

The Transfer of Sentenced Persons Agreement

The Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Czech Republic concerning Transfer of Sentenced Persons will enter into force on 28 November 2014.

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

E123

AGREEMENT BETWEEN
THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA
AND
THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

The Hong Kong Special Administrative Region of the People's Republic of China (hereinafter "the Hong Kong Special Administrative Region") having been duly authorised by the Central People's Government of the People's Republic of China to conclude this Agreement and the Czech Republic (hereinafter "the Contracting Parties");

Desiring to co-operate in the transfer of sentenced persons to facilitate their reintegration into society;

Have agreed as follows:

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
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ON TRANSFER OF SENTENCED PERSONS

Article 1

DEFINITIONS

For the purposes of this Agreement

- (a) "transferring Party" means the Contracting Party from which the sentenced person may be, or has been, transferred;
- (b) "receiving Party" means the Contracting Party to which the sentenced person may be, or has been, transferred;
- (c) "sentenced person" means a person who is required to be detained in a prison, a hospital or any other institution in the jurisdiction of the transferring Party to serve a sentence;
- (d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction.

Article 2

GENERAL PRINCIPLES

A sentenced person may be transferred from the transferring Party to the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him in the transferring Party.

Article 3

CENTRAL AUTHORITIES

- (1) The Contracting Parties shall arrange for the transfer of sentenced persons through their Central Authorities.

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

E125

- (2) The Central Authority of the Hong Kong Special Administrative Region is the Secretary for Justice or his or her duly authorised officer. The Central Authority for the Czech Republic is the Ministry of Justice or a state authority authorised by the Ministry of Justice.
- (3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.
- (4) Either Contracting Party may change its Central Authority in which case it shall notify the other of the change.

Article 4

CONDITIONS FOR TRANSFER

A sentenced person may be transferred only on the following conditions:

- (a) the conduct on account of which the sentence has been imposed would constitute a criminal offence according to the law of the receiving Party if it had been committed within the jurisdiction of its courts;
- (b) where the Hong Kong Special Administrative Region is the receiving Party the sentenced person is a permanent resident of, or has close ties with, the Hong Kong Special Administrative Region;
- (c) where the Czech Republic is the receiving Party the sentenced person is a national of the Czech Republic;
- (d) the sentence imposed on the sentenced person is one of imprisonment, confinement or any other form of deprivation of liberty in any institution:
 - (i) for life;

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

- (ii) for an indeterminate period on account of mental incapacity; or
 - (iii) for a fixed period of which at least one year remains to be served at the time of the request for transfer;
- (e) the judgment is final and no further proceedings relating to the offence or any other offence are pending in the transferring Party;
- (f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that, where in view of age or physical or mental condition either Contracting Party considers it necessary, the sentenced person's consent may be given for him by a person entitled to act on his behalf in accordance with the Contracting Party's laws.

Article 5

PROCEDURE FOR TRANSFER

- (1) The Parties shall inform sentenced persons of the possibility of transfer under this Agreement.
- (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. If the sentenced person wishes to be transferred, he may express such a wish to the transferring Party or the receiving Party, which shall consider such an expressed wish against the criteria set out in Article 4 before deciding whether to request a transfer.
- (3) Where a request for transfer has been made the transferring Party shall provide the receiving Party with the following information:
 - (a) a statement of the facts upon which the conviction and sentence were based and the text of the legal provisions creating the offence;

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

E127

- (b) the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remissions to which he is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
 - (c) an original or a certified copy of the certificate of conviction and sentence, and any relevant judgment.
- (4) Either Contracting Party shall, as far as possible, provide the other Contracting Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether or not to agree to the transfer.
- (5) The transferring Party shall afford an opportunity to the receiving Party, if the receiving Party so desires, to verify through an official designated by the receiving Party, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(f) of this Agreement is given voluntarily and with full knowledge of the consequences thereof.
- (6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date at a place in the transferring Party agreed upon by both Contracting Parties.

Article 6

CONTINUED ENFORCEMENT OF SENTENCE

- (1) The receiving Party shall enforce the sentence as if the sentence had the same duration or termination date as advised by the transferring Party and had been imposed in the receiving Party.
- (2) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, including those governing conditions for

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.

- (3) If the sentence is by its nature or duration incompatible with the law of the receiving Party that Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. The adapted sentence shall be no severer than that imposed by the transferring Party in terms of nature or duration.
- (4) Either Contracting Party may grant to the sentenced person pardon or amnesty in accordance with its law. The transferring Party shall retain exclusive jurisdiction for the review of judgments of its courts. The receiving Party shall modify or terminate the sentence as soon as it is informed of any decision taken by the transferring Party under this paragraph.
- (5) The receiving Party may, if a sentenced person would be a juvenile according to its law, treat the sentenced person as a juvenile regardless of his or her status under the law of the transferring Party.
- (6) The receiving Party shall inform the transferring Party:
 - (a) when the sentenced person is discharged;
 - (b) if the sentenced person is granted conditional release;
or
 - (c) if the sentenced person has escaped from custody before enforcement of the sentence has been completed.
- (7) The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence.

Article 7

TRANSIT OF SENTENCED PERSON

If either Contracting Party transfers a sentenced person to or from another place outside the jurisdiction of both Contracting Parties, the other Contracting Party may, subject to its law, cooperate in facilitating the transit through its territory of such a sentenced person. The Contracting Party intending to make such a transfer shall give advance notice to the other Contracting Party of such transit.

Article 8

LANGUAGE AND EXPENSES

- (1) A request for transfer and all documents submitted pursuant to this Agreement shall be accompanied by a translation into an official language of the receiving Party unless that Party dispenses with this requirement.
- (2) The receiving Party shall bear the expenses of:
 - (a) the transfer of the sentenced person including any escorting officer, except the expenses incurred exclusively in the transferring Party;
 - (b) the continued enforcement of the sentence after transfer.
- (3) The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person.

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

Article 9

SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

Article 10

FINAL PROVISIONS

- (1) This Agreement shall enter into force on the thirtieth day after the day on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.
- (2) Either Contracting Party may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect six months after the date of receipt of the notice.

AGREEMENT BETWEEN THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE CZECH REPUBLIC
ON TRANSFER OF SENTENCED PERSONS

E131

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Hong Kong, this Fourth day of March, Two thousand and Thirteen, in two originals, in the Chinese, English and Czech languages, each text being equally authentic. In case of divergence of interpretation the English text shall prevail.



FOR THE HONG KONG
SPECIAL ADMINISTRATIVE
REGION OF THE PEOPLE'S
REPUBLIC OF CHINA :



FOR THE CZECH REPUBLIC :