

**For discussion on
2 June 2009**

Panel on Security of the Legislative Council

**Legislative Proposals on
Immigration Convenience Measures for Macao Visitors and
Other Immigration Control Matters**

Purpose

This paper briefs Members on our proposal to amend the Immigration Ordinance (Chapter 115) to allow Macao permanent residents (PRs) to visit Hong Kong anytime solely on the strength of their Macao Permanent Identity Cards (PICs), so as to enhance travel convenience. We would also like to take the opportunity to make new provisions and specify an offence for taking employment by illegal immigrants (IIs) and other ineligible persons.

Background

Immigration Convenience Measures

2. As explained to the Panel at the meeting on 7 April 2009, we have reached agreement with the Macao Special Administrative Region Government on a number of immigration convenience measures. Among them, Macao PRs will be allowed to visit Hong Kong solely on the strength of their PICs. Since a Macao PIC does not show the holder's nationality, it does not meet the existing definition of a "valid travel document" (VTD) under the Immigration Ordinance. We need to include a new category of documents in the relevant definition to cover documents such as Macao PIC.

3. Our paper for the Panel's meeting held on 7 April 2009 is at **Annex**.

Combating Taking of Employment by IIs

4. The Administration had been prosecuting IIs found taking employment in Hong Kong for the offence of “unlawful remaining” under section 38 of the Immigration Ordinance¹. The Court of First Instance (CFI) of the High Court held in March 2009, in a judicial review case (*Iqbal Shahid, Waseem Abbas & Others v SJ*), that recognizance granted to IIs represented an authority from the Director of Immigration for them to remain in Hong Kong. Hence they could no longer be charged for “unlawful remaining”.

5. Although the law enforcement agencies have strengthened boundary control in collaboration with the Mainland counterparts, there was a surge of non-ethnic Chinese IIs (not including Vietnamese) intercepted in recent months since the handing down of the above judgment: from 32 and 41 in January and February 2009 respectively, to 102 and 167 in March and April 2009 respectively. These represent increases by 180% and 350% respectively over the average of the first two months. We see an urgent need to make provisions, to specify an offence against taking of employment (or establishing/joining in of business) by IIs and other ineligible persons. This is to urgently prevent IIs from believing that there is any loophole to exploit, thus deteriorating the problem of illegal work.

The Legislative Proposal

Immigration Convenience Measures

6. We recommend that an additional category of documents be included in the definition of VTD under the Immigration Ordinance to cater for documents such as Macao PIC. The new class of VTD should fulfill the following requirements –

- (a) be able to establish to the satisfaction of an immigration officer/assistant the identity of its holder, and his domicile or place of permanent residence;

¹ Section 38(1)(b) of the Immigration Ordinance provides that a person who, having landed in Hong Kong unlawfully, remains in Hong Kong without the authority of the Director shall be guilty of an offence.

(b) be issued by a competent authority to its holder for identification or traveling purposes, and is valid according to the laws of the country or territory of origin;

(c) allow its holder to return to the country or territory of origin; and

(d) be subject to visa control (if applicable).

7. Since an “endorsement” cannot be stamped on the card surface of a Macao PIC, we need to make technical amendments regarding the requirements under the Immigration Ordinance that conditions of stay and visas have to be “endorsed” onto travel documents. The relevant conditions of stay would be issued on a printed label or slip in the future.

Creating an Offence of Taking of Employment by IIs and Other Ineligible Persons

8. We recommend making new provisions under the Immigration Ordinance to specify an offence against taking of employment, or establishing / joining in of business, by IIs and other ineligible persons. In principle, the penalty level should not be lower than the offence of unlawful remaining and breach of conditions of stay under sections 38(1)(b) and 41 of the Immigration Ordinance respectively², i.e. liable on conviction to a fine at level 4 and to imprisonment for 3 years and to a fine at level 5 and to imprisonment for 2 years respectively.

Legislative Timetable

9. We hope to complete the drafting of the legislative amendments as soon as practicable, and where possible, introduce an amendment bill into the Legislative Council within this legislative session.

² Section 41 of the Immigration Ordinance provides that any person who contravenes a condition of stay in force in respect of him shall be guilty of an offence.

Advice Sought

10. Members are invited to provide views on the legislative proposal set out in the paper.

Security Bureau
May 2009

**For discussion on
7 April 2009**

**Panel on Security
Legislative Council**

**Immigration Convenience Measures for
Hong Kong and Macao Residents
Travelling between the Two Places**

Purpose

This paper briefs Members of the progress of the implementation of the immigration convenience measures for Hong Kong and Macao residents travelling between the two places, as announced in the Policy Address 2008.

Background

2. The passenger flow between Hong Kong and Macao has been growing substantially in recent years owing to close ties between the two places. The number of Macao Special Administrative Region (MSAR) residents visiting Hong Kong has increased from around 529 700 in 2006 to 591 800 in 2007 and 665 300 in 2008, representing an increase of over 25% in two years. The number of Hong Kong Special Administrative Region (HKSAR) residents visiting Macao has also increased from 6 940 000 in 2006 to 8 174 000 in 2007 and 8 234 000 in 2008, representing an increase of about 19% over the period. The number is expected to continue to rise in the future in view of the on-going tourism and business service development in the two places. Against this background, the Legislative Council adopted, on 27 June 2008, a motion on enhancing co-operation between Hong Kong and Macao on all fronts in view of Macao's close proximity to Hong Kong and its development in recent years.

3. The Chief Executive announced in his Policy Address 2008 that we will further streamline immigration clearance for residents travelling between Hong Kong and Macao. As we have briefed Members (vide LC Paper No. CB(2)66/08-09 (01)) on policy initiatives of the Security Bureau in the 2008/09 Policy Agenda in October 2008,

measures would be introduced to enhance immigration convenience for residents of the two places as follows -

- (a) automated immigration clearance (namely e-Channels) be made available mutually for enrolled HKSAR and MSAR permanent residents aged 11 or above visiting Macao and Hong Kong respectively as an additional clearance service for residents travelling between the two places, thus shortening the clearance time required;
- (b) for those HKSAR or MSAR permanent residents who prefer not to register for using the automated service, as well as those not eligible to be so registered, they may continue to go through immigration clearance at traditional counters on the strength of their permanent identity cards solely¹; and
- (c) extend the limit of stay in Hong Kong for Macao residents as visitors.

4. The ensuing paragraphs set out the progress of the implementation of the various measures.

Progress

e-Channels

5. At present, Hong Kong residents visiting Macao have to go through traditional immigration clearance counters at Macao. The Macao authorities are planning to launch automatic immigration clearance system for use by Macao residents. Following discussion between the two sides, it was agreed that the service will be extended to Hong Kong permanent residents following an enrolment procedure. Likewise, Hong Kong would extend our e-Channel service for use by Macao residents visiting Hong Kong.

6. We are considering measures to facilitate the enrolment arrangements for residents of both sides. We plan to set up self-service

¹ Those not eligible for the service include those who do not hold smart identity cards, those who have physical disabilities that render them not able to make use of the self-serviced clearance system and those under 11. We do not intend to extend the service to persons of age below 11 because of safety concerns. Those under 11, who are likely to be accompanied by adults, should continue to use traditional immigration counters.

kiosks at the Macao Ferry Terminal (MFT) and China Ferry Terminal (CFT) for HKSAR permanent residents to enroll to use Macao's automated immigration clearance system. The applicant will be advised of the purpose of the collection of information. Interested persons may also enroll at enrolment counters on their arrival at Macao. As regards persons between the age of 11 and 17, they would be required to present proof of consent of their parents or guardians for enrolment in Macao. We will ensure that the arrangements will be in compliance with the relevant principles under the Personal Data (Privacy) Ordinance. The Macao side will make similar arrangements for their residents.

Arrival / Departure Documents

7. At present, MSAR permanent residents are required to produce Declaration Forms for Holders of MSAR Permanent Resident Identity Card to HKSAR (Declaration Forms) for visits to Hong Kong. They may print the Forms at self-service kiosks on the Macao side before their arrival in Hong Kong. We have recently arranged for the installation of such kiosks at the MFT and CFT to provide printing service on the spot for those Macao visitors who have not brought along the Declaration Forms. This has eliminated the situation whereby Macao visitors have to return to Macao merely because of not in possession of a Declaration Form.

8. In the longer run, we aim to further streamline the clearance process at the counters. We plan to waive the requirement for Declaration Forms for Macao residents visiting Hong Kong. Reciprocally, the Macao side will dispense with the existing requirement for HKSAR permanent residents to fill out arrival / departure cards. In other words, HKSAR and MSAR permanent residents travelling between the two places would be able to go through immigration clearance on the strength of their permanent identity cards solely.

9. We are studying the legal and implementation details, including changes to computer system and programme and requisite amendments to legislation, in order to implement the provision of e-Channel service to Macao residents and the waiving of Declaration Forms.

Limit of Stay

10. To encourage Macao residents to come to Hong Kong, we have extended with effect from 16 February 2009 the limit of stay for MSAR permanent residents as visitors in Hong Kong from 14 days to 180 days; and non-permanent residents² from 14 days to 30 days. HKSAR permanent residents will continue to enjoy a limit of stay of one year as visitors in Macao and for non-permanent residents, 30 days or up to six months depending on the passports or travel documents held.

Advice Sought

11. Members are invited to note the content of the paper.

Security Bureau
March 2009

² Those who hold Visit Permits for Residents of MSAR to HKSAR