

## **The Transfer of Sentenced Persons Agreement**

The Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the French Republic on the Transfer of Sentenced Persons will enter into force on 1 May 2008.

**AGREEMENT BETWEEN**

**THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION  
OF THE PEOPLE'S REPUBLIC OF CHINA**

**AND**

**THE GOVERNMENT OF THE FRENCH REPUBLIC**

**ON THE TRANSFER OF SENTENCED PERSONS**

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The Government of the Hong Kong Special Administrative Region of the People's Republic of China having been duly authorised by the Central People's Government of the People's Republic of China and the Government of the French Republic, hereinafter called the Contracting Parties;

Desiring to facilitate the social rehabilitation of sentenced persons;  
and

Considering that this objective should be fulfilled by giving sentenced persons, who have been convicted as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows:

**Article 1**

**Definitions**

For the purpose of this Agreement:

- (a) "judgment" means a decision or order of a court or tribunal imposing a sentence;
- (b) "sentenced person" means a person upon whom a sentence has been imposed;

- (c) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time, in the exercise of its criminal jurisdiction;
- (d) "receiving Party" means the Party to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (e) "transferring Party" means the Party in which the sentence was imposed on the person who may be, or has been transferred.

## **Article 2**

### **General Principles**

1. A person sentenced by a court or tribunal in one Contracting Party may be transferred to the jurisdiction of the other Contracting Party, in accordance with the provisions of this Agreement, in order to serve the sentence imposed on him. To that end, he may express to the transferring Party or the receiving Party his willingness to be transferred under this Agreement.
2. Transfer may be requested by either the transferring Party or the receiving Party.

## **Article 3**

### **Conditions for Transfer**

1. A sentenced person may be transferred under this Agreement only on the following conditions, namely that:
  - (a) - where the Republic of France is the receiving Party the sentenced person is a national of the Republic of France;
  - where the Hong Kong Special Administrative Region is the receiving Party the sentenced person is a permanent resident of the Hong Kong Special Administrative Region;
- (b) the judgment is final;

- (c) at the time of receipt of the request for transfer the sentenced person still has at least six months of the sentence to serve;
  - (d) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving Party, or would constitute a criminal offence if it had been committed within the jurisdiction of its courts;
  - (e) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting Party considers it necessary, by a person legally entitled to act for the sentenced person; and
  - (f) the transferring and receiving Parties agree to the transfer.
2. In exceptional cases, the transferring and receiving Parties may agree to a transfer even if the time remaining to be served by the sentenced person is less than that specified in paragraph (1)(c) of this Article.

#### **Article 4**

##### **Obligation to Furnish Information**

1. For the purposes of enabling a decision to be made on a request under this Agreement, the transferring Party shall send the following information and documents to the receiving Party unless either the receiving or the transferring Party has already decided that it will not agree to the transfer:
- (a) the name, date and place of birth of the sentenced person;
  - (b) his address, if any, in the receiving Party;
  - (c) a statement of the facts upon which the sentence was based;
  - (d) the nature, duration and date of commencement of the sentence;
  - (e) a certified copy of the judgment and a copy or account of the law on which it is based;
  - (f) whenever there is a need, any medical or social reports on the sentenced person, information about his treatment in the transferring Party and any recommendation for his further treatment in the receiving Party;

- (g) any other information which the receiving Party may require, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for sentenced person under its law;
  - (h) request of the sentenced person to be transferred or a statement of his consent to be transferred; and
  - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving Party shall send the following information and documents to the transferring Party unless either the receiving or the transferring Party has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the sentenced person fulfills the condition set out in paragraph (1)(a) of Article 3;
  - (b) relevant law of the receiving Party which indicates that the acts or omissions on account of which the sentence has been imposed in the transferring Party constitutes a criminal offence according to the law of the receiving Party or would constitute a criminal offence if committed within the jurisdiction of its courts; and
  - (c) a statement of the effect, in relation to the sentenced person, of any law or regulation relating to that person's detention in the receiving Party after that person's transfer, including a statement of the effect of paragraph (4) of Article 8 upon that person's transfer.

## Article 5

### Requests and Replies

1. Requests for transfer shall be made in writing and addressed by the relevant authority of the requesting Party direct to the relevant authority of the requested Party. Replies shall be communicated through the same channels.

