在澳門特別行政區成立以前或以後在澳門出生的中國公民，且在其出生時其父親或母親在澳門合法居住，或已取得澳門居留權；

（二）在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上的中國公民；

（三）上述兩項所指的永久性居民在澳門以外所生的中國籍子女，且在其出生時父親或母親已符合（一）項或（二）項的規定；

（四）在澳門特別行政區成立以前或以後在澳門出生並以澳門為永久居住地的，具有中國血統但又具有葡萄牙血統的人士，且在其出生時其父親或母親已在澳門合法居住，或已取得澳門居留權；

（五）在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上並以澳門為永久居住地的，具有中國血統但又具有葡萄牙血統的人士；

（六）（四）項及（五）項所指的永久性居民在澳門以外所生的並以澳門為永久居住地的中國籍或未選擇國籍的子女，且在其出生時其父親或母親已符合（四）項或（五）項的規定；

(七) 在澳門特別行政區成立以前或以後在澳門出生並以澳門為永久居住地的葡萄牙人，且在其出生時其父親或母親已在澳門合法居住，或已取得澳門居留權；

(八) 在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上，並以澳門為永久居住地的葡萄牙人；

(九) 在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上，並以澳門為永久居住地的其他人；

(十) (九) 項所指的永久性居民在澳門所生的未滿十八週歲的子女，且在其出生時其父親或母親已符合(九) 項的規定。

二、在澳門出生由澳門有權限的登記部門發出的出生記錄證明。

第二條

居留權

一、永久性居民在澳門特別行政區享有居留權。居留權包括以下權利：

(一) 自由進出澳門特別行政區；

(二) 不會被施加任何逗留澳門特別行政區的條件，任何對其施加的逗留條件均屬無效；

(三) 不得被驅逐出境。

二、第一條第一款(九) 項及(十) 項所指的澳門特別行政區永久性居民，如不在澳門特別行政區通常居住連續三十六個月以上，即喪失居留權。

三、上款所指喪失居留權的居民，保留下列權利：

(一) 自由進出澳門特別行政區；

(二) 不會被施加任何逗留澳門特別行政區的條件，任何對其施加的逗留條件均屬無效。

第三條

非永久性居民

澳門特別行政區的非永久性居民為：除第一條所列的人士以外的依法獲准在澳門居留的人士。

第四條

通常居住

一、本法律規定的通常居住是指合法在澳門居住，並以澳門為常居地，但本條第二款的規定除外。

二、處於下列情況之一的人士，不屬在澳門居住：

- (一) 非法入境；
- (二) 非法在澳門逗留；
- (三) 僅獲准逗留；
- (四) 以難民身份在澳門逗留；
- (五) 以非本地勞工身份在澳門逗留；
- (六) 屬領事機構非於本地聘用的成員；
- (七) 在本法律生效以後根據法院的確定判決被監禁或羈押，但被羈押者經確定判決為無罪者除外。
- (八) 法規規定的其他情形。

三、為著第一條第一款(二)項、(五)項、(八)項或(九)項所指的人士永久性居民的身份，及第二條第二款所指的居留權的喪失，如有任何人暫時不在澳門，並不表示該人已不再通常居於澳門。

