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

Supplementary Note

Purpose

This paper supplements the Administration's response at the Bills Committee on 31 May 2005 concerning adaptation of sentence for an application for an inward transfer.

Transfer into Hong Kong - adaptation of sentence

2. Where a sentenced person, say, in Country X applies to return to Hong Kong to serve the remainder of his sentence imposed by a court in Country X and his sentence is by its nature or duration incompatible with the law of Hong Kong, Hong Kong may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. We shall explain by way of a hypothetical case in the following paragraphs.

3. Hong Kong has entered into a TSP Agreement with Country X which contains a clause on adaptation of sentence similar to the one in the HKSAR/ Macau SAR arrangement on TSP. A person was convicted of theft and sentenced to 20 years' imprisonment by a court in Country X. After serving two years' sentence there, he applies to be transferred under the Country X / Hong Kong TSP Agreement to serve the remainder of his sentence in Hong Kong.

4. Section 9 of Theft Ordinance (Cap.210, Laws of Hong Kong) provides that a person who commits theft shall be liable on conviction to imprisonment for 10 years. Pursuant to the adaptation of sentence clause in the TSP

Agreement, Hong Kong may adapt the remaining sentence to be served by the applicant prisoner to 10 years, the maximum for a similar offence in Hong Kong.

5.   The Hong Kong authorities will inform Country X that it is going to enforce a term of imprisonment of 10 years if the prisoner is transferred to Hong Kong.   With the consent of Country X and the applicant, the transfer will be effected and the date on which the prisoner's sentence will terminate (i.e. 10 years from the date of his transfer) will be specified in the inward warrant to be issued under section 3 of the TSP Ordinance.

Security Bureau
3 June 2005