

**For discussion on
2 November 2004**

Legislative Council Panel on Security

Transfer of Sentenced Persons (Amendment)(Macau) Bill

Purpose

This note briefs members on the proposal to amend the Transfer of Sentenced Persons (TSP) Ordinance (Cap 513) to enable the transfer of sentenced persons between the Macau Special Administrative Region (MSAR) and Hong Kong Special Administrative Region (HKSAR).

Background

2. Transfer of sentenced persons to their places of origin, by returning them to an environment free of language and cultural barriers and where their friends and relatives can visit them on a regular basis, is conducive to their rehabilitation. Our policy is to facilitate such transfers between the HKSAR and other places.

3. Enacted in June 1997, the TSP Ordinance provides a mechanism for implementing TSP arrangements between the HKSAR and other places (excluding other parts of China). The Ordinance empowers the Chief Executive (CE) to issue inward and outward warrants in respect of such transfers. It also regulates the continued custody of sentenced persons transferred and deals with notification of the sovereign power of any transfer requests.

4. Under the Ordinance, foreign prisoners in the HKSAR, irrespective of their race and nationality, may apply through the Correctional Services Department for transfer back to their own countries to serve the remainder of their sentences. Hong Kong people imprisoned overseas may also make similar applications. Transfer applications may be processed in accordance with standing bilateral TSP agreements or pursuant to ad hoc arrangements

when such agreement is not in place.

5. We have embarked on a negotiation programme to establish a network of bilateral TSP agreements with other jurisdictions. So far, we have signed TSP agreements with the United States, the United Kingdom, Sri Lanka, Italy, Thailand, Philippines and Portugal.

TSP Arrangement with Macau

6. With a view to facilitating the repatriation of Hong Kong people imprisoned in the MSAR to serve the remainder of their sentences, and vice versa, we have been in discussion with the MSAR Government on an arrangement for the transfer of sentenced persons between the two places. Article 95 of the Basic Law provides that the HKSAR may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other.

7. The discussions with Macau have concluded and a text of the TSP arrangement has been agreed. The terms of the arrangement are in conformity with the main principles and provisions enshrined in the TSP Ordinance and the TSP agreements that we have signed with other jurisdictions, which include, for example, the conditions of transfer, procedures for transfer, retention of jurisdiction and continued enforcement of sentence.

Legislative Proposal

8. As mentioned in paragraph 3 above, the TSP Ordinance only enables transfer of sentenced persons between Hong Kong and places outside China, and does not permit transfers between the MSAR and HKSAR. To implement the TSP arrangement between the two SARs, it is necessary to amend the TSP Ordinance to extend its application to include MSAR. Accordingly, section 2 of the Ordinance will need to be amended to make the Ordinance applicable to the arrangements for the transfer of sentenced persons between the MSAR and HKSAR.

9. Other provisions in the TSP Ordinance will need corresponding adjustments. First, section 4 of the Ordinance provides that the CE shall not issue an outward warrant unless, among other things, the sentenced person is a national of the receiving jurisdiction, or in the opinion of the CE, otherwise has close ties with that place. Under the TSP arrangement between the MSAR and HKSAR, one of the conditions for transfer is that a sentenced person must be a permanent resident of the receiving jurisdiction or has close ties with it. It is therefore necessary to amend the TSP Ordinance to provide that the sentenced person must be a permanent resident of the MSAR or, in the opinion of the CE, has close ties with it, where the place outside Hong Kong is Macau.

10. Secondly, section 9 of the TSP Ordinance requires the CE to notify the Central People's Government (CPG) of every relevant request for transfer and to comply with instructions given by the CPG. These requirements are not applicable to transfers between the MSAR and HKSAR. Amendment to the TSP Ordinance is necessary so that section 9 will not be made applicable to transfers between the MSAR and HKSAR.

11. Following amendment of the TSP Ordinance as proposed, the MSAR/HKSAR TSP Arrangement will be signed and brought into force.

Legislative Timeframe

12. We aim to introduce an amendment bill into the Legislative Council in the current legislative session.

Advice Sought

13. Members are invited to comment on the above proposal.

Security Bureau
October 2004