四、在斷定上述人士是否已不再通常居於澳門時，須考慮該人的個人情況及他不在澳門的情況，包括：

- (一) 不在澳門的原因、期間及次數；
- (二) 是否在澳門有慣常住所；
- (三) 是否受僱於澳門的機構；

(四) 其主要家庭成員，尤其是配偶及未成年子女的所在。

五、本法律第一條第一款(八)項、(九)項所指的人士在澳門通常居住“連續七年”，是指緊接其申請成為澳門特別行政區永久性居民之前的連續七年。

第五條

推定

一、推定有效澳門居民身份證、有效澳門特別行政區永久性居民身份證及有效澳門特別行政區居民身份證的持有人在澳門通常居住。

二、如對利害關係人在澳門通常居住有疑問，身份證明局局長可根據第四條第四款的規定對其是否在澳門通常居住進行審查。

第六條

父母子女關係

在本法律的範圍內，下列父母子女關係得到承認：

(一) 任何女子與其婚生或非婚生子女；

(二) 任何男子與其婚生子女，或任何男子與經有權限機構發出的文件確認父子關係的非婚生子女。

第七條

永久性居民身份的確立

一、澳門特別行政區永久居民身份由下列任一有效文件確立：

(一) 澳門特別行政區永久性居民身份證；

(二) 澳門特別行政區護照；

(三) 身份證明局發出的居留權證明書；

(四) 身份證明局根據第九條發出的永久性居民身份證明書。

二、符合第一條第一款(二)項、(三)項或(六)項的規定，不持有澳門居民身份證或澳門特別行政區居民身份證明文件，且在中華人民共和國其他地區(香港特別行政區及台灣地區除外)居住的人士，除法律另有規定外，進入澳門特別行政區定居須持有由中央人民政府主管部門發出的前往澳門特別行政區定居的有效證件，無須申請居留權證明書。

三、除第二款所指的人士外，其他符合第一條第一款(二)項、(三)項、(五)項或(六)項的規定，但不持有澳門居民身份證或澳門特別行政區居民身份證明文件的人士須申請居留權證明書。

四、本條所指的居留權證明書的發出規章由行政法規訂定。

第八條

永久居住地的確認

一、第一條第一款(四)項至(九)項所指的人士，須在申請成為澳門特別行政區永久性居民時簽署一份書面聲明，聲明其本人以澳門為永久居住地。

二、第一條第一款(七)項、(八)項及(九)項所指的人士在作出上款所指的聲明時，須申報下列個人情況，供身份證明局審批其有關申請時參考：

(一) 在澳門有無慣常居所；

(二) 家庭主要成員，包括配偶及未成年子女是否在澳門通常居住；

(三) 在澳門是否有職業或穩定的生活來源；

(四) 在澳門是否有依法納稅。

三、如身份證明局對第一條第一款(四)項、(五)項及(六)項所指的人士按第一款的規定所作的聲明有疑問，可要求其遞交上款所規定的文件。

第九條

過渡性規定

一、澳門居民在澳門特別行政區成立前所持有的有效澳門居民身份證，在一九九九年十二月二十日以後繼續有效，直至獲換發新的身份證。

二、持有一九九九年十二月二十日前發出的澳門居民身份證，且符合下列條件之一的澳門居民中的中國公民是澳門特別行政區永久性居民：

(一) 在澳門居民身份證上載明出生地為澳門；

(二) 澳門居民身份證從首次發出日計已滿七年；

(三) 持有澳門治安警察廳出入境事務局發出的永久居留證。

三、第一條第一款(四)項、(五)及(六)項所指的人士，如持有一九九九年十二月二十日前發出的澳門居民身份證，且符合上款所指的條件之一者，推定為澳門特別行政區永久性居民。

四、第一條第一款(七)項及(八)項所指的人士，如符合本條第二款所指的條件之一者，推定以澳門為永久居住地，但在換發澳門特別行政區永久性居民身份證時，須履行第八條第一款的規定，方可成為澳門特別行政區永久性居民。

五、第一條第一款(九)項所指的人士，如符合本條第二款所指的條件之一者，須參照第八條第一、第二款聲明以澳門為永久居住地，方可成為澳門特別行政區永久性居民。

六、在換發澳門特別行政區永久性居民身份證之前，擁有澳門特別行政區永久性居民身份的居民所持有的澳門居民身份證，具有與澳門特別行政區永久性居民身份證同等的效力。

七、在獲發澳門特別行政區永久性居民身份證之前，澳門居民身份證持有人可在證明有需要時向身份證明局申請發出永久性居民身份證明書。

八、上款所指的永久性居民身份證明書，在持有人獲發澳門特別行政區永久性居民身份證後，或在換發澳門特別行政區永久性居民身份證的工作結束後自動失效。

第十條

生效

本法自一九九九年十二月二十日起生效。

一九九九年十二月二十日通過。

立法會主席 曹其真

一九九九年十二月二十日簽署。

命令公佈。

行政長官 何厚鏞