2. For the purpose of paragraph 1 of this Article, the relevant authority shall be, in relation to the Republic of France, the Ministry of Justice and in relation to the Hong Kong Special Administrative Region, the Department of Justice.
3. The requested Party shall promptly inform the requesting Party of its decision whether or not to agree to the requested transfer.
4. Either Party shall notify the other Party, in writing, of any change in the designation of its relevant authority.

## **Article 6**

### **Consent and Verification**

1. The transferring Party shall ensure that the person required to give consent to the transfer in accordance with paragraph (1)(e) of Article 3, does so voluntarily and with full knowledge of the legal consequences thereof. The giving of such consent shall be governed by the procedures of the transferring Party.
2. The transferring Party shall afford an opportunity to the receiving Party to verify, if the receiving Party so desires, that the consent is given in accordance with the conditions set out in paragraph 1 above.

## **Article 7**

### **Delivery of Sentenced Persons**

Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place agreed upon by both Parties.

## **Article 8**

### **Continued Enforcement**

1. The competent authorities of the receiving Party shall continue the enforcement of the sentence in accordance with its domestic law.

2. Subject to the provisions of Article 9, the enforcement of the sentence shall be governed by the law of the receiving Party and that Party alone shall be competent to take all appropriate decisions.
3. The receiving Party shall be bound by the legal nature and duration of the sentence as determined in the transferring Party.
4. If, however, the sentence is by its nature or duration incompatible with the law of the receiving Party, or its law so requires, that Party may, in accordance with its domestic law, adapt the sentence to a punishment or measure prescribed by its own law. The punishment or measure shall, as far as possible, as to its nature and duration, correspond with that imposed by the judgment of the transferring Party. It shall not aggravate, by its nature or duration, the sentence imposed in the transferring Party.

## **Article 9**

### **Pardon, Amnesty or Commutation**

Either of the Contracting Parties may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

## **Article 10**

### **Termination of Enforcement**

The receiving Party shall terminate enforcement of the sentence as soon as it is informed by the transferring Party of any decision or measure as a result of which the sentence ceases to be enforceable.

## **Article 11**

### **Notification on Enforcement**

1. The receiving Party shall notify the transferring Party:
  - (a) when the enforcement of the sentence has been completed; or
  - (b) if the sentenced person escapes from custody before enforcement of the sentence has been completed.

2. When the receiving Party notifies that the sentence has been completed such notification shall have the effect of discharging that sentence in the transferring Party.

3. The receiving Party shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring Party.

## **Article 12**

### **Transit**

If either Contracting Party enters into arrangements for the transfer of sentenced persons with any third Party, the other Contracting Party shall, in accordance with its law, facilitate the transit through its jurisdiction of sentenced persons being transferred pursuant to such arrangements, excepting that it may refuse to grant transit to any sentenced person who fulfills the condition set out in paragraph (1)(a) of Article 3 of this Agreement. The Contracting Party intending to make such a transfer will give advance notice to the other Contracting Party of such transit.

## **Article 13**

### **Costs**

Any costs incurred in the application of this Agreement shall be borne by the receiving Party, except costs incurred exclusively in the jurisdiction of the transferring Party. The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person or from a third person.

## **Article 14**

### **Language**

Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requested Party.



## Article 15

### Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

## Article 16

### Settlement of Disputes

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

## Article 17

### Final Provisions

1. The Contracting Parties shall notify each other, in writing, when their respective requirements for entry into force of this Agreement have been complied with. The Agreement shall enter into force on the first day of the second month following the date of the second notification.
2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting Party gives written notice to the other Contracting Party of its intention to terminate it.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

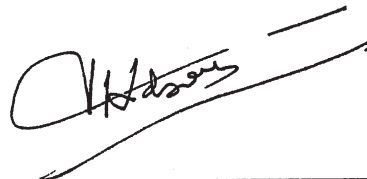
Done at *Paris* on this *9<sup>th</sup>* day of *November 2006*,  
in the Chinese, English and French languages, all texts being equally authentic.

For the Government of the Hong Kong  
Special Administrative Region of the  
People's Republic of China:



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For the Government of the  
French Republic:



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