

立法會
Legislative Council

LC Paper No. CB(2)723/04-05(03)

Ref : CB2/BC/3/04

**Bills Committee on
Transfer of Sentenced Persons (Amendment) (Macau) Bill**

Background brief prepared by the Legislative Council Secretariat

**Proposal to amend the Transfer of Sentenced Persons Ordinance
to enable the transfer of sentenced persons between
the Hong Kong Special Administrative Region and
Macau Special Administrative Region**

Purpose

This paper gives a summary of the issues raised by members of the Panel on Security on the Administration's proposal to amend the Transfer of Sentenced Persons Ordinance (Cap. 513) to enable the transfer of sentenced persons between the Hong Kong Special Administrative Region (HKSAR) and the Macau Special Administrative Region (MSAR).

Background

2. The Transfer of Sentenced Persons Bill was introduced into the Legislative Council (LegCo) on 9 April 1997. No Bills Committee was formed to scrutinise the Bill. The Bill, with amendments, was passed by LegCo on 21 May 1997. The Transfer of Sentenced Persons Ordinance (Cap. 513) came into operation on 6 June 1997.

3. According to the Administration, the HKSAR Government have signed transfer of sentenced persons agreements with the United States, United Kingdom, Sri Lanka, Italy, Thailand, Philippines and Portugal. Under the Ordinance, such agreements do not require the approval of LegCo.

The Administration's proposal

4. At its meeting on 2 November 2004, the Panel on Security was consulted on the Administration's proposal to amend the Transfer of Sentenced

Persons Ordinance to enable the transfer of sentenced persons between the HKSAR and MSAR.

5. The Administration informed the Panel that to facilitate the repatriation of Hong Kong people imprisoned in the MSAR to serve the remainder of their sentences, and vice versa, the HKSAR Government and the MSAR Government had concluded an arrangement on the transfer of sentenced persons. To put in place the arrangement between the two SARs, it was necessary to amend the Transfer of Sentenced Persons Ordinance to extend its application to include the MSAR. Legislative amendments would also be proposed to –

- (a) empower the Chief Executive (CE) to issue an outward warrant for the transfer to Macau a sentenced person who was a permanent resident of the MSAR or, in the CE's opinion, had close ties with it; and
- (b) make the requirement of CE to notify the Central People's Government (CPG) about requests for transfer of sentenced persons not applicable to transfers between the HKSAR and MSAR.

Issues raised by Panel members

6. 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 tie with, the receiving jurisdiction.

7. Another member asked whether and why CE was required to notify 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 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.

8. The extract from the minutes of the Panel meeting on 2 November 2004 is in the **Appendix** for members' reference.

EXTRACT

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Legislative Council

Ref : CB2/PL/SE/1

LC Paper No. CB(2)306/04-05
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Tuesday, 2 November 2004
at 2:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon CHOY So-yuk
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung

Members attending : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man

Public Officers attending : Item IV
Mr Raymond WONG Hung-chiu
Commissioner
Independent Commission Against Corruption

Mr Daniel LI Ming-chak, IDS
Head of Operations
Independent Commission Against Corruption

Mr Michael John BISHOP, IDS
Assistant Director of Operations
Independent Commission Against Corruption

Miss CHEUNG Siu-hing
Deputy Secretary for Security 1
Security Bureau

Mr Kevin P ZERVOS, SC
Senior Assistant Director of Public Prosecutions
Department of Justice

Item V

Mrs Jennie CHOK
Deputy Secretary for Security 2

Mr Charles WONG
Principal Assistant Secretary for Security

Ms Amelia LUK
Deputy Law Officer
Department of Justice

Miss Elizabeth LIU
Senior Government Counsel
Department of Justice

Mr Dicky CHAN
Assistant Commissioner (Operation)
Correctional Services Department

Attendance by invitation : Hong Kong Journalists Association

Ms MAK Yin-ting
Honorary Secretary

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2) 5

Action

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V. Proposal to amend the Transfer of Sentenced Persons Ordinance to enable the transfer of sentenced persons between the Hong Kong Special Administrative Region and Macau Special Administrative Region
(LC Paper No. CB(2)111/04-05(07))

41. Referring to paragraph 9 of the Administration's paper, Mr Howard YOUNG asked whether the proposed transfer of sentenced persons (TSP) arrangement would only be applicable to permanent residents of the Hong Kong Special Administrative Region (HKSAR) and permanent residents of the Macau Special Administrative Region (MSAR).

42. Deputy Secretary for Security 2 (DS for S2) responded that under the TSP arrangement between HKSAR and 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.

43. Mr Howard YOUNG asked whether the Central People's Government (CPG) had been informed of the proposed arrangement. DS for S2 responded that communications had been made with CPG on the proposed TSP arrangement.

44. Referring to paragraph 10 of the Administration's paper, Mr CHEUNG Man-kwong asked whether and why CE was required to notify CPG of every relevant request for transfer of a sentenced person between HKSAR and jurisdictions other than MSAR.

45. DS for S2 replied that 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.